

**Reprint  
as at 1 July 2014**



**Children, Young Persons, and  
Their Families Act 1989**

Public Act    1989 No 24  
Date of assent    27 May 1989  
Commencement    see section 1(2)

**Contents**

|   | Page |
|---|------|
| Title   | 28   |
| 1 Short Title and commencement  | 28   |
| 2 Interpretation  | 28   |
| 2A Transitional and savings provisions relating to amendments to this Act | 37   |
| 3 Act to bind the Crown   | 37   |

**Part 1**

**General objects, principles, and duties**

*General objects*

|           |    |
|-----------|----|
| 4 Objects | 37 |
|-----------|----|

*General principles*

|  |    |
|--|----|
| 5 Principles to be applied in exercise of powers conferred by this Act | 39 |
| 6 Welfare and interests of child or young person paramount             | 40 |

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**Note**

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This Act is administered by the Ministry of Social Development.**

|     |  |    |
|-----|--|----|
|     | <i>General duties</i>  |    |
| 7   | Duties of chief executive  | 40 |
| 8   | Parents and others to be informed of decisions   | 42 |
| 9   | Interpreters   | 43 |
| 10  | Duty of court and counsel to explain proceedings   | 43 |
| 11  | Duty of court and counsel to encourage and assist child or young person to participate in proceedings                                  | 45 |
| 12  | Duty of medical practitioner to minimise distress to child or young person   | 45 |
|     | <b>Part 2</b>  |    |
|     | <b>Care and protection of children and young persons</b>   |    |
|     | <i>Principles</i>  |    |
| 13  | Principles   | 45 |
|     | <i>Definition of child or young person in need of care or protection</i>   |    |
| 14  | Definition of child or young person in need of care or protection  | 48 |
| 14A | Conduct outside New Zealand  | 50 |
|     | <i>Reporting of child abuse</i>  |    |
| 15  | Reporting of ill-treatment or neglect of child or young person   | 50 |
| 16  | Protection of person reporting ill-treatment or neglect of child or young person   | 50 |
| 17  | Investigation of report of ill-treatment or neglect of child or young person   | 51 |
| 18  | Referral of care or protection cases to care and protection co-ordinator or youth justice co-ordinator by social workers or constables | 51 |
| 19  | Referral of care or protection cases to care and protection co-ordinator by other persons or by court                                  | 52 |
|     | <i>Family group conferences</i>  |    |
| 20  | Convening of family group conferences  | 54 |
| 21  | Care and protection co-ordinator to consult family, whanau, or family group on convening of family group conference                    | 54 |
| 22  | Persons entitled to attend family group conference   | 55 |
| 23  | Care and protection co-ordinator to ensure that relevant information and advice made available to family group conference              | 57 |

|    |  |    |
|----|--|----|
| 24 | Care and protection co-ordinator to ascertain views of persons unable to attend family group conference                    | 57 |
| 25 | Notification of convening of family group conference   | 57 |
| 26 | Procedure at family group conference   | 58 |
| 27 | Department to provide administrative services to family group conference   | 58 |
| 28 | Functions of family group conference   | 58 |
| 29 | Family group conference may make decisions and recommendations and formulate plans   | 59 |
| 30 | Care and protection co-ordinator to seek agreement to decisions, recommendations, and plans of family group conference     | 59 |
| 31 | Procedure where no agreement possible  | 61 |
| 32 | Records of decisions, recommendations, and plans of family group conferences to be made available to interested persons    | 62 |
| 33 | Department to maintain records of proceedings of family group conferences  | 63 |
| 34 | Chief executive to give effect to decisions, recommendations, and plans of family group conference                         | 63 |
| 35 | Police to comply with decisions, recommendations, and plans of family group conference                                     | 64 |
| 36 | Family group conference may reconvene to review its decisions, recommendations, and plans                                  | 64 |
| 37 | Proceedings of family group conference privileged  | 64 |
| 38 | Proceedings of family group conference not to be published   | 65 |
|    | <i>Powers to remove child or young person</i>  |    |
| 39 | Place of safety warrants   | 65 |
| 40 | Warrant to remove child or young person  | 66 |
| 41 | Person executing warrant to produce evidence of authority and identity [ <i>Repealed</i> ]                                 | 68 |
| 42 | Search without warrant   | 68 |
| 43 | Placement of child or young person placed in custody of chief executive  | 69 |
| 44 | Parent or guardian may apply for release of or access to child or young person   | 69 |
| 45 | Child or young person placed in custody of chief executive to be brought before court within 5 days unless sooner released | 70 |

|    |  |    |
|----|--|----|
| 46 | Powers of court where application made under section 44 or child or young person brought before court under section 45                       | 70 |
| 47 | Social worker or constable to furnish report to Commissioner where child or young person released before required to be brought before court | 71 |
| 48 | Unaccompanied children and young persons   | 72 |
|    | <i>Medical examination of child or young person</i>  |    |
| 49 | Court may order medical examination of child or young person   | 74 |
| 50 | <i>Ex parte</i> application for order for medical examination  | 74 |
| 51 | Court may impose conditions on order for medical examination   | 75 |
| 52 | Medical practitioner to prepare report on examination  | 75 |
| 53 | Medical examination of child or young person at request of social worker   | 75 |
| 54 | Child or young person entitled to have adult present   | 76 |
| 55 | Restrictions on internal examinations and examinations under general anaesthetic   | 76 |
| 56 | Medical practitioner to prepare report on examination  | 77 |
| 57 | Social worker to make report to chief executive  | 77 |
| 58 | Fees for reports prepared under section 52 or section 56   | 77 |
|    | <i>Production of documents relevant to investigation</i>   |    |
| 59 | Application for production of documents relevant to investigation of whether child or young person in need of care or protection             | 78 |
| 60 | <i>Ex parte</i> application for order for production of document   | 78 |
| 61 | Court may order document to be produced  | 79 |
| 62 | Section 61 to apply notwithstanding any enactment or rule of law   | 79 |
| 63 | Right to remove, retain, and make copies of document produced under section 61   | 80 |
| 64 | Document produced under section 61 not to be used for any other purpose  | 80 |
| 65 | Use of documents in subsequent proceedings   | 80 |
| 66 | Government departments may be required to supply information   | 81 |
|    | <i>Proceedings in respect of children and young persons in need of care or protection</i>  |    |
| 67 | Grounds for declaration that child or young person is in need of care or protection  | 82 |

|     |  |    |
|-----|--|----|
| 68  | Application for declaration that child or young person is in need of care or protection  | 82 |
| 69  | Joint applications   | 82 |
| 70  | No application to be made unless family group conference has been held   | 82 |
| 71  | Court may make declaration in absence of proof of responsibility for neglect or ill-treatment of child or young person                 | 84 |
| 72  | Court not to make declaration unless family group conference held  | 84 |
| 73  | Court not to make declaration unless satisfied that child's or young person's need for care or protection cannot be met by other means | 85 |
|     | <i>Counselling</i>   |    |
| 74  | Court may require parties to undergo counselling   | 85 |
| 75  | Counsellor to arrange meeting and submit report on outcome   | 86 |
| 76  | Fees   | 86 |
| 77  | Privilege  | 87 |
|     | <i>Custody of child or young person pending determination of proceedings</i>   |    |
| 78  | Custody of child or young person pending determination of proceedings  | 87 |
| 79  | Persons who may be granted custody under section 78  | 88 |
| 80  | Effect of order made under section 78  | 89 |
| 81  | Placement of child or young person under order made under section 78   | 89 |
| 82  | Child or young person may be returned to person who previously had care  | 90 |
|     | <i>Orders under this Part</i>  |    |
| 83  | Orders of court on making of declaration   | 91 |
| 84  | Power to make other orders where declaration made on ground of child's offending   | 92 |
| 85  | Recall to come before court  | 93 |
|     | <i>Services orders</i>   |    |
| 86  | Services orders  | 94 |
| 86A | Interim services orders  | 95 |
|     | <i>Restraining orders</i>  |    |
| 87  | Restraining orders   | 96 |

|     |  |     |
|-----|--|-----|
| 88  | Interim restraining orders   | 96  |
| 89  | Offence to contravene restraining order or interim<br>restraining order  | 97  |
| 90  | When restraining order shall cease to have effect  | 97  |
|     | <i>Support orders</i>  |     |
| 91  | Support orders   | 97  |
| 92  | Interim support orders   | 98  |
| 93  | Duty to provide support  | 98  |
| 94  | Duty of chief executive to appoint social worker to<br>provide support   | 99  |
| 95  | Conditions of support order or interim support order   | 99  |
| 96  | Power of court to impose additional conditions   | 100 |
| 97  | Court may impose conditions in respect of parent,<br>guardian, etc, of child or young person                     | 101 |
| 98  | Court not to impose condition requiring medical treatment<br>without person's consent                            | 101 |
| 99  | Person or organisation providing support to child or young<br>person to report to court                          | 102 |
| 100 | Failure to observe conditions of support order   | 102 |
|     | <i>Custody orders</i>  |     |
| 101 | Custody orders   | 103 |
| 102 | Interim custody orders   | 104 |
| 103 | Court may impose conditions to facilitate return of child<br>or young person                                     | 104 |
| 104 | Effect of custody order  | 105 |
| 105 | Living arrangements for child or young person placed in<br>custody of chief executive                            | 106 |
| 106 | Living arrangements where child or young person placed<br>in custody of iwi social service, etc                  | 108 |
| 107 | Person in whose custody child or young person is placed<br>may determine access rights in absence of court order | 108 |
| 108 | When custody order shall cease to have effect  | 109 |
| 109 | Custody to revert on expiry of order   | 109 |
|     | <i>Guardianship orders</i>   |     |
| 110 | Guardianship orders  | 109 |
| 111 | Person not to be appointed as guardian without consent   | 110 |
| 112 | Chief executive may be appointed as guardian for specific<br>purpose   | 110 |
| 113 | Court may impose conditions to facilitate return of child<br>or young person                                     | 110 |
| 114 | Effect of guardianship order   | 111 |

|      |  |     |
|------|--|-----|
| 115  | Disputes between guardians   | 112 |
| 116  | Review of guardian's decision or refusal to give consent   | 112 |
| 117  | When guardianship orders to cease to have effect   | 113 |
| 118  | Reversion of guardianship on expiry or discharge of guardianship order                           | 114 |
| 119  | Guardianship of child or young person on death of person appointed as guardian under this Act    | 114 |
|      | <i>Effect of custody and guardianship orders on jurisdiction under Care of Children Act 2004</i> |     |
| 120  | Restriction on making of guardianship and parenting orders under Care of Children Act 2004       | 115 |
|      | <i>Access and exercise of other rights</i>   |     |
| 121  | Court may make orders for access and exercise of other rights by parents and other persons       | 116 |
| 122  | Enforcement of access rights   | 116 |
| 123  | Power of entry   | 117 |
| 124  | Person executing warrant to produce evidence of authority and identity [ <i>Repealed</i> ]       | 117 |
|      | <i>Variation and discharge of orders</i>   |     |
| 125  | Application for variation or discharge of orders made under this Part                            | 117 |
| 126  | Persons who may apply for variation or discharge of order  | 118 |
| 126A | Court may direct holding of family group conference to consider application                      | 119 |
| 127  | Court may vary or discharge order  | 120 |
|      | <i>Plans for children and young persons</i>  |     |
| 128  | Court to obtain and consider plan for child or young person before making certain orders         | 121 |
| 129  | Court to direct who is to prepare plan   | 123 |
| 130  | Content of plans   | 124 |
| 131  | Adjournment for purposes of obtaining plan   | 125 |
| 132  | Access to plans  | 125 |
| 133  | Court may order plan not to be disclosed   | 126 |
| 134  | Court to set date for review of plan   | 126 |
| 135  | Review of plan   | 127 |
| 136  | Access to reports and revised plans  | 128 |
| 137  | Court to consider report and make directions   | 128 |
| 138  | Court to set date for further review of plan   | 130 |

|     |  |     |
|-----|--|-----|
|     | <i>Agreements for care of children and young persons</i>   |     |
| 139 | Agreements for temporary care of children and young persons by chief executive, iwi social services, etc | 131 |
| 140 | Agreements for extended care of children and young persons by chief executive, iwi social service, etc   | 131 |
| 141 | Agreements for extended care of severely disabled children and young persons                             | 132 |
| 142 | Agreements with persons providing residential disability care  | 134 |
| 143 | All parents or guardians not required to be party to agreement   | 135 |
| 144 | Agreement not to be made without consent of child or young person  | 135 |
| 145 | Agreement not to be made without approval of family group conference                                     | 136 |
| 146 | Form and terms of agreements   | 137 |
| 147 | Further restrictions on making of agreements   | 138 |
| 148 | Effect of agreements   | 139 |
| 149 | Agreement may provide for consent to medical treatment   | 139 |
|     | <b>Part 3</b>  |     |
|     | <b>Provisions relating to procedure in respect of proceedings under Parts 2 and 3A</b>                   |     |
|     | <i>Courts having jurisdiction under Parts 2 and 3A</i>   |     |
| 150 | Jurisdiction of Family Courts  | 140 |
| 151 | Jurisdiction of District Courts in cases of urgency  | 140 |
|     | <i>Service of applications</i>   |     |
| 152 | Service of application for declaration   | 140 |
| 153 | Notice of application for declaration to be given to child or young person                               | 141 |
| 154 | Service of application for variation or discharge of order   | 141 |
| 155 | Court may dispense with service  | 142 |
|     | <i>Attendance of parties at hearing</i>  |     |
| 156 | Court may require party to attend hearing  | 142 |
| 157 | Court may require child or young person to attend hearing  | 143 |
|     | <i>Joint hearings</i>  |     |
| 158 | Applications may be heard together   | 144 |



|     |  |     |
|-----|--|-----|
|     | <i>Appointment of persons to represent child or young person<br/>or assist court</i>             |     |
| 159 | Appointment of lawyer to represent child or young person<br>in proceedings                       | 144 |
| 160 | Appointment of lawyer to assist court  | 145 |
| 161 | Further provisions relating to appointment under section<br>159 or 160                           | 146 |
| 162 | Payment of lawyer appointed under section 159 or 160   | 146 |
| 163 | Appointment of lay advocate  | 147 |
| 164 | Further provisions relating to lay advocate  | 148 |
| 165 | Payment of lay advocate  | 149 |
|     | <i>Attendance at hearings and right to make representations</i>                                  |     |
| 166 | Persons entitled to be present at hearing of proceedings<br>in Family Court                      | 149 |
| 167 | Child or young person may give evidence in private   | 151 |
| 168 | Other powers of court to hear proceedings in private or<br>exclude persons not affected          | 151 |
| 169 | Right to make representations  | 151 |
|     | <i>Mediation conferences</i>   |     |
| 170 | Calling of mediation conference  | 152 |
| 171 | Objectives of mediation conference   | 153 |
| 172 | Procedure at mediation conference  | 153 |
| 173 | Presiding Judge to make record of proceedings at<br>mediation conference                         | 154 |
| 174 | Power of presiding Judge to make consent orders  | 155 |
| 175 | Power to require attendance at mediation conference  | 155 |
| 176 | Privilege  | 155 |
| 177 | Presiding Judge may hear subsequent proceedings  | 156 |
|     | <i>Reports</i>   |     |
| 178 | Medical, psychiatric, and psychological reports  | 156 |
| 179 | Further provisions relating to medical, psychiatric, and<br>psychological examinations           | 157 |
| 180 | Fees for reports prepared under section 178  | 158 |
| 181 | Court may order examination to be carried out in<br>psychiatric hospital                         | 158 |
| 182 | Release of child or young person from psychiatric hospital<br>where detention no longer required | 160 |
| 183 | Review of order made under section 178 or section 181  | 160 |
| 184 | Court may indicate matters to be dealt with in report  | 160 |

|      |   |     |
|------|---|-----|
| 185  | Sections to have effect in place of sections 38 to 44 of Criminal Procedure (Mentally Impaired Persons) Act 2003              | 160 |
| 186  | Report by social worker   | 161 |
| 187  | Cultural and community reports  | 162 |
| 188  | Privilege for reports   | 163 |
| 189  | Adjournment for purposes of obtaining report  | 163 |
| 190  | Reports may be made orally  | 164 |
| 191  | Access to reports   | 164 |
| 192  | Court may order report not to be disclosed  | 164 |
| 193  | Right to tender evidence on report  | 165 |
| 194  | Court may call person making report as witness  | 165 |
|      | <i>Miscellaneous provisions</i>   |     |
| 195  | Evidence [ <i>Repealed</i> ]  | 165 |
| 196  | Special provisions applying to disclosure of communications to medical practitioner or clinical psychologist                  | 165 |
| 197  | Standard of proof   | 166 |
| 198  | Special provisions applying to applications for declaration on ground of child's offending                                    | 166 |
| 199  | Power of court to call witnesses  | 166 |
| 200  | Court to ensure that application for declaration that child or young person in need of care or protection dealt with promptly | 167 |
| 201  | Adjournments  | 168 |
| 202  | Orders by consent   | 168 |
| 203  | Costs   | 169 |
| 204  | Rehearings  | 169 |
| 205  | Preventing removal of child or young person from New Zealand  | 169 |
| 206  | Offence to take child or young person out of New Zealand where proceedings pending  | 171 |
| 206A | Leave required in certain cases to commence substantially similar proceedings   | 171 |
| 206B | Power to dismiss proceedings  | 172 |
| 207  | Vexatious proceedings   | 173 |

### **Part 3A**

#### **Trans-Tasman transfer of protection orders and protection proceedings**

##### *Purpose of Part*

|      |                 |     |
|------|-----------------|-----|
| 207A | Purpose of Part | 173 |
|------|-----------------|-----|

|       |  |     |
|-------|--|-----|
|       | <i>Interpretation</i>  |     |
| 207B  | Interpretation   | 174 |
| 207C  | Meaning of protection order  | 175 |
|       | <i>Transfer of protection orders from New Zealand by chief executive</i>       |     |
| 207D  | Chief executive may transfer protection order                                  | 176 |
| 207E  | Chief executive to have regard to certain matters                              | 178 |
| 207F  | Consent required   | 178 |
| 207G  | Consultation required  | 179 |
| 207H  | Conditions and duration of order to be transferred                             | 179 |
| 207I  | Notice of decision to transfer   | 180 |
| 207J  | Review of decision to transfer   | 181 |
|       | <i>Transfer of protection orders from New Zealand by order of court</i>        |     |
| 207K  | Court may order transfer of protection order                                   | 181 |
| 207L  | Service of application   | 182 |
| 207M  | Court to have regard to certain matters  | 183 |
| 207N  | Terms, conditions, and duration of order to be transferred                     | 183 |
| 207O  | Appeal against order for transfer  | 184 |
| 207P  | Review of order for transfer   | 184 |
|       | <i>Transfer of protection proceedings from New Zealand by order of court</i>   |     |
| 207Q  | Court may order transfer of protection proceedings                             | 185 |
| 207R  | Service of application   | 186 |
| 207S  | Court to have regard to certain matters  | 187 |
| 207T  | Interim order  | 187 |
| 207U  | Appeal against order for transfer  | 188 |
| 207V  | Review of order for transfer   | 188 |
| 207W  | Transferred proceedings discontinued   | 189 |
|       | <i>Transfer of protection orders and protection proceedings to New Zealand</i> |     |
| 207X  | Registration of orders and proceedings to be transferred to New Zealand        | 189 |
| 207Y  | Notice of registration   | 190 |
| 207Z  | Effect of registration   | 190 |
| 207ZA | Court to obtain plan for child or young person                                 | 191 |
| 207ZB | Hearing and determination of transferred proceedings                           | 192 |
| 207ZC | Aboriginal or Torres Strait Islander children or young persons                 | 192 |
| 207ZD | Application to have registration revoked                                       | 192 |

|       |  |     |
|-------|--|-----|
| 207ZE | Service of application                     | 193 |
| 207ZF | Revocation of registration                 | 193 |
| 207ZG | Notice of revocation                       | 194 |
| 207ZH | Effect of revocation on plan and documents | 194 |

*Miscellaneous provisions*

|       |  |     |
|-------|--|-----|
| 207ZI | Expiry and revival of order transferred from New Zealand       | 194 |
| 207ZJ | Expiry and revival of ancillary orders                         | 195 |
| 207ZK | Transfer of court file   | 195 |
| 207ZL | Disclosure of information to interstate officer                | 196 |
| 207ZM | Information disclosed to chief executive by interstate officer | 196 |
| 207ZN | Department not to disclose information identifying notifier    | 196 |
| 207ZO | Written consent of interstate officer                          | 197 |

**Part 4  
Youth justice**

*Principles*

|     |            |     |
|-----|------------|-----|
| 208 | Principles | 198 |
|-----|------------|-----|

*Warnings and formal Police cautions*

|     |   |     |
|-----|---|-----|
| 209 | Consideration of warning as alternative to prosecution  | 200 |
| 210 | Administration of warning   | 200 |
| 211 | Formal Police caution   | 200 |
| 212 | Notice of warning or caution  | 201 |
| 213 | Evidence of warnings and formal Police cautions and of offences to which they relate not admissible in criminal proceedings | 201 |

*Arrest of child or young person without warrant*

|      |   |     |
|------|---|-----|
| 214  | Arrest of child or young person without warrant             | 202 |
| 214A | Arrest of child or young person in breach of bail condition | 203 |

*Rights of children and young persons when questioned,  
charged with offence, or arrested*

|      |  |     |
|------|--|-----|
| 215  | Child or young person to be informed of rights before questioned by enforcement officer          | 204 |
| 215A | Rights to be explained to child or young person on request                                       | 205 |
| 216  | Enforcement officer to explain rights to child or young person who is to be charged with offence | 205 |
| 217  | Rights to be explained to child or young person who is arrested                                  | 206 |

|     |  |     |
|-----|--|-----|
| 218 | Explanations to be given in manner and language appropriate to age and level of understanding of child or young person   | 206 |
| 219 | Explanations not required if child or young person already informed of rights  | 206 |
| 220 | Other enactments requiring information or particulars not affected   | 206 |
|     | <i>Provisions relating to admissibility of statements made by children and young persons</i>   |     |
| 221 | Admissibility of statements made by children and young persons   | 207 |
| 222 | Persons who may be nominated for the purposes of section 221(2)(b) or (c)  | 208 |
| 223 | Section 221 not to apply where statement made before requirements of that section can be met   | 209 |
| 224 | Reasonable compliance sufficient   | 209 |
| 225 | Other enactments relating to admissibility of statements or confessions, or requiring information or particulars to be given, not affected   | 209 |
| 226 | Evidence of communications during consultation not admissible  | 210 |
|     | <i>Entitlement to consult barrister or solicitor</i>   |     |
| 227 | Child or young person at enforcement agency office for questioning in relation to commission or possible commission of offence or arrested entitled to consult with barrister or solicitor               | 210 |
| 228 | Entitlement of child or young person to consult with barrister or solicitor where taken to hospital following arrest or questioned at hospital   | 211 |
|     | <i>Notification of parents and other persons where child or young person being questioned or is arrested</i>   |     |
| 229 | Parents or guardians or other persons to be informed where child or young person at enforcement agency office for questioning in relation to commission or possible commission of offence or is arrested | 211 |
| 230 | Evidence of communications during visit not admissible   | 213 |
| 231 | Persons who may be nominated for the purposes of section 229(1)(a)   | 213 |
| 232 | Notice of offence with which child or young person charged to be given to parents or guardians or other persons having care of child or young person   | 214 |

|      |  |     |
|------|--|-----|
|      | <i>Breath-alcohol and blood-alcohol provisions of Land<br/>Transport Act 1998 not affected</i>   |     |
| 233  | Breath-alcohol and blood-alcohol provisions of Land<br>Transport Act 1998 not affected   | 215 |
|      | <i>Custody of child or young person following arrest or<br/>pending hearing</i>  |     |
| 234  | Custody of child or young person following arrest  | 215 |
| 235  | Child or young person who is arrested may be placed in<br>custody of chief executive   | 216 |
| 236  | Young person who is arrested may be detained in Police<br>custody  | 217 |
| 237  | Child or young person who is arrested to be brought<br>before court as soon as possible  | 218 |
| 238  | Custody of child or young person pending hearing   | 219 |
| 239  | Restrictions on power of court to order child or young<br>person to be detained in custody   | 219 |
| 239A | Expiry of sections 238(1A) to (1C), and 239(3)   | 221 |
| 240  | Conditions of bail   | 221 |
| 241  | Review of orders made under section 238  | 221 |
| 242  | Order under section 238 sufficient authority for detention<br>of child or young person   | 221 |
| 243  | Other powers to grant bail not affected  | 222 |
|      | <i>Powers under Immigration Act 2009 not affected</i>  |     |
| 244  | Immigration Act 2009 (other than sections 342 to 354)<br>not affected  | 223 |
|      | <i>Prosecution of children and young persons</i>   |     |
| 245  | Proceedings not to be instituted against young person<br>unless youth justice co-ordinator consulted and family<br>group conference held | 223 |
| 246  | Procedure where young person arrested and brought<br>before court  | 224 |
| 247  | Youth justice co-ordinator to convene family group<br>conference   | 224 |
| 248  | Family group conference not required in certain cases  | 225 |
| 249  | Time limits for convening of family group conferences  | 227 |
| 250  | Consultation on convening of family group conference   | 228 |
| 251  | Persons entitled to attend family group conference   | 229 |
| 252  | Child or young person in custody to be permitted to attend<br>family group conference  | 233 |
| 253  | Notification of convening of family group conference   | 233 |

|      |  |     |
|------|--|-----|
| 254  | Youth justice co-ordinator to ascertain views of persons unable to attend family group conference                                  | 234 |
| 255  | Youth justice co-ordinator must ensure that relevant information and advice made available to family group conference              | 234 |
| 256  | Procedure at family group conference   | 235 |
| 257  | Department to provide administrative services to family group conferences  | 235 |
| 258  | Functions of family group conference   | 235 |
| 259  | Family group conference to ascertain whether child or young person admits offence  | 237 |
| 259A | Family group conference must consider attendance at parenting education, mentoring, and alcohol or drug rehabilitation programmes  | 237 |
| 260  | Family group conference may make decisions and recommendations and formulate plans   | 238 |
| 261  | Family group conference may make decisions, recommendations, and plans relating to care or protection of child or young person     | 238 |
| 262  | Youth justice co-ordinator to make record of decisions, recommendations, and plans of family group conference                      | 239 |
| 263  | Youth justice co-ordinator to seek agreement to decisions, recommendations, and plans of family group conference                   | 239 |
| 264  | Procedure where no agreement possible  | 241 |
| 265  | Records of decisions, recommendations, and plans of family group conference to be made available to interested persons             | 241 |
| 266  | Department to maintain records of proceedings of family group conferences  | 242 |
| 267  | Enforcement agencies to comply with decisions, recommendations, and plans of family group conference                               | 243 |
| 268  | Chief executive to give effect to decisions, recommendations, and plans of family group conference                                 | 243 |
| 269  | Chief executive may provide financial assistance to enable decisions, etc, of family group conference to be carried out            | 244 |
| 269A | Chief executive to ascertain whether victims wish to be informed of progress in implementing decisions, recommendations, and plans | 245 |
| 270  | Family group conference may reconvene to review its decisions, recommendations, and plans  | 245 |

|      |  |     |
|------|--|-----|
| 271  | Proceedings of family group conference privileged and not to be published  | 246 |
|      | <i>Jurisdiction of Youth Courts</i>  |     |
| 272  | Jurisdiction of Youth Courts and children's liability to be prosecuted for criminal offences   | 246 |
| 272A | Modifications and procedure for child aged 12 or 13 years charged with offence in section 272(1)(b) or (c)                             | 250 |
| 273  | Manner of dealing with offences (other than murder or manslaughter)  | 251 |
| 274  | Young person may elect trial by jury in certain cases  | 251 |
| 275  | Manner of dealing with offence of murder or manslaughter, or where jury trial to be held   | 251 |
| 276  | Child or young person may forgo right to jury trial and elect to have proceedings determined by Youth Court                            | 252 |
| 277  | Provisions applicable where child, young person, or adult jointly charged  | 253 |
| 277A | Place and level of trial court for jury trial  | 255 |
| 278  | Parent or guardian may be summoned to appear when young person charged with offence  | 256 |
| 279  | Court to consider recommendations of family group conference   | 257 |
| 280  | Court may refer case to care and protection co-ordinator to determine whether matter should be dealt with under Part 2                 | 257 |
| 280A | Court may refer case to person who commenced proceeding to be dealt with as child offending care or protection proceeding under Part 2 | 258 |
|      | <i>Disposal of proceedings in Youth Court</i>  |     |
| 281  | Court not to make orders unless family group conference held   | 260 |
| 281A | Court to consider whether family group conference should be held   | 261 |
| 281B | Court may direct holding of family group conference at any time  | 261 |
| 282  | Power of court to discharge charge   | 262 |
| 283  | Hierarchy of court's responses if charge against young person proved   | 262 |
| 284  | Factors to be taken into account on sentencing   | 265 |
| 285  | Restrictions on power of court to make certain orders under section 283  | 267 |



|      |  |     |
|------|--|-----|
| 286  | Person or organisation not to be required to supervise young person without consent  | 268 |
| 286A | Parenting education, mentoring, or alcohol or drug rehabilitation programme order: general requirement for provider to have first agreed to provide programme concerned, and making of order subject to conditions | 269 |
| 287  | Reparation limited to direct loss  | 269 |
| 288  | Order in respect of parent or guardian or other person having care not to be made without first informing of proposal to make order and giving opportunity to make representations                                 | 269 |
| 289  | Court must impose least restrictive outcome adequate in circumstances  | 270 |
| 290  | Judge must record in writing reasons for supervision with residence or transfer order  | 271 |
| 290A | Restriction on who may provide residential component of specified programme or activity  | 271 |
| 291  | Transfer of other charges to District Court or High Court for sentence   | 272 |
| 292  | Whole or part of fine may be awarded to victim of offence suffering physical or emotional harm <i>[Repealed]</i>   | 272 |
| 293  | Effect of order imposing fine or requiring payment of compensation or restitution or forfeiture of property  | 272 |
| 293A | Disqualification from driving  | 273 |
| 294  | Demerit points   | 274 |
| 295  | Recall to come before court  | 275 |
|      | <i>Expiry of orders</i>  |     |
| 296  | Expiry of orders   | 276 |
|      | <i>Failure to comply with, and variation and cancellation of, specified orders</i>   |     |
| 296A | Orders to which sections 296B and 296E apply   | 277 |
| 296B | Failure to comply  | 278 |
| 296C | Warrant to have young person arrested and brought before court   | 279 |
| 296D | Execution of warrant under section 296C  | 280 |
| 296E | Variation and cancellation   | 280 |
| 296F | Interim suspension order   | 281 |
|      | <i>Intensive supervision orders</i>  |     |
| 296G | Intensive supervision order in response to young person's non-compliance with judicially monitored condition of supervision or supervision with activity order   | 282 |

|      |   |     |
|------|---|-----|
| 296H | Duty of chief executive to provide for supervision under intensive supervision order                      | 283 |
| 296I | Conditions of intensive supervision order   | 283 |
| 296J | Additional conditions imposing curfew with or without electronic monitoring of compliance                 | 284 |
| 296K | Electronic monitoring   | 286 |
| 296L | Powers to detain and return, and arrest, young person breaching curfew condition                          | 287 |
| 296M | Review of intensive supervision order   | 288 |
|      | <i>Powers of court where young person already subject to order made under this Part</i>                   |     |
| 297  | Powers of court in dealing with young person subject to order made under this Part                        | 289 |
|      | <i>Parenting education programme orders</i>   |     |
| 297A | Written statements of terms, and how court may respond to failures to comply                              | 290 |
|      | <i>Alcohol or drug rehabilitation programme orders</i>  |     |
| 297B | Nature of programmes, who may consent to medical treatment, and related custody orders                    | 291 |
|      | <i>Community work order</i>   |     |
| 298  | Community work order  | 292 |
| 299  | Failure to comply with community work order <i>[Repealed]</i>   | 293 |
| 300  | Variation or cancellation of community work order <i>[Repealed]</i>                                       | 293 |
| 301  | Procedural provisions relating to application under section 300 <i>[Repealed]</i>                         | 293 |
| 302  | Application of Accident Compensation Act 2001 to young persons performing work under community work order | 294 |
| 303  | Effect of subsequent sentence   | 294 |
|      | <i>Provisions relating to supervision orders and supervision with activity orders</i>                     |     |
| 304  | Duty of chief executive to provide for supervision  | 295 |
| 305  | Conditions of supervision order   | 295 |
| 306  | Power of court to impose additional conditions  | 296 |
| 307  | Supervision with activity order   | 297 |
| 308  | Conditions of supervision with activity order   | 299 |
| 308A | Judicial monitoring of compliance with conditions of supervision or supervision with activity order       | 299 |
| 308B | Effect of judicial monitoring direction   | 300 |

|      |   |     |
|------|---|-----|
| 308C | Progress reports  | 301 |
| 309  | Failure to observe conditions of supervision order or supervision with activity order <i>[Repealed]</i>           | 301 |
| 310  | Suspension, cancellation, and variation of supervision order or supervision with activity order <i>[Repealed]</i> | 301 |
|      | <i>Supervision with residence orders</i>  |     |
| 311  | Supervision with residence order  | 302 |
| 312  | Effect of supervision with residence order  | 303 |
| 313  | Court may make orders for access and exercise of other rights by parents and other persons                        | 304 |
| 314  | Court must in certain cases release young person from custody before expiry of supervision with residence order   | 305 |
| 315  | Supervision with residence order to cease to run if young person absconds   | 305 |
| 316  | Court may cancel supervision with residence order if young person absconds  | 306 |
| 317  | When supervision with residence order ceases to have effect   | 307 |
| 318  | Search without warrant  | 307 |
| 319  | Medical treatment of young person in custody of chief executive   | 308 |
|      | <i>Review of orders for periods of at least 8 months</i>  |     |
| 319A | Orders must be reviewed   | 309 |
|      | <i>Reports on effectiveness of orders</i>   |     |
| 320  | Report to be made to court on effectiveness of certain orders   | 311 |
|      | <b>Part 5</b>   |     |
|      | <b>Provisions relating to procedure in Youth Court</b>  |     |
|      | <i>General</i>  |     |
| 321  | Application of Acts relating to bail, criminal disclosure, criminal procedure, and District Courts                | 313 |
| 322  | Time for instituting proceedings  | 314 |
|      | <i>Youth advocates</i>  |     |
| 323  | Appointment of youth advocate to represent child or young person  | 314 |
| 324  | Further provisions relating to youth advocate   | 315 |
| 325  | Payment of youth advocate   | 316 |

|   |  |     |
|---|--|-----|
| <i>Lay advocates</i>  |  |     |
| 326   | Appointment of lay advocate  | 316 |
| 327   | Functions of lay advocate  | 317 |
| 328   | Further provisions relating to lay advocate                              | 317 |
| 328A  | Payment of lay advocate  | 317 |
| <i>Attendance at hearings and right to make representations</i> |  |     |
| 329   | Persons entitled to be present at hearing                                | 318 |
| 330   | Right to make representations in Youth Court                             | 319 |
| <i>Arrangements for hearings in Youth Courts</i>                |  |     |
| 331   | Matters before court to be dealt with separately                         | 320 |
| 332   | Arrangements for hearing of proceedings in Youth Court                   | 320 |
| <i>Reports</i>  |  |     |
| 333   | Medical, psychiatric, and psychological reports                          | 320 |
| 334   | Report by social worker  | 321 |
| 335   | Report to be accompanied by plan   | 322 |
| 336   | Court may obtain cultural or community report                            | 323 |
| 337   | Reports may be made orally   | 323 |
| 338   | Privilege for reports  | 323 |
| 339   | Access to reports and plans under this Part                              | 323 |
| <i>Written statement of terms of orders</i>                     |  |     |
| 340   | Written statement of terms of certain orders to be given to young person | 324 |

## **Part 6 Appeals**

|  |   |     |
|--|---|-----|
| <i>Appeals from decisions of Family Courts</i> |   |     |
| 341  | Rights of appeal against decisions of Family Courts                   | 325 |
| 342  | Procedure for bringing appeal <i>[Repealed]</i>                       | 326 |
| 343  | Notice of appeal to be given to local principal manager               | 326 |
| 344  | Notice of appeal not to affect orders unless court otherwise directs  | 326 |
| 345  | Interim custody order pending appeal                                  | 326 |
| 346  | Procedure on appeal   | 327 |
| 347  | Appeal to Court of Appeal   | 327 |
| 348  | Determination of appeals  | 328 |
| 349  | Court may refer appeals back for reconsideration <i>[Repealed]</i>    | 328 |
| 350  | Decision of High Court and Family Court to be sent to chief executive | 328 |

|      |   |     |
|------|---|-----|
|      | <i>Appeals from decisions of Youth Court</i>  |     |
| 351  | Appeals from decisions of Youth Court by young person                                   | 329 |
| 352  | Appeal by parents or guardians or other persons having care of young person             | 329 |
| 353  | Appeal by persons other than young person dealt with in Youth Court                     | 331 |
| 354  | Appeal on a point of law only   | 331 |
| 355  | Application of Part 6 of Criminal Procedure Act 2011                                    | 331 |
| 356  | Effect of notice of appeal on certain orders  | 332 |
| 357  | Application of section 329 to hearing of appeal   | 333 |
| 358  | Presence of young person at hearing of appeal   | 333 |
| 359  | Presence of parents at hearing of appeal from decisions of Youth Court                  | 333 |
| 360  | Notification of appeal and result of appeal to local principal manager                  | 334 |
|      | <b>Part 7</b>   |     |
|      | <b>Children and young persons in care of chief executive or other persons or bodies</b> |     |
| 361  | Application of sections 362, 364, 365, 387, 390 to 392, 394, and 395                    | 335 |
|      | <i>Placement of children and young persons</i>  |     |
| 362  | Children and young persons may be placed in care of approved persons                    | 337 |
| 363  | Payment to person or organisation providing care  | 337 |
|      | <i>Residences</i>   |     |
| 364  | Authority to establish residences   | 339 |
| 364A | Residence management committees <i>[Repealed]</i>                                       | 340 |
| 364B | Functions of residence management committees <i>[Repealed]</i>                          | 340 |
| 365  | Chief executive may place children and young persons in residences                      | 341 |
| 366  | Closing of residences and transfer of residents   | 342 |
|      | <i>Secure care</i>  |     |
| 367  | Secure care   | 342 |
| 368  | Grounds for placement in secure care  | 343 |
| 369  | Notice to be given where child or young person placed in secure care                    | 343 |
| 370  | Time limits on detention in secure care   | 344 |
| 371  | Application for approval for continued detention in secure care                         | 345 |

|      |  |     |
|------|--|-----|
| 372  | Registrar may authorise continued detention in secure care until application is determined | 346 |
| 373  | Persons entitled to be present at hearing of application under section 371                 | 347 |
| 374  | Right to make representations  | 348 |
| 375  | Hearing to be held in residence wherever practicable                                       | 349 |
| 376  | Court may authorise continued detention in secure care                                     | 349 |
| 377  | Renewal of approval for continued detention in secure care                                 | 350 |
| 378  | Notification of decision of court  | 351 |
| 379  | Review of decision to grant or renew approval  | 352 |
| 380  | Application for review of detention in secure care   | 352 |
| 381  | Notice of application for review of detention in secure care                               | 353 |
| 382  | Disposal of application for review of detention in secure care                             | 353 |
| 383  | Review of refusal of application   | 353 |
| 383A | Lapse of authority for detention in secure care  | 354 |
|      | <i>Discipline</i>  |     |
| 384  | Discipline of children and young persons in residences                                     | 354 |
|      | <i>Searches</i>  |     |
| 384A | Interpretation   | 354 |
| 384B | Inspection of mail   | 356 |
| 384C | Child or young person may be searched to detect unauthorised items                         | 357 |
| 384D | Use of dogs for searching  | 357 |
| 384E | Child or young person may be strip searched  | 358 |
| 384F | Explanation of purpose and consequences of inspections and searches                        | 358 |
| 384G | Restrictions on searches   | 359 |
| 384H | Use of force in carrying out search  | 360 |
| 384I | Recording of inspections and searches  | 360 |
| 384J | Child or young person may make complaint   | 361 |
| 384K | Power to seize articles, etc, found on inspection or search                                | 361 |
|      | <i>Absconding by children and young persons</i>  |     |
| 385  | Children and young persons who abscond   | 362 |
| 386  | Search warrants  | 362 |
|      | <i>Financial matters</i>   |     |
| 387  | Chief executive empowered to make payments for benefit of children and young persons       | 363 |

|     |  |     |
|-----|--|-----|
| 388 | Financial and other assistance in respect of children and young persons subject to orders made under this Act  | 364 |
| 389 | Financial and other assistance in other cases  | 364 |
| 390 | Power to control finances of young persons under guardianship or in custody  | 365 |
| 391 | Imposition of charge to meet expenses of providing care for children and young persons   | 366 |
| 392 | Manager may be appointed under Protection of Personal and Property Rights Act 1988 to manage property of children and young persons subject to guardianship or custody order | 367 |
|     | <i>Maintenance</i><br><i>[Repealed]</i>  |     |
| 393 | Recovery of cost of maintenance of children and young persons in care <i>[Repealed]</i>  | 367 |
|     | <i>Limitation on tortious liability</i>  |     |
| 394 | Limitation on tortious liability of chief executive and other persons having care of child or young person   | 367 |
|     | <i>Reporting of deaths</i>   |     |
| 395 | Police to be notified of deaths  | 368 |
|     | <b>Part 8</b><br><b>Provisions relating to iwi social services, cultural social services, child and family support services, and community services</b>                      |     |
|     | <i>Iwi social services, cultural social services, and child and family support services</i>  |     |
| 396 | Approval of iwi social services, cultural social services, and child and family support services   | 370 |
| 397 | Restrictions on granting of approval   | 370 |
| 398 | Chief executive not to decline application without giving applicant opportunity to make submissions  | 371 |
| 399 | Revocation of approval   | 371 |
| 400 | Assessment of iwi social services, etc   | 372 |
| 401 | Powers of persons carrying out assessment of iwi social service, etc   | 373 |
| 402 | Convener of iwi social service or cultural social service to have power of decision for purposes of this Act   | 374 |
|     | <i>Community services</i>  |     |
| 403 | Approval of community services   | 375 |

|     |   |     |
|-----|---|-----|
| 404 | Chief executive not to decline application without giving applicant opportunity to make submissions | 375 |
| 405 | Revocation of approval  | 376 |
| 406 | Financial assistance to community services  | 376 |
| 407 | Chief executive may contract with community services for provision of services                      | 377 |
| 408 | Assessment of community services  | 377 |
| 409 | Powers of person carrying out assessment of community service                                       | 378 |

### **Part 9**

#### **Commissioner for Children**

*[Repealed]*

##### *Appointment and functions*

*[Repealed]*

|     |   |     |
|-----|---|-----|
| 410 | Commissioner for Children <i>[Repealed]</i> | 379 |
| 411 | Functions of Commissioner <i>[Repealed]</i> | 379 |

##### *Proceedings of Commissioner*

*[Repealed]*

|     |   |     |
|-----|---|-----|
| 412 | Powers of Commissioner <i>[Repealed]</i>  | 379 |
| 413 | Commissioner may regulate own procedure <i>[Repealed]</i>                                       | 379 |
| 414 | Commissioner not to make adverse comment unless opportunity to be heard given <i>[Repealed]</i> | 380 |
| 415 | Annual report <i>[Repealed]</i>   | 380 |

##### *Conditions of employment*

*[Repealed]*

|     |   |     |
|-----|---|-----|
| 416 | Appointment of Commissioner <i>[Repealed]</i>                                 | 380 |
| 417 | Term of office and conditions of employment of Commissioner <i>[Repealed]</i> | 380 |
| 418 | Removal from office <i>[Repealed]</i>   | 380 |
| 419 | Superannuation or retiring allowances <i>[Repealed]</i>                       | 380 |

##### *Miscellaneous provisions*

*[Repealed]*

|     |  |     |
|-----|--|-----|
| 420 | Proceedings privileged <i>[Repealed]</i>   | 381 |
| 421 | Commissioner deemed to be official <i>[Repealed]</i>                               | 381 |
| 422 | Money to be appropriated by Parliament for purposes of this Part <i>[Repealed]</i> | 381 |



**Part 10**

**Miscellaneous provisions**

*Care and protection co-ordinators and youth justice  
co-ordinators*

|     |   |     |
|-----|---|-----|
| 423 | Appointment of care and protection co-ordinators  | 381 |
| 424 | Duties of care and protection co-ordinator  | 382 |
| 425 | Appointment of youth justice co-ordinators  | 382 |
| 426 | Duties of youth justice co-ordinator  | 382 |
| 427 | Delegation of functions of care and protection co-ordinator<br>or youth justice co-ordinator to social worker | 383 |

*Care and protection resource panels*

|     |   |     |
|-----|---|-----|
| 428 | Care and protection resource panels                               | 384 |
| 429 | Functions of care and protection resource panels                  | 385 |
| 430 | Care and protection resource panels may regulate own<br>procedure | 385 |
| 431 | Annual report   | 385 |
| 432 | Fees and allowances   | 386 |

*Youth Courts*

|      |   |     |
|------|---|-----|
| 433  | Establishment of Youth Courts   | 386 |
| 434  | Principal Youth Court Judge   | 386 |
| 435  | Designation of Youth Court Judges   | 387 |
| 435A | Stationing of Judges and sittings of courts                                       | 387 |
| 436  | District Court Judge may exercise jurisdiction in absence<br>of Youth Court Judge | 388 |

*Miscellaneous provisions relating to proceedings under  
this Act*

|      |  |     |
|------|--|-----|
| 437  | Notice of proceedings and orders to be given to parents or<br>guardians or other persons having care of child or young<br>person | 388 |
| 437A | Publication of reports of proceedings under Part 2, Part<br>3A, or section 371   | 389 |
| 438  | Publication of reports of proceedings under Part 4   | 389 |
| 439  | Proceedings not invalid because of mistake as to age   | 391 |
| 440  | Proceedings not to be questioned for want of form  | 391 |
| 441  | Court may determine age of child or young person in<br>absence of evidence   | 392 |
| 442  | No court fees payable  | 392 |
| 443  | Issue and execution of warrants  | 392 |
| 444  | Liability of persons providing reports   | 392 |
| 445  | Witnesses expenses   | 393 |

|  |  |     |
|--|--|-----|
| <i>Search warrants</i>   |  |     |
| 445A   | Person executing warrant to produce evidence of authority and identity   | 393 |
| 445B   | Authority to use facsimile copy of warrant   | 394 |
| 445C   | Issue and execution of warrants  | 396 |
| 445D   | Certain provisions of Search and Surveillance Act 2012 apply to some warrants                                    | 396 |
| <i>Offences</i>  |  |     |
| 446  | Offences   | 396 |
| 446A   | Children and young persons to whom section 446B applies  | 397 |
| 446B   | Offences available if child or young person is subject of certain protection orders or proceedings under Part 3A | 398 |
| <i>Regulations</i>   |  |     |
| 447  | Regulations  | 399 |
| 448  | Rules of procedure   | 401 |
| 448A   | Transitional provisions relating to rules  | 401 |
| <b>Part 11</b>   |  |     |
| <b>Amendments to other enactments, repeals, savings,<br/>and transitional provisions</b> |  |     |
| <i>Amendments to other enactments</i>  |  |     |
| 449  | Consequential amendments   | 402 |
| 450  | Adoption Act 1955 amended  | 402 |
| 451  | Department of Social Welfare Act 1971 consequentially amended <i>[Repealed]</i>                                  | 402 |
| 452  | Local Government Act 1974 consequentially amended <i>[Repealed]</i>  | 402 |
| 453  | Summary Offences Act 1981 amended  | 402 |
| 454  | Criminal Justice Act 1985 amended  | 402 |
| 455  | Child Care Regulations 1985 consequentially amended  | 403 |
| <i>Repeals and savings</i>   |  |     |
| 456  | Repeals and savings  | 403 |
| <i>2010 Amendment Act</i>  |  |     |
| 456A   | Purpose and application  | 403 |
| <i>Transitional provisions</i>   |  |     |
| 457  | Complaints <i>[Repealed]</i>   | 405 |
| 458  | Informations <i>[Repealed]</i>   | 405 |
| 459  | Guardianship orders <i>[Repealed]</i>  | 406 |

|      |   |     |
|------|---|-----|
| 460  | Plans and reports to be furnished to court in respect of orders deemed to be guardianship orders under this Act <i>[Repealed]</i>   | 406 |
| 461  | Review of orders deemed to be guardianship orders under this Act <i>[Repealed]</i>  | 406 |
| 462  | Applications for review of guardianship orders <i>[Repealed]</i>  | 406 |
| 463  | Supervision orders <i>[Repealed]</i>  | 406 |
| 464  | Applications for review of supervision orders <i>[Repealed]</i>   | 406 |
| 465  | Complaints for failure to observe conditions of supervision order <i>[Repealed]</i>   | 406 |
| 466  | Agreements for control of child or young person by the Director-General <i>[Repealed]</i>   | 407 |
| 467  | Homes registered or deemed to be registered under Part 9 of Children and Young Persons Act 1974 <i>[Repealed]</i>                   | 407 |
| 467A | Building Act 2004   | 407 |
| 468  | Agreements for assumption of care of child or young person by manager of home or recognised system of foster care <i>[Repealed]</i> | 407 |
| 469  | Administration of property by Public Trustee <i>[Repealed]</i>  | 408 |
|      | <b>Schedule 1AA</b>   | 409 |
|      | <b>Transitional and savings provisions relating to amendments to this Act</b>   |     |
|      | <b>Schedule 1</b>   | 410 |
|      | <b>Provisions applied to Youth Courts and to proceedings in such courts</b>   |     |
|      | <b>Schedule 2</b>   | 412 |
|      | <b>Enactments amended</b>   |     |
|      | <b>Schedule 3</b>   | 414 |
|      | <b>Enactments repealed</b>  |     |

**An Act to reform the law relating to children and young persons who are in need of care or protection or who offend against the law and, in particular,—**

- (a) **to advance the well-being of families and the well-being of children and young persons as members of families, whanau, hapu, iwi, and family groups:**

- (b) to make provision for families, whanau, hapu, iwi, and family groups to receive assistance in caring for their children and young persons:
- (c) to make provision for matters relating to children and young persons who are in need of care or protection or who have offended against the law to be resolved, wherever possible, by their own family, whanau, hapu, iwi, or family group:
- (d) *[Repealed]*
- (e) to repeal the Children and Young Persons Act 1974

Title paragraph (d): repealed, on 26 November 2003, by section 37 of the Children's Commissioner Act 2003 (2003 No 121).

## 1 Short Title and commencement

- (1) This Act may be cited as the Children, Young Persons, and Their Families Act 1989.
- (2) This Act shall come into force on 1 November 1989.

## 2 Interpretation

- (1) In this Act, unless the context otherwise requires,—
  - care and protection co-ordinator** means a care and protection co-ordinator appointed by the chief executive pursuant to section 423
  - care and protection resource panel** means a care and protection resource panel established pursuant to section 428
  - chief executive** means, subject to any enactment, the person holding office as the chief executive of the department
  - child** means a boy or girl under the age of 14 years
  - child abuse** means the harming (whether physically, emotionally, or sexually), ill-treatment, abuse, neglect, or deprivation of any child or young person
  - child and family support service** means any organisation or body approved by the chief executive as a child and family support service pursuant to section 396(3)
  - Commissioner** means the Children's Commissioner continued under section 6 of the Children's Commissioner Act 2003

**community service** means any service approved by the chief executive as a community service pursuant to section 403

**convene**, in relation to a family group conference, means to take the appropriate steps under sections 20 and 25 (in the case of a family group conference authorised or required under Part 2) or under sections 247 and 253 (in the case of a conference authorised or required under Part 4) in order to cause the conference to meet; and **reconvene** has a corresponding meaning

**court**, in relation to Parts 2, 3, and 3A, means a Family Court, and in relation to Parts 4 and 5, means a Youth Court

**cultural social service** means any incorporated body approved by the chief executive as a cultural social service pursuant to section 396(2)

**custody** means the right to possession and care of a child or young person

**department** means the department that is, with the authority of the Prime Minister, for the time being responsible for the administration of this Act

**document** means a document in any form; and includes—

- (a) any writing on any material:
- (b) any information recorded or stored by means of any tape-recorder, computer, or other device; and any material subsequently derived from information so recorded or stored:
- (c) any label, marking, or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means:
- (d) any book, map, plan, graph, or drawing:
- (e) any photograph, film, negative, tape, or other device in which 1 or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced

**enforcement agency** means—

- (a) the New Zealand Police:
- (b) any department (as defined in section 2(1) of the State Sector Act 1988):
- (c) a local authority

**enforcement agency office** means—

- (a) a Police station:
- (b) any premises occupied by—
  - (i) any department (as defined in section 2(1) of the State Sector Act 1988):
  - (ii) any local authority

**enforcement officer** means—

- (a) any constable:
- (b) an enforcement officer (as defined in section 2(1) of the Land Transport Act 1998):
- (c) any person acting in the course of his or her official duties (being duties that consist of or include the detection, investigation, or prosecution of offences) as an officer or employee of—
  - (i) the Public Service (as defined in section 2(1) of the State Sector Act 1988); or
  - (ii) a local authority

**ex parte application** means an application made without notice to the respondent to the application

**family group**, in relation to a child or young person, means a family group, including an extended family,—

- (a) in which there is at least 1 adult member—
  - (i) with whom the child or young person has a biological or legal relationship; or
  - (ii) to whom the child or young person has a significant psychological attachment; or
- (b) that is the child's or young person's whanau or other culturally recognised family group

**family group conference**,—

- (a) in relation to Part 2, means a meeting convened or reconvened by a care and protection co-ordinator in accordance with section 20:
- (b) in relation to Part 4, means a meeting convened or reconvened by a youth justice co-ordinator in accordance with section 247 or section 270 or section 281 or section 281B

**family resource centre** means any premises that provide temporary accommodation for a child or young person and any person who has the care of that child or young person, where

that accommodation is provided as part of a programme designed to provide assistance to that person

**guardianship** has the meaning given to it by section 15 of the Care of Children Act 2004; and **guardian** has a corresponding meaning, and includes, without limitation, a person who is a guardian by virtue of this Act

**iwi social service** means any incorporated body approved by the chief executive as an iwi social service pursuant to section 396(1)

**lay advocate** does not include any person who is a barrister or solicitor

**medical practitioner** means a health practitioner who is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine

**Minister** means, subject to any enactment, the Minister who is, with the authority of the Prime Minister, for the time being responsible for the administration of this Act

**near relative** means a grandparent, aunt, uncle, brother, or sister; and includes a brother or sister of the half-blood as well as of the full-blood

**parent**, in relation to a child, includes a step-parent of the child, but only if the step-parent shares responsibility for the day-to-day care of the child with a parent of the child

**psychiatric hospital** means a hospital within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992

**psychologist** means a health practitioner who is, or is deemed to be, registered with the Psychologists Board continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of psychology

**residence—**

- (a) means any residential centre, family home, group home, foster home, family resource centre, or other premises or place, approved or recognised for the time being by

the chief executive as a place of care or treatment for the purposes of this Act; and

- (b) includes any place of care or treatment, so approved, whether administered by the Crown or not; but
- (c) does not include—
  - (i) a prison; or
  - (ii) a psychiatric hospital or a facility within the meaning of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003; or
  - (iii) *[Repealed]*
  - (iv) a children's health camp operated by Children's Health Camps—The New Zealand Foundation for Child and Family Health and Development

**secure care**, in relation to a child or young person in a residence established under section 364, means containment in that residence within a locked room or enclosure with visible physical barriers

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

**traffic offence** means—

- (a) any offence against the Road User Charges Act 2012, the Land Transport Act 1998, or the Land Transport Management Act 2003 or against any regulation, rule, or bylaw made under any of those Acts:
- (b) any offence against any regulation, rule, or bylaw made under any other Act if the offence relates to the use of motor vehicles or parking places or transport stations

**victim** means a person who, through or by means of an offence, suffers physical or emotional harm, or loss of or damage to property; and where an offence results in death, the term includes the members of the immediate family of the deceased

**working day** means a day of the week other than—

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, and Waitangi Day; and
- (ab) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and



- (b) a day in the period commencing with 25 December in a year and ending with 15 January in the following year; and
- (c) in relation to a requirement to file a document with any court or to supply a document before a sitting of any court,—
  - (i) the day observed as the anniversary of the province in which the court is situated; and
  - (ii) any other day that is observed by the court as a court holiday

**young person** means a boy or girl of or over the age of 14 years but under 17 years; but does not include any person who is or has been married or in a civil union

**youth advocate** means a barrister or solicitor appointed pursuant to section 323 to represent a child or young person

**youth justice co-ordinator** means a youth justice co-ordinator appointed by the chief executive pursuant to section 425.

- (2) Where any proceedings are being considered or have been taken in respect of any offence allegedly committed by a person when that person was a child or young person, the age of that person at the date of the alleged offence shall be that person's age for the purpose of—
  - (a) whether there is jurisdiction to take any proceedings in respect of that alleged offence, and, subject to paragraph (d), which court has jurisdiction in respect of proceedings that may be taken; and
  - (b) the proceedings taken,—  
but nothing in this subsection shall—
  - (c) require or authorise any family group conference in respect of the alleged offence before or at any stage of the proceedings if, at the time the conference would otherwise be required, that person has attained the age of 18 years; or
  - (d) require any proceedings to be taken in a Youth Court if, at the time the charging document is filed, that person has attained the age of 18 years; or
  - (e) derogate from the provisions of section 6 of the Sentencing Act 2002 (which shall apply in respect of pro-

ceedings under Part 4 as if the proving of a charge was a conviction).

- (3) Where any charging document is filed in a District Court pursuant to subsection (2)(d), section 322 shall apply, with all necessary modifications, to the proceedings.
- (4) Where any proceedings have been taken under Part 2 in respect of any alleged incident, the age of any child or young person at the date of the alleged incident shall be that person's age for the purpose of the proceedings.

Compare: 1974 No 72 s 2; 1981 No 113 s 50(4); 1982 No 135 s 2; 1983 No 129 s 2

Section 2(1) **care and protection co-ordinator**: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 2(1) **chief executive**: inserted, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 2(1) **child abuse**: inserted, on 8 January 1995, by section 2(1) of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 2(1) **child and family support service**: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 2(1) **Commissioner**: replaced, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 2(1) **community service**: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 2(1) **convene**: inserted, on 8 January 1995, by section 2(2) of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 2(1) **court**: amended, on 1 November 1999, by section 6 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

Section 2(1) **Cultural Authority**: repealed, on 8 January 1995, by section 2(3) of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 2(1) **cultural social service**: inserted, on 8 January 1995, by section 2(3) of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 2(1) **cultural social service**: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 2(1) **department**: replaced, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 2(1) **Director-General**: repealed, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

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

Section 2(1) **enforcement officer** paragraph (b): replaced, on 1 March 1999, by section 215(1) of the Land Transport Act 1998 (1998 No 110).

Section 2(1) **family group conference** paragraph (b): amended, on 8 January 1995, by section 2(4) of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 2(1) **guardianship**: amended, on 1 July 2014, by section 6(2) of the KiwiSaver (Vulnerable Children) Amendment Act 2014 (2014 No 42).

Section 2(1) **guardianship**: amended, on 1 July 2005, by section 151 of the Care of Children Act 2004 (2004 No 90).

Section 2(1) **indictable offence**: repealed, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 2(1) **Iwi Authority**: repealed, on 8 January 1995, by section 2(5) of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 2(1) **iwi social service**: inserted, on 8 January 1995, by section 2(5) of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 2(1) **iwi social service**: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 2(1) **medical practitioner**: inserted, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 2(1) **Minister**: replaced, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 2(1) **near relative**: amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 2(1) **parent**: replaced, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 2(1) **psychiatric hospital**: replaced, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 2(1) **psychologist**: inserted, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 2(1) **purely indictable offence**: repealed, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 2(1) **residence** paragraph (a): amended, on 1 October 2010, by section 5 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 2(1) **residence** paragraph (a): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 2(1) **residence** paragraph (c)(i): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 2(1) **residence** paragraph (c)(ii): replaced, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 2(1) **residence** paragraph (c)(iii): repealed, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 2(1) **residence** paragraph (c)(iv): amended, on 1 April 2000, by section 8 of the Children's Health Camps Board Dissolution Act 1999 (1999 No 141).

Section 2(1) **Social Welfare District** or **District**: repealed, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 2(1) **social worker**: replaced, on 1 April 1990, by section 35(1)(d) of the Social Welfare (Transitional Provisions) Act 1990 (1990 No 26).

Section 2(1) **social worker**: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 2(1) **summary offence**: repealed, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 2(1) **traffic offence**: replaced, on 23 July 2011, by section 4 of the Children, Young Persons, and Their Families Amendment Act 2011 (2011 No 33).

Section 2(1) **traffic offence** paragraph (a): amended, on 1 August 2012, by section 94 of the Road User Charges Act 2012 (2012 No 1).

Section 2(1) **working day**: replaced, on 1 November 1999, by section 6 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

Section 2(1) **working day** paragraph (ab): inserted, on 1 January 2014, by section 8 of the Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19).

Section 2(1) **young person**: amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 2(1) **youth justice co-ordinator**: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 2(2): replaced, on 8 January 1995, by section 2(6) of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 2(2)(d): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 2(2)(e): amended, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

Section 2(3): inserted, on 8 January 1995, by section 2(6) of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 2(3): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 2(4): inserted, on 8 January 1995, by section 2(6) of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

**2A Transitional and savings provisions relating to amendments to this Act**

- (1) Schedule 1AA contains transitional and savings provisions—
  - (a) relating to amendments made to this Act on or after the commencement of the Children, Young Persons, and Their Families Amendment Act (No 2) 2013; and
  - (b) that affect other provisions of this Act (*see* subsection (2)).
- (2) The transitional and savings provisions set out in Schedule 1AA, which relate to amendments made to this Act on or after the commencement of the Children, Young Persons, and Their Families Amendment Act (No 2) 2013, have effect for the purposes of this Act.

Section 2A: inserted, on 5 December 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2013 (2013 No 110).

**3 Act to bind the Crown**

This Act binds the Crown.

**Part 1**  
**General objects, principles, and duties**  
*General objects*

**4 Objects**

The object of this Act is to promote the well-being of children, young persons, and their families and family groups by—

- (a) establishing and promoting, and assisting in the establishment and promotion, of services and facilities within the community that will advance the well-being of children, young persons, and their families and family groups and that are—
  - (i) appropriate having regard to the needs, values, and beliefs of particular cultural and ethnic groups; and

- (ii) accessible to and understood by children and young persons and their families and family groups; and
  - (iii) provided by persons and organisations sensitive to the cultural perspectives and aspirations of different racial groups in the community:
- (b) assisting parents, families, whanau, hapu, iwi, and family groups to discharge their responsibilities to prevent their children and young persons suffering harm, ill-treatment, abuse, neglect, or deprivation:
- (c) assisting children and young persons and their parents, family, whanau, hapu, iwi, and family group where the relationship between a child or young person and his or her parents, family, whanau, hapu, iwi, or family group is disrupted:
- (d) assisting children and young persons in order to prevent them from suffering harm, ill-treatment, abuse, neglect, and deprivation:
- (e) providing for the protection of children and young persons from harm, ill-treatment, abuse, neglect, and deprivation:
- (f) ensuring that where children or young persons commit offences,—
  - (i) they are held accountable, and encouraged to accept responsibility, for their behaviour; and
  - (ii) they are dealt with in a way that acknowledges their needs and that will give them the opportunity to develop in responsible, beneficial, and socially acceptable ways:
- (g) encouraging and promoting co-operation between organisations engaged in providing services for the benefit of children and young persons and their families and family groups.

Compare: 1974 No 72 s 3

*General principles*

**5 Principles to be applied in exercise of powers conferred by this Act**

Subject to section 6, any court which, or person who, exercises any power conferred by or under this Act shall be guided by the following principles:

- (a) the principle that, wherever possible, a child's or young person's family, whanau, hapu, iwi, and family group should participate in the making of decisions affecting that child or young person, and accordingly that, wherever possible, regard should be had to the views of that family, whanau, hapu, iwi, and family group:
- (b) the principle that, wherever possible, the relationship between a child or young person and his or her family, whanau, hapu, iwi, and family group should be maintained and strengthened:
- (c) the principle that consideration must always be given to how a decision affecting a child or young person will affect—
  - (i) the welfare of that child or young person; and
  - (ii) the stability of that child's or young person's family, whanau, hapu, iwi, and family group:
- (d) the principle that consideration should be given to the wishes of the child or young person, so far as those wishes can reasonably be ascertained, and that those wishes should be given such weight as is appropriate in the circumstances, having regard to the age, maturity, and culture of the child or young person:
- (e) the principle that endeavours should be made to obtain the support of—
  - (i) the parents or guardians or other persons having the care of a child or young person; and
  - (ii) the child or young person himself or herself—to the exercise or proposed exercise, in relation to that child or young person, of any power conferred by or under this Act:
- (f) the principle that decisions affecting a child or young person should, wherever practicable, be made and

implemented within a time-frame appropriate to the child's or young person's sense of time:

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

Compare: 1974 No 72 ss 4A–4C; 1983 No 129 s 3

Section 5(g): inserted, on 1 July 2014, by section 5 of the Children, Young Persons, and Their Families (Vulnerable Children) Amendment Act 2014 (2014 No 41).

## **6 Welfare and interests of child or young person paramount**

In all matters relating to the administration or application of this Act (other than Parts 4 and 5 and sections 351 to 360), the welfare and interests of the child or young person shall be the first and paramount consideration, having regard to the principles set out in sections 5 and 13.

Section 6: replaced, on 8 January 1995, by section 3 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

### *General duties*

## **7 Duties of chief executive**

- (1) It is the duty of the chief executive to take such positive and prompt action and steps as will in the chief executive's opinion best ensure—
  - (a) that the objects of this Act are attained; and
  - (b) that those objects are attained in a manner that is consistent with the principles set out in sections 5 and 6.
- (2) In carrying out the duty imposed by subsection (1), the chief executive shall—
  - (a) monitor, and advise the Minister on, the effect of social policies and social issues on children, young persons, families, whanau, hapu, iwi, and family groups:
  - (b) promote—
    - (i) the establishment of services (including social work services, family support services, and community-based services designed to advance the



- welfare of children and young persons in the community or the home); and
- (ii) the adoption of policies (including the provision of financial support to parents, families, and family groups)—  
that are designed to provide assistance to children and young persons who lack adequate parental care, or require protection from harm, or need accommodation or social or recreational activities:
- (ba) in relation to child abuse,—
  - (i) promote, by education and publicity, among members of the public (including children and young persons) and members of professional and occupational groups, awareness of child abuse, the unacceptability of child abuse, the ways in which child abuse may be prevented, the need to report cases of child abuse, and the ways in which child abuse may be reported; and
  - (ii) develop and implement protocols for agencies (both governmental and non-governmental) and professional and occupational groups in relation to the reporting of child abuse, and monitor the effectiveness of such protocols:
- (c) ensure, wherever possible, that all policies adopted by the department, and all services provided by the department,—
  - (i) recognise the social, economic, and cultural values of all cultural and ethnic groups; and
  - (ii) have particular regard for the values, culture, and beliefs of the Maori people; and
  - (iii) support the role of families, whanau, hapu, iwi, and family groups; and
  - (iv) avoid the alienation of children and young persons from their family, whanau, hapu, iwi, and family group:
- (d) establish and fund care and protection resource panels:
- (e) establish procedures to ensure that the cases of children and young persons in respect of whom action has been

taken under this Act are regularly reviewed in order to assess the adequacy and appropriateness of that action:

- (f) ensure that persons providing services under this Act receive adequate training and comply with appropriate standards:
- (g) monitor and assess the services provided under this Act by the department and by other organisations, groups, and individuals.

Compare: 1974 No 72 ss 5, 6

Section 7 heading: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 7(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 7(2): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 7(2)(ba): inserted, on 1 July 1995, by section 4(1) of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

## **8 Parents and others to be informed of decisions**

- (1) Where any person takes any action, or makes any decision, under this Act that significantly affects any child or young person, that person shall ensure that, wherever practicable, the following persons are informed, as soon as practicable, of that action or decision and of the reasons for it:
  - (a) every person who is a parent or guardian of, or a person having the care of, the child or young person:
  - (b) the child or young person.
- (2) It is not necessary to inform a child or young person of any action or decision if—
  - (a) that child or young person is incapable of understanding it; or
  - (b) it is plainly not in the child's or young person's interests to be so informed.
- (3) The information required by subsection (1) to be given to any person shall be given—
  - (a) orally and, where practicable, in writing; and
  - (b) where practicable, in a manner and in language that the person understands.

## **9 Interpreters**

- (1) Where—
- (a) any court hears any proceedings under this Act relating to a child or young person; or
  - (b) any person takes or proposes to take any action under this Act in relation to a child or young person,—
- it is the duty of that court or, as the case requires, that person to ensure that the requirements of this section are carried out wherever practicable.
- (2) The requirements of this section are as follows:
- (a) that where—
    - (i) the first or preferred language of the child or young person is Maori or any other language other than English; or
    - (ii) the child or young person is unable, by reason of a physical disability, to understand English,—the services of an interpreter are provided for the child or young person:
  - (b) that where—
    - (i) the first or preferred language of any parent or guardian or other person having the care of the child or young person is Maori or any other language other than English; or
    - (ii) that parent or guardian or that other person is unable, by reason of a physical disability, to understand English,—the services of an interpreter are provided for that parent or guardian or that other person.
- (3) Nothing in this section limits or affects the Maori Language Act 1987.

## **10 Duty of court and counsel to explain proceedings**

- (1) Where, in any proceedings under this Act, a child or young person, or any parent or guardian or other person having the care of a child or young person, appears before a Family Court or a Youth Court, the court shall—
- (a) explain in a manner and in language that can be understood by the child or young person or other person the nature of the proceedings, including, in the case of pro-

- ceedings in a Youth Court, the nature and, where the child or young person or other person is not legally represented, the legal implications of the allegations; and
- (b) satisfy itself that the child or young person or other person understands the proceedings; and
  - (c) where the court makes any order under section 83(1) or section 84 or section 283, explain to the child or young person to whom the order relates and to any parent or guardian or other person having the care of the child or young person, in a manner and in language that can be understood by that child or young person or other person,—
    - (i) the nature and requirements of the order;
    - (ii) any provisions for variation of the order;
    - (iii) the existence of rights of appeal against the order or the finding on which the order is based.
- (2) Where, in any proceedings under this Act, a child or young person, or any parent or guardian or other person having the care of a child or young person, appears before a Family Court or a Youth Court, the barrister or solicitor representing that child or young person or other person shall—
- (a) explain to the person whom that barrister or solicitor represents, in a manner and in language that can be understood by that person, the nature of the proceedings, including, in the case of proceedings in a Youth Court, the nature and legal implications of the allegations; and
  - (b) satisfy himself or herself that the person whom that barrister or solicitor represents understands the proceedings; and
  - (c) where the court makes any order under section 83(1) or section 84 or section 283, explain to the person whom that barrister or solicitor represents, in a manner and in language that can be understood by that person, the matters specified in subparagraphs (i) to (iii) of subsection (1)(c).

Compare: 1974 No 72 s 40(a); 1983 No 129 s 9

**11 Duty of court and counsel to encourage and assist child or young person to participate in proceedings**

Where, in any proceedings under this Act, a child or young person appears before a Family Court or a Youth Court, that court and the barrister or solicitor representing the child or young person shall, where necessary and appropriate, encourage and assist the child or young person to participate in those proceedings to the degree appropriate to the age and level of maturity of the child or young person.

**12 Duty of medical practitioner to minimise distress to child or young person**

Every medical practitioner who carries out a medical examination of any child or young person under any provision of this Act shall carry out that examination in a way that causes the least possible distress to the child or young person.

**Part 2**  
**Care and protection of children and young persons**

*Principles*

**13 Principles**

- (1) Every court or person exercising powers conferred by or under this Part, Part 3 or 3A, or sections 341 to 350, must adopt, as the first and paramount consideration, the welfare and interests of the relevant child or young person (as required by section 6).
- (2) In determining the welfare and interests of a child or young person, the court or person must be guided by the principle that children and young people must be protected from harm and have their rights upheld, and also the principles in section 5 as well as the following principles:
  - (a) *[Repealed]*
  - (b) the principle that the primary role in caring for and protecting a child or young person lies with the child's or young person's family, whanau, hapu, iwi, and family group, and that accordingly—

- (i) a child's or young person's family, whanau, hapu, iwi, and family group should be supported, assisted, and protected as much as possible; and
  - (ii) intervention into family life should be the minimum necessary to ensure a child's or young person's safety and protection:
- (c) the principle that it is desirable that a child or young person live in association with his or her family, whanau, hapu, iwi, and family group, and that his or her education, training, or employment be allowed to continue without interruption or disturbance:
- (d) where a child or young person is considered to be in need of care or protection, the principle that, wherever practicable, the necessary assistance and support should be provided to enable the child or young person to be cared for and protected within his or her own family, whanau, hapu, iwi, and family group:
- (e) the principle that a child or young person should be removed from his or her family, whanau, hapu, iwi, and family group only if there is a serious risk of harm to the child or young person:
- (f) where a child or young person is removed from his or her family, whanau, hapu, iwi, and family group, the principles that,—
  - (i) wherever practicable, the child or young person should be returned to, and protected from harm within, that family, whanau, hapu, iwi, and family group; and
  - (ii) where the child or young person cannot immediately be returned to, and protected from harm within, his or her family, whanau, hapu, iwi, and family group, until the child or young person can be so returned and protected he or she should, wherever practicable, live in an appropriate family-like setting—
    - (A) that, where appropriate, is in the same locality as that in which the child or young person was living; and

- (B) in which the child's or young person's links with his or her family, whanau, hapu, iwi, and family group are maintained and strengthened; and
- (iii) where the child or young person cannot be returned to, and protected from harm within, his or her family, whanau, hapu, iwi, and family group, the child or young person should live in a new family group, or (in the case of a young person) in an appropriate family-like setting, in which he or she can develop a sense of belonging, and in which his or her sense of continuity and his or her personal and cultural identity are maintained:
- (g) where a child or young person cannot remain with, or be returned to, his or her family, whanau, hapu, iwi, and family group, the principle that, in determining the person in whose care the child or young person should be placed, priority should, where practicable, be given to a person—
  - (i) who is a member of the child's or young person's hapu or iwi (with preference being given to hapu members), or, if that is not possible, who has the same tribal, racial, ethnic, or cultural background as the child or young person; and
  - (ii) who lives in the same locality as the child or young person:
- (h) where a child or young person cannot remain with, or be returned to, his or her family, whanau, hapu, iwi, and family group, the principle that the child or young person should be given an opportunity to develop a significant psychological attachment to the person in whose care the child or young person is placed:
- (i) where a child is considered to be in need of care or protection on the ground specified in section 14(1)(e), the principle set out in section 208(g).

Compare: 1974 No 72 s 4

Section 13(1): inserted, on 1 July 2014, by section 6(1) of the Children, Young Persons, and Their Families (Vulnerable Children) Amendment Act 2014 (2014 No 41).

Section 13(2): amended, on 1 July 2014, by section 6(2) of the Children, Young Persons, and Their Families (Vulnerable Children) Amendment Act 2014 (2014 No 41).

Section 13(2)(a): repealed, on 1 July 2014, by section 6(3) of the Children, Young Persons, and Their Families (Vulnerable Children) Amendment Act 2014 (2014 No 41).

*Definition of child or young person in need of  
care or protection*

**14 Definition of child or young person in need of care or protection**

- (1) A child or young person is in need of care or protection within the meaning of this Part if—
- (a) the child or young person is being, or is likely to be, harmed (whether physically or emotionally or sexually), ill-treated, abused, or seriously deprived; or
  - (b) the child's or young person's development or physical or mental or emotional well-being is being, or is likely to be, impaired or neglected, and that impairment or neglect is, or is likely to be, serious and avoidable; or
  - (c) serious differences exist between the child or young person and the parents or guardians or other persons having the care of the child or young person to such an extent that the physical or mental or emotional well-being of the child or young person is being seriously impaired; or
  - (d) the child or young person has behaved, or is behaving, in a manner that—
    - (i) is, or is likely to be, harmful to the physical or mental or emotional well-being of the child or young person or to others; and
    - (ii) the child's or young person's parents or guardians, or the persons having the care of the child or young person, are unable or unwilling to control; or
  - (e) in the case of a child of or over the age of 10 years and under 14 years, the child has committed an offence or offences the number, nature, or magnitude of which is such as to give serious concern for the well-being of the child; or



- (f) the parents or guardians or other persons having the care of the child or young person are unwilling or unable to care for the child or young person; or
  - (g) the parents or guardians or other persons having the care of the child or young person have abandoned the child or young person; or
  - (h) serious differences exist between a parent, guardian, or other person having the care of the child or young person and any other parent, guardian, or other person having the care of the child or young person to such an extent that the physical or mental or emotional well-being of the child or young person is being seriously impaired; or
  - (i) the ability of the child or young person to form a significant psychological attachment to the person or persons having the care of the child or young person is being, or is likely to be, seriously impaired because of the number of occasions on which the child or young person has been in the care or charge of a person (not being a person specified in subsection (2)) for the purposes of maintaining the child or young person apart from the child's or young person's parents or guardians.
- (2) The persons referred to in subsection (1)(i) are as follows:
- (a) any person who has custody of the child or young person pursuant to the order of any court, whether or not that court is a court within the meaning of this Act:
  - (b) any person who has the child or young person in that person's care—
    - (i) pursuant to an agreement under section 139 or section 140 or section 141 or section 142; or
    - (ii) for the purpose of adoption, and the requirements of section 6 of the Adoption Act 1955 are being complied with:
  - (c) any person who is caring for the child or young person in—
    - (i) any residential accommodation provided for children or young persons attending a registered school within the meaning of the Education Act 1989:

- (ii) a hospital care institution within the meaning of section 58(4) of the Health and Disability Services (Safety) Act 2001.

Compare: 1974 No 72 s 27(2); 1977 No 126 s 7(1)

Section 14(2)(c): replaced, on 1 October 2002, by section 58(1) of the Health and Disability Services (Safety) Act 2001 (2001 No 93).

#### **14A Conduct outside New Zealand**

For the purposes of this Act, it does not matter whether the conduct constituting a ground referred to in section 14(1) occurred partly or wholly outside New Zealand.

Section 14A: inserted, on 1 November 1999, by section 2 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

### *Reporting of child abuse*

#### **15 Reporting of ill-treatment or neglect of child or young person**

Any person who believes that any child or young person has been, or is likely to be, harmed (whether physically, emotionally, or sexually), ill-treated, abused, neglected, or deprived may report the matter to a social worker or a constable.

Section 15: amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

#### **16 Protection of person reporting ill-treatment or neglect of child or young person**

No civil, criminal, or disciplinary proceedings shall lie against any person in respect of the disclosure or supply, or the manner of the disclosure or supply, by that person pursuant to section 15 of information concerning a child or young person (whether or not that information also concerns any other person), unless the information was disclosed or supplied in bad faith.

Section 16: amended, on 8 January 1995, by section 5 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

**17 Investigation of report of ill-treatment or neglect of child or young person**

- (1) Where any social worker or constable receives a report pursuant to section 15 relating to a child or young person, that social worker or constable shall, as soon as practicable after receiving the report, undertake or arrange for the undertaking of such investigation as may be necessary or desirable into the matters contained in the report and shall, as soon as practicable after the investigation has commenced, consult with a care and protection resource panel in relation to the investigation.
- (2) Where, after an investigation under subsection (1) into the matters contained in a report under section 15, the social worker or constable to whom the report was made reasonably believes that the child or young person to whom the report relates is in need of care or protection, that social worker or constable shall, as soon as practicable, notify a care and protection co-ordinator of those matters in accordance with section 18.
- (3) Where any person receives a report pursuant to section 15 relating to a child or young person, that person shall, as soon as practicable after—
  - (a) that report is investigated under subsection (1); or
  - (b) a decision is made not to investigate the report,—unless it is impracticable or undesirable to do so, inform the person who made the report whether or not the report has been investigated and, if so, whether any further action has been taken with respect to it.

Section 17(1): replaced, on 8 January 1995, by section 6 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 17(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 17(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

**18 Referral of care or protection cases to care and protection co-ordinator or youth justice co-ordinator by social workers or constables**

- (1) Where any social worker or constable believes, after inquiry, that any child or young person is in need of care or protection (other than on the ground specified in section 14(1)(e)), that

social worker or constable shall forthwith report the matter to a care and protection co-ordinator, who shall convene a family group conference in accordance with section 20.

- (2) Where any social worker suspects that any child is in need of care or protection on the ground specified in section 14(1)(e), that social worker may refer the matter to the appropriate enforcement agency.
- (3) Where any enforcement officer believes, after inquiry, that any child is in need of care or protection on the ground specified in section 14(1)(e), that enforcement officer shall forthwith report the matter to a youth justice co-ordinator, who after consulting with that enforcement officer, and if that enforcement officer believes that the making of an application for a declaration under section 67 in respect of that child is required in the public interest, shall convene a family group conference in accordance with section 247.

Section 18 heading: amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 18(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

## **19 Referral of care or protection cases to care and protection co-ordinator by other persons or by court**

- (1) Where—
  - (a) after inquiry, any body or organisation (including a government department or other agency of the Crown, or a local authority) concerned with the welfare of children and young persons; or
  - (b) in any proceedings, any court—believes that any child or young person is in need of care or protection on 1 or more of the grounds specified in section 14(1), that body, organisation, or court may refer the matter to a care and protection co-ordinator.
- (1A) Every referral pursuant to subsection (1) shall be accompanied by—
  - (a) a statement of the reasons for believing that the child or young person to whom the referral relates is in need of care or protection; and

- (b) particulars sufficient to identify any person, body, or organisation that might be contacted to substantiate that belief; and
  - (c) a statement indicating whether or not the referral is being made with the consent or knowledge of—
    - (i) the parents or guardians or other persons having the care of the child or young person to whom the referral relates; or
    - (ii) the family, whanau, or family group of that child or young person; and
  - (d) any recommendation as to the course of action the care and protection co-ordinator might take in respect of the referral.
- (2) Every care and protection co-ordinator to whom a case is referred pursuant to subsection (1) shall, where it appears to that care and protection co-ordinator to be necessary to do so,—
  - (a) except where paragraph (b) applies, convene a family group conference in accordance with section 20; or
  - (b) where the child is believed to be in need of care or protection on the ground specified in section 14(1)(e), report the matter to the appropriate enforcement agency; or
  - (c) take such other action as is appropriate in the circumstances.
- (3) For the purposes of determining whether or not it is necessary to convene a family group conference pursuant to subsection (2)(a), a care and protection co-ordinator may arrange for a case to be investigated by a social worker.
- (4) Every care and protection co-ordinator to whom a case is referred pursuant to subsection (1) by a court shall,—
  - (a) within 28 days after receiving that referral, furnish to the court a written report stating—
    - (i) what action (if any) has been taken with respect to the case as a result of the referral; and
    - (ii) if any such action has been taken, whether that action has resolved the matter, and, if so, how that matter has been resolved; and
    - (iii) what further action (if any) is proposed with respect to the case, and, if any such action is pro-

posed, when that action is likely to be completed;  
and

- (b) subject to paragraph (c), where the report furnished pursuant to paragraph (a) indicates that further action is proposed with respect to the case, within 28 days of the furnishing of that report, furnish to the court a written report stating—
  - (i) what progress (if any) has been made with respect to that action; and
  - (ii) when that action is likely to be completed; and
- (c) where the report furnished pursuant to paragraph (a) indicates that further action is proposed with respect to the case, on the completion of that action, furnish to the court a written report stating whether that action has resolved that matter, and, if so, how that matter has been resolved.

Section 19(1): amended, on 8 January 1995, by section 7(1) of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 19(1A): inserted, on 8 January 1995, by section 7(2) of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 19(4): inserted, on 8 January 1995, by section 7(3) of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

### *Family group conferences*

#### **20 Convening of family group conferences**

Where, pursuant to this Part, a care and protection co-ordinator is authorised or required to convene or reconvene a family group conference, that care and protection co-ordinator shall, subject to section 21, fix the date on which and the time and place at which the conference is to be held.

#### **21 Care and protection co-ordinator to consult family, whanau, or family group on convening of family group conference**

Every care and protection co-ordinator shall, before convening any family group conference pursuant to this Part in respect of any child or young person,—

- (a) consult with a care and protection resource panel; and

- (b) make all reasonable endeavours to consult with the child's or young person's family, whanau, or family group in relation to—
  - (i) the date on which, and the time and place at which, the conference is to be held; and
  - (ii) the persons who should attend the conference; and
  - (iii) the procedure to be adopted at the conference,—and, subject to section 22, shall, so far as it is practicable and consistent with the principles of this Act, give effect to the wishes of the child's or young person's family, whanau, or family group in relation to those matters.

**22 Persons entitled to attend family group conference**

- (1) Subject to subsection (2), the following persons are entitled to attend a family group conference convened under this Part:
  - (a) the child or young person in respect of whom the conference is held, unless the care and protection co-ordinator convening the conference is of the opinion that—
    - (i) the attendance of that child or young person would not be in the interests of that child or young person, or would, for any other reason, be undesirable; or
    - (ii) the child or young person would be unable, by reason of its age or level of maturity, to understand the proceedings:
  - (b) every person who is—
    - (i) a parent or guardian of, or a person having the care of, that child or young person; or
    - (ii) a member of the family, whanau, or family group of the child or young person,—unless the care and protection co-ordinator convening the conference is of the opinion that that person's attendance would not be in the interests of the child or young person, or would be undesirable for any other reason:
  - (c) the care and protection co-ordinator who is convening the conference, or any care and protection co-ordinator who is acting for that person:

- (d) where the conference has been convened on the basis of a report under section 18(1) from a social worker or a constable, that social worker or constable, or any social worker or constable who is acting for that person:
  - (e) where the conference has been convened on the basis of a referral of a matter under section 19(1)(a) by any body or organisation, a representative of that body or organisation:
  - (f) where the conference has been convened or reconvened, for the purposes of section 145, in respect of a child or young person, a representative of the person who has the care of that child or young person pursuant to an agreement to which that section applies, or who it is proposed should have the care of that child or young person pursuant to such an agreement:
  - (g) if the child or young person is under the guardianship of the court under the Care of Children Act 2004, any person appointed as agent for the court under that Act, or any representative of that person:
  - (h) any barrister or solicitor or lay advocate representing the child or young person:
  - (i) any person whose attendance at that conference is in accordance with the wishes of the family, whanau, or family group of the child or young person as expressed under section 21.
- (2) No person to whom paragraph (c) or paragraph (d) or paragraph (e) or paragraph (f) or paragraph (h) of subsection (1) applies is entitled to be present at any family group conference during any discussions or deliberations held among the members of the family, whanau, or family group of the child or young person in respect of whom the conference is held, unless those members request any such person to be present.

Section 22(1)(d): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 22(1)(g): replaced, on 3 June 1998, by section 8 of the Guardianship Amendment Act 1998 (1998 No 48).

Section 22(1)(g): amended, on 1 July 2005, by section 151 of the Care of Children Act 2004 (2004 No 90).



**23 Care and protection co-ordinator to ensure that relevant information and advice made available to family group conference**

- (1) Every care and protection co-ordinator who convenes a family group conference under this Part shall take all reasonable steps to ensure that all information and advice required by the conference to carry out its functions are made available to the conference.
- (2) Subject to section 22, where it is appropriate for any person (including a member of a care and protection resource panel) to attend a family group conference for the purpose of conveying to that conference any information or advice required by the conference to carry out its functions, that person may attend that conference for that purpose, but may otherwise attend the conference only with the agreement of the conference.

**24 Care and protection co-ordinator to ascertain views of persons unable to attend family group conference**

- (1) Every care and protection co-ordinator who convenes a family group conference under this Part shall take all reasonable steps to ascertain the views of the following persons in relation to the matters to be considered at the conference:
  - (a) any person who is excluded from attendance at the conference pursuant to paragraph (a)(i) or paragraph (b) of section 22(1):
  - (b) any person who is entitled to attend the conference but who has notified the care and protection co-ordinator that he or she or it is unable, for any reason, to do so.
- (2) Where, in respect of any family group conference, a care and protection co-ordinator ascertains the views of any person pursuant to subsection (1), that co-ordinator shall ensure that those views are made known at that conference.

**25 Notification of convening of family group conference**

- (1) Subject to subsection (2), every care and protection co-ordinator who convenes a family group conference under this Part shall take all reasonable steps to ensure that notice of the date on which, and the time and place at which, the conference is to

be held is given to every person who is entitled to attend that conference.

- (2) No notice is required to be given pursuant to subsection (1) to any person whose whereabouts cannot, after reasonable enquiries, be ascertained.
- (3) Every notice required by subsection (1) shall be given a reasonable time before the conference is to be held.
- (4) Failure to notify any person in accordance with this section shall not affect the validity of the proceedings of a family group conference unless it is shown that the failure is likely to have materially affected the outcome of that conference.

## **26 Procedure at family group conference**

- (1) Subject to this Part, a family group conference may regulate its procedure in such manner as it thinks fit.
- (2) Subject to section 5(f), a family group conference may from time to time be adjourned to a time and place determined by the conference.

## **27 Department to provide administrative services to family group conference**

The department shall provide such administrative services as may be necessary to enable a family group conference to discharge its functions.

## **28 Functions of family group conference**

The functions of a family group conference convened under this Part are as follows:

- (a) to consider, in relation to the child or young person in respect of whom the conference was convened, such matters relating to the care or protection of that child or young person as the conference thinks fit;
- (b) where the conference considers that the child or young person in respect of whom it was convened is in need of care or protection, to make such decisions or recommendations, and to formulate such plans, in relation to that child or young person as the conference considers

necessary or desirable, having regard to the principles set out in sections 5, 6, and 13:

- (c) to review from time to time—
  - (i) the decisions and recommendations made, and the plans formulated, by that conference:
  - (ii) the implementation of any such decisions, recommendations, and plans.

**29 Family group conference may make decisions and recommendations and formulate plans**

- (1) A family group conference convened under this Part may make such decisions and recommendations and formulate such plans as it considers necessary or desirable in relation to the care or protection of the child or young person in respect of whom the conference was convened.
- (2) In making such decisions and recommendations and formulating such plans, the conference shall have regard to the principles set out in sections 5, 6, and 13.
- (3) Every care and protection co-ordinator who convenes a family group conference shall cause to be made a written record of the details of the decisions and recommendations made, and the plans formulated, by that conference pursuant to this section.

**30 Care and protection co-ordinator to seek agreement to decisions, recommendations, and plans of family group conference**

- (1) Where a family group conference makes any decision or recommendation, or formulates any plan, pursuant to section 29(1) or subsection (4) of this section, the care and protection co-ordinator who convened that conference shall,—
  - (a) where the conference was convened under section 18(1) on the basis of a report from a social worker or a constable,—
    - (i) communicate that decision, recommendation, or plan to that social worker or constable (or any person acting for that social worker or that constable), and to every person who will be directly involved in the implementation of the decision, recommendation, or plan; and

- (ii) seek the agreement of that social worker or constable (or any person acting for that social worker or that constable), and of every other person to whom that decision, recommendation, or plan is communicated pursuant to subparagraph (i), to that decision, recommendation, or plan:
- (b) where the conference was convened under section 19(2)(a) on the basis of a referral from any body, organisation, or court,—
  - (i) communicate that decision, recommendation, or plan to that body, organisation, or court, and to every person who will be directly involved in the implementation of that decision, recommendation, or plan; and
  - (ii) seek the agreement of that organisation or body, and of every other person (other than a court) to whom that decision, recommendation, or plan is communicated pursuant to subparagraph (i), to that decision, recommendation, or plan.
- (2) Where, pursuant to paragraph (a)(i) or paragraph (b)(i) of subsection (1), a care and protection co-ordinator meets with any person, body, organisation, or court for the purpose of communicating to that person, body, organisation, or court any decision, recommendation, or plan made or formulated by a family group conference, the care and protection co-ordinator may be accompanied by a person nominated by that family group conference.
- (3) Where a care and protection co-ordinator is unable to secure agreement, under subsection (1), to a decision, recommendation, or plan made or formulated by a family group conference, the care and protection co-ordinator may, for the purpose of enabling that conference to reconsider that decision, recommendation, or plan, reconvene that conference.
- (4) Any family group conference reconvened under subsection (3) may confirm, rescind, or modify its previous decision, recommendation, or plan, or rescind its previous decision, recommendation, or plan and make or formulate a new decision, recommendation, or plan.

- (5) Any decision, recommendation, or plan confirmed or modified under subsection (4), and any new decision, recommendation, or plan made or formulated under that subsection, shall be deemed to have been made or formulated pursuant to section 29.

Section 30(1)(a): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 30(1)(a)(i): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 30(1)(a)(ii): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

### **31 Procedure where no agreement possible**

- (1) Where—

- (a) the members of a family group conference are unable to agree on what decisions, recommendations, or plans should be made in relation to the child or young person in respect of whom the conference was convened; or
- (b) a care and protection co-ordinator is unable to secure agreement under section 30 to the decisions, recommendations, and plans made or formulated by a family group conference,—

the care and protection co-ordinator who convened the conference—

- (c) shall,—
  - (i) where the conference was convened under section 18(1) on the basis of a report from a social worker or a constable, make a report on the matter to that social worker or constable; or
  - (ii) in any other case, report the matter to a social worker:
- (d) shall, where proceedings have been commenced under this Act in any court in relation to the child or young person in respect of whom the conference was convened, report the matter to that court:
- (e) shall, in every case, consult with a care and protection resource panel.

- (2) Where a care and protection co-ordinator makes a report, under subsection (1)(c)(i) or (ii), to any social worker or

constable, that social worker or constable may take such action under this Act as that person considers appropriate.

Section 31(1)(c)(i): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 31(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

**32 Records of decisions, recommendations, and plans of family group conferences to be made available to interested persons**

- (1) Every care and protection co-ordinator who convenes a family group conference under this Part shall ensure that a copy of every record made pursuant to section 29(3) in relation to that conference is given or sent to—
- (a) the child or young person in respect of whom the conference was convened, unless the child or young person would be unable, by reason of its age or level of maturity, to understand the contents of the record; and
  - (b) every person who is a parent or guardian of that child or young person or has the care of that child or young person; and
  - (c) any barrister or solicitor or lay advocate representing the child or young person; and
  - (d) any other person who is or will be directly affected by any decision, recommendation, or plan detailed in that record; and
  - (e) where there is an appropriate iwi social service or cultural social service with respect to the child or young person, that social service; and
  - (f) the appropriate care and protection resource panel.
- (2) Where any child or young person is the subject of any proceedings under this Act before any court, a copy of the record made pursuant to section 29(3) in respect of any family group conference held in relation to that child or young person shall be made available to that court.

Section 32(1)(e): replaced, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

**33 Department to maintain records of proceedings of family group conferences**

- (1) Every written record made pursuant to section 29(3) in relation to a family group conference shall be kept at the District Office of the department nearest to where the conference is held.
- (2) The following persons shall have access to any such record:
  - (a) any person to whom a copy of that record is required to be sent pursuant to section 32:
  - (b) any care and protection co-ordinator:
  - (c) any social worker:
  - (d) any other person who, in the opinion of a care and protection co-ordinator, has a genuine and proper interest in the matter.
- (3) Nothing in this section limits or affects the Official Information Act 1982.

**34 Chief executive to give effect to decisions, recommendations, and plans of family group conference**

- (1) The chief executive shall consider every decision, recommendation, or plan that is made or formulated by a family group conference pursuant to this Part (other than a decision, recommendation, or plan to which the agreement of a social worker is not secured under section 30), and, unless it is clearly impracticable or clearly inconsistent with the principles set out in sections 5, 6, and 13, shall give effect to that decision, recommendation, or plan by the provision of such services and resources, and the taking of such action and steps, as are necessary and appropriate in the circumstances of the particular case.
- (2) The chief executive may, from time to time, make such grants or provide such financial assistance as may be necessary to give effect to any decision, recommendation, or plan made or formulated by a family group conference pursuant to this Part.

Section 34 heading: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 34(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 34(2): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**35 Police to comply with decisions, recommendations, and plans of family group conference**

Where—

- (a) any decision, recommendation, or plan is made or formulated by a family group conference; and
  - (b) agreement to that decision, recommendation, or plan has been secured under section 30; and
  - (c) the implementation of that decision, recommendation, or plan involves any action on the part of the Police,—
- unless it is clearly impracticable or clearly inconsistent with the principles set out in sections 5, 6, and 13 to do so, it is the duty of the Police to give effect to that decision, recommendation, or plan by the taking of such action and steps as are necessary and appropriate in the circumstances of the particular case.

**36 Family group conference may reconvene to review its decisions, recommendations, and plans**

- (1) Where any decision, recommendation, or plan is made or formulated by a family group conference pursuant to this Part, the care and protection co-ordinator who convened that conference may from time to time, at that co-ordinator's own motion or at the request of at least 2 members of that conference, reconvene that conference for the purpose of reviewing that decision, recommendation, or plan.
- (2) Sections 20 to 35 shall apply, with all necessary modifications, with respect to every family group conference reconvened under this section.

**37 Proceedings of family group conference privileged**

- (1) No evidence shall be admissible in any court, or before any person acting judicially, of any information, statement, or admission disclosed or made in the course of a family group conference.
- (2) Nothing in subsection (1) applies to a record made by a care and protection co-ordinator under section 29(3).



**38 Proceedings of family group conference not to be published**

- (1) Subject to subsection (2), no person shall publish any report of the proceedings of any family group conference.
- (2) Nothing in subsection (1) applies to the publication of—
  - (a) statistical information relating to family group conferences:
  - (b) the results of any bona fide research relating to family group conferences.
- (3) In no case shall it be lawful to publish, in any report of the proceedings of any family group conference, any particulars that are identifiable by any person (other than the person to whom those particulars relate) as particulars relating to any particular person who was the subject of, or a participant in, that family group conference.
- (4) Every person who contravenes subsection (1) or subsection (3) commits an offence and is liable on conviction,—
  - (a) in the case of an individual, to a fine not exceeding \$2,000:
  - (b) in the case of a body corporate, to a fine not exceeding \$10,000.

Section 38(4): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

*Powers to remove child or young person*

**39 Place of safety warrants**

- (1) Any District Court Judge or, if no District Court Judge is available, any issuing officer (within the meaning of section 3 of the Search and Surveillance Act 2012) who, on application in writing verified in accordance with section 99 of that Act, is satisfied that there are reasonable grounds for suspecting that a child or young person is suffering, or is likely to suffer, ill-treatment, neglect, deprivation, abuse, or harm may issue a warrant authorising any constable or a social worker, either by name or generally, to search for the child or young person.
- (2) An application for a warrant under subsection (1) may be made by a constable or a social worker.

- (3) Any person authorised by warrant under this section to search for any child or young person may—
- (a) enter and search, by force if necessary, any dwelling-house, building, aircraft, ship, carriage, vehicle, premises or place:
  - (b) if that person believes, on reasonable grounds, that the child or young person has suffered, or is likely to suffer, ill-treatment, serious neglect, abuse, serious deprivation, or serious harm,—
    - (i) remove or detain, by force if necessary, the child or young person and place the child or young person in the custody of the chief executive; or
    - (ii) where the child or young person is in a hospital, direct the medical superintendent of that hospital to keep that child or young person in that hospital.
- (4) Where any direction is issued pursuant to subsection (3)(b)(ii) in respect of any child or young person, that child or young person shall be deemed to have been placed in the custody of the chief executive pursuant to this section.

Compare: 1974 No 72 s 7(1)–(3)

Section 39(1): amended, on 1 October 2012, by section 207(1) of the Search and Surveillance Act 2012 (2012 No 24).

Section 39(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 39(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 39(3)(b)(i): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 39(4): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

#### **40 Warrant to remove child or young person**

- (1) Where an application for a declaration under section 67 has been made in respect of a child or young person, any District Court Judge or, if no District Court Judge is available, any issuing officer (within the meaning of section 3 of the Search and Surveillance Act 2012) may, on application in writing verified in accordance with section 99 of that Act, where there are reasonable grounds for believing that the child or young person is—

- (a) suffering, or is likely to suffer, ill-treatment, serious neglect, abuse, serious deprivation, or serious harm; or
  - (b) so seriously disturbed as to be likely—
    - (i) to act in a manner harmful to the child or young person or any other person; or
    - (ii) to cause serious damage to property,—issue a warrant authorising any constable or a social worker, either by name or generally, to search for the child or young person.
- (2) An application for a warrant under subsection (1) may be made by a constable or a social worker.
- (3) The alleged commission of an offence shall not of itself be sufficient grounds for the issue of a warrant under this section.
- (4) Any person authorised by warrant under this section to search for any child or young person may—
  - (a) enter and search, by force if necessary, any dwelling-house, building, aircraft, ship, carriage, vehicle, premises or place:
  - (b) either—
    - (i) remove or detain, by force if necessary, the child or young person and place the child or young person in the custody of the chief executive; or
    - (ii) where the child or young person is in a hospital, direct the medical superintendent of that hospital to keep that child or young person in that hospital.
- (5) Where any direction is issued pursuant to subsection (4)(b)(ii) in respect of any child or young person, that child or young person shall be deemed to have been placed in the custody of the chief executive pursuant to this section.

Compare: 1974 No 72 s 28(1)–(3)

Section 40(1): amended, on 1 October 2012, by section 207(2) of the Search and Surveillance Act 2012 (2012 No 24).

Section 40(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 40(4)(b)(i): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 40(5): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**41 Person executing warrant to produce evidence of  
authority and identity***[Repealed]*

Section 41: repealed, on 2 September 1996, by section 2(2) of the Children, Young Persons, and Their Families Amendment Act 1996 (1996 No 112).

**42 Search without warrant**

- (1) Any constable who believes on reasonable grounds that it is critically necessary to protect a child or young person from injury or death may, without warrant,—
  - (a) enter and search, by force if necessary, any dwelling-house, building, aircraft, ship, carriage, vehicle, premises or place;
  - (b) remove or detain, by force if necessary, the child or young person and place the child or young person in the custody of the chief executive.
- (2) Every constable who exercises any powers conferred by subsection (1) shall, on first entering any dwellinghouse, building, aircraft, ship, carriage, vehicle, premises or place, and if requested, at any subsequent time,—
  - (a) produce evidence of identity; and
  - (b) disclose that those powers are being exercised under this section.
- (3) A constable who exercises the power conferred by subsection (1) shall, within 3 days after the day on which the power is exercised, forward to the Commissioner of Police a written report on the exercise of the power and the circumstances in which it came to be exercised.

Compare: 1974 No 72 s 8

Section 42(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 42(1)(b): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 42(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 42(3): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

**43 Placement of child or young person placed in custody of chief executive**

- (1) Subject to subsection (2), where a child or young person is placed in the custody of the chief executive pursuant to section 39 or section 40 or section 42, the chief executive may place the child or young person with—
  - (a) a parent or guardian of the child or young person; or
  - (b) any other person who previously had the care of the child or young person; or
  - (c) any member of the child's or young person's family, whanau, or family group; or
  - (d) any person approved by a social worker.
- (2) If it is not practicable or appropriate to place the child or young person with any of the persons specified in any of paragraphs (a) to (d) of subsection (1), the chief executive may place the child or young person in a residence.
- (3) Where a child or young person is placed in the custody of the chief executive pursuant to section 39 or section 40 or section 42, the chief executive may, at any time, release the child or young person from that custody.

Section 43 heading: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 43(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 43(2): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 43(3): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**44 Parent or guardian may apply for release of or access to child or young person**

- (1) Where a child or young person is placed in the custody of the chief executive pursuant to section 39 or section 40 or section 42, any parent or guardian or other person previously having the care of the child or young person may apply to the court for the release of that child or young person, or for access to that child or young person while he or she is in the custody of the chief executive, and the court may make any order that it is empowered to make under section 46.

- (2) An application may be made under subsection (1) at any time before the child or young person is released from the custody of the chief executive or is brought before the court in accordance with section 45.

Section 44(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 44(2): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**45 Child or young person placed in custody of chief executive to be brought before court within 5 days unless sooner released**

A child or young person who is placed in the custody of the chief executive pursuant to section 39 or section 40 or section 42—

- (a) shall be brought before the court not later than the fifth day after the date on which that child or young person is so placed, unless, before that day,—
- (i) the child or young person is released from that custody; or
  - (ii) an order is made under section 78 with respect to the custody of that child or young person:
- (b) may be kept in the custody of the chief executive until the child or young person is brought before the court in accordance with paragraph (a), or for such further period as may be directed by a Family Court Judge.

Section 45 heading: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 45: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 45(b): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**46 Powers of court where application made under section 44 or child or young person brought before court under section 45**

Where an application is made to the court under section 44, or a child or young person is brought before the court pursuant to section 45, the court may—

- (a) make an order—

- (i) directing that the child or young person be released from custody; and
  - (ii) subject to any order in force under the Care of Children Act 2004 and relating to who has the role of providing day-to-day care for the child or young person, directing that the role of providing day-to-day care for the child or young person be exercised by any person the court thinks fit:
- (b) if an application for a declaration under section 67 has been made in respect of the child or young person, make an order under section 78 relating to the custody of the child or young person pending the determination of the application:
- (c) make any order that it is empowered to make under section 121.

Section 46(a)(ii): replaced, on 1 July 2005, by section 151 of the Care of Children Act 2004 (2004 No 90).

**47 Social worker or constable to furnish report to  
Commissioner where child or young person released  
before required to be brought before court**

- (1) Where—
  - (a) a child or young person is placed in the custody of the chief executive pursuant to section 39 or section 40 or section 42; and
  - (b) the child or young person is released from that custody before the child or young person is required by section 45(a) to be brought before the court,—the social worker or constable who placed the child or young person in that custody shall, as soon as practicable after the release of the child or young person, send to the Commissioner a report containing the details required by subsection (2).
- (2) The details to be included in a report required by subsection (1) in relation to the placing of a child or young person in the custody of the chief executive are as follows:
  - (a) where the child or young person was placed in the custody of the chief executive pursuant to a warrant issued under section 39 or section 40, the grounds on which

that warrant was issued and the reasons why the child or young person was so placed:

- (b) where the child or young person was placed in the custody of the chief executive pursuant to section 42, the reasons why the child or young person was so placed:
- (c) where and with whom the chief executive placed the child or young person while the child or young person was in the chief executive's custody:
- (d) whether a medical examination of the child or young person was carried out pursuant to section 53, and, if so, the findings of that examination:
- (e) the reason for releasing the child or young person from the custody of the chief executive:
- (f) the details of any further action that the social worker or constable has taken, or is proposing to take, in relation to the child or young person.

Section 47 heading: amended, on 1 October 2008, pursuant to section 116(a)(i) of the Policing Act 2008 (2008 No 72).

Section 47(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 47(1)(a): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 47(2): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 47(2)(a): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 47(2)(b): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 47(2)(c): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 47(2)(e): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 47(2)(f): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

## **48 Unaccompanied children and young persons**

- (1) Where a child or young person is found unaccompanied by a parent or guardian or other person who usually has the care of the child or young person in a situation in which the child's or young person's physical or mental health is being, or is likely



- to be, impaired, a constable may, using such force as may reasonably be necessary, take the child or young person and—
- (a) with the consent of the child or young person, deliver the child or young person into the custody of a parent or guardian or other person usually having the care of the child or young person; or
  - (b) if—
    - (i) the child or young person does not wish to be returned to a parent or guardian or other person having the care of the child or young person; or
    - (ii) no parent or guardian or other such person is willing or able to have custody of the child or young person,—place the child or young person in the custody of the chief executive by delivering the child or young person to a social worker.
- (2) Placement of a child or young person in the custody of the chief executive shall be sufficient authority for the detention of the child or young person by a social worker or in a residence under this Act until—
- (a) the child or young person agrees to being returned to a parent or guardian or other person usually having the care of the child or young person who is willing to have the care of the child or young person; or
  - (b) an application is made to the court for a declaration under section 67 and the child or young person is brought before the court for the purpose of determining whether the child or young person is to be held in custody pending the disposal of the application; or
  - (c) where the circumstances of the case indicate that the child or young person is, or may be, in need of care or protection, the expiry of 5 days after the day on which the child or young person was placed in custody, or in any other case, 3 days after that date—
- whichever first occurs.
- (3) In subsections (1) and (2) the term **young person** means a person of or over the age of 14 years but under the age of 17 years.

Compare: 1974 No 72 s 12; 1981 No 113 s 50; 1982 No 135 s 4

Section 48(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 48(1)(b): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 48(2): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 48(3): amended, on 8 January 1995, by section 8 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

*Medical examination of child or young person*

**49 Court may order medical examination of child or young person**

- (1) Where the court is satisfied—
- (a) that there are reasonable grounds for suspecting that a child or young person is suffering ill-treatment, abuse, neglect, deprivation, or serious harm; and
  - (b) that it is expedient that a medical examination of that child or young person be carried out for the purpose of determining whether that suspicion is well-founded,—
- the court may order the child or young person to attend for a medical examination by a medical practitioner.
- (2) An application for an order under subsection (1) may be made by a social worker or a constable.
- (3) Every application for an order under subsection (1) shall be served on the barrister or solicitor representing the child or young person and on such other persons as the court directs.
- (4) The following persons shall be entitled to appear and be heard on the hearing of an application under this section:
- (a) the applicant;
  - (b) any person on whom the application is served;
  - (c) with the leave of the court, any other person.

Section 49(1): amended, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 49(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

**50 *Ex parte* application for order for medical examination**

- (1) An order may be made under section 49 on an *ex parte* application if the court is satisfied—

- (a) that the delay that would be caused by proceeding on notice would or might entail risk to the personal safety of the child or young person who is the subject of the application; or
  - (b) that proceeding on notice would be likely to prejudice investigations into whether the child or young person is in need of care or protection.
- (2) No order may be made under section 49 on an *ex parte* application unless the barrister or solicitor representing the child or young person has been given an opportunity to be heard.
- (3) Where an order is made under section 49 on an *ex parte* application, any person affected by the order may apply at any time for a variation or discharge of the order.

**51 Court may impose conditions on order for medical examination**

Any order under section 49 may be made on such terms and conditions as the court thinks fit, including restrictions on the nature of the medical examination that may be carried out and the procedures that may be used to carry out that examination.

**52 Medical practitioner to prepare report on examination**

- (1) Every medical practitioner who carries out a medical examination of a child or young person pursuant to an order under section 49 shall forthwith prepare a written report of the results of that examination and shall supply that report to the court.
- (2) A copy of every report supplied to the court pursuant to subsection (1) shall be given by the Registrar to—
  - (a) every person entitled to appear and be heard on the application to which the report relates;
  - (b) any other person whom the court considers has a proper interest in receiving a copy of the report.

**53 Medical examination of child or young person at request of social worker**

- (1) This section applies to any child or young person—
  - (a) in respect of whom a warrant has been issued under section 39; or

- (b) who is placed in the custody of the chief executive under that section or under section 40 or section 42.
- (2) A social worker may, with the consent of any parent or guardian of the child or young person, arrange for any child or young person to whom this section applies to be medically examined by a medical practitioner.
- (3) Where, after making reasonable efforts to do so, a social worker does not obtain the consent of a parent or guardian of a child or young person to a medical examination under subsection (2), a social worker may require the child or young person to be medically examined by a medical practitioner.

Section 53(1)(b): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 53(2): amended, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 53(3): amended, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

#### **54 Child or young person entitled to have adult present**

Every child or young person who is medically examined under section 53 is entitled to have present during that examination 1 adult—

- (a) who is nominated for that purpose by that child or young person or, if the age or level of maturity of the child or young person makes it impracticable for him or her to make such a nomination, by a social worker; and
- (b) who consents to be present.

#### **55 Restrictions on internal examinations and examinations under general anaesthetic**

- (1) No medical examination carried out under section 53 shall include any internal examination of the genitals or anus of any child or young person unless—
  - (a) the medical practitioner carrying out the examination believes that the child or young person may have been subject to recent physical or sexual abuse involving either or both of those parts of the body; and
  - (b) the child or young person consents to such an examination of that part of the body.

- (2) No medical examination carried out under section 53 shall include any medical procedure that involves the administration of a general anaesthetic to the child or young person.
- (3) Nothing in subsection (1)(b) requires the consent of any child or young person to any examination if the age or level of maturity of the child or young person makes it impracticable to obtain such consent.

**56 Medical practitioner to prepare report on examination**

Every medical practitioner who carries out a medical examination of a child or young person under section 53 shall forthwith prepare a written report of the results of that examination and shall supply that report to the social worker by whom the examination was arranged or required, as the case may be.

**57 Social worker to make report to chief executive**

A social worker who exercises the power under section 53(3) to require a medical examination to be carried out shall, within 3 days after the day on which that examination is carried out, forward to the chief executive a written report on the exercise of that power and the circumstances in which it came to be exercised.

Section 57 heading: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 57: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**58 Fees for reports prepared under section 52 or section 56**

Where any person prepares a report pursuant to section 52 or section 56, the fees and expenses of that person shall be paid—

- (a) out of money appropriated by Parliament for the purpose; or
- (b) if the court so decides, by such party or parties to the proceedings as the court may order.

*Production of documents relevant to  
investigation*

**59 Application for production of documents relevant to investigation of whether child or young person in need of care or protection**

- (1) Subject to subsection (4), where—
- (a) any social worker or constable believes, on reasonable grounds, that any person has in that person's possession, custody, or power any document that contains, or that the social worker or constable considers is likely to contain, information necessary or relevant for the purpose of determining whether any child or young person is in need of care or protection (other than on the ground specified in section 14(1)(e)); and
  - (b) that person has refused to allow that document to be inspected by that social worker or constable,—
- that social worker or constable may apply to the court for an order requiring that person to produce that document for inspection by that social worker or constable.
- (2) Subject to section 60, notice of an application under subsection (1) for an order for the production of a document shall be given by the applicant to the person in respect of whom the order is sought and to such other person or persons as the court directs.
- (3) The applicant and every person to whom notice of an application under subsection (1) is given shall be entitled to appear and be heard on the hearing of the application.
- (4) Nothing in subsection (1) applies in respect of any document the production of which would breach legal professional privilege.

Section 59(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 59(1)(a): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 59(1)(b): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

**60 *Ex parte* application for order for production of document**

- (1) An order may be made under section 61 on an *ex parte* application if the court is satisfied that proceeding on notice would

be likely to prejudice investigations into whether a child or young person is in need of care or protection.

- (2) Where an order is made under section 61 on an *ex parte* application, the person in respect of whom the order is made, or any other person affected by the order, may apply at any time for a variation or discharge of the order.

**61 Court may order document to be produced**

- (1) Where an application is made under section 59 for the production of any document, and the court is satisfied that the document contains information necessary or relevant for the purpose of determining whether any child or young person is in need of care or protection (other than on the ground specified in section 14(1)(e)), the court may, subject to section 59(4), order the person named in the application as the person who has the document in that person's possession, custody, or power to produce that document for inspection by the applicant.
- (2) The court may inspect any document for the purpose of determining whether to make an order under this section for the production of that document, and for that purpose may order that document to be produced to the court.
- (3) Every person commits an offence and is liable on conviction to a fine not exceeding \$2,000 who, being a person who is ordered pursuant to this section to produce any document, refuses or fails to comply with that order.

Section 61(3): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

**62 Section 61 to apply notwithstanding any enactment or rule of law**

- (1) Subject to section 59(4), section 61 applies notwithstanding any enactment, or any rule of law, that obliges any person to maintain secrecy in relation to, or not to disclose, any matter, and any compliance with that section is not a breach of the relevant obligation of secrecy or non-disclosure or of the enactment or rule of law by which that obligation is imposed.
- (2) Subject to section 59(4), no person shall be excused from producing any document under section 61—

- (a) on the ground that the production of that document could or would tend to incriminate that person or subject that person to any penalty or forfeiture; or
- (b) on the ground of any other privilege that could otherwise be claimed by that person in relation to the production of the document in any proceedings in a court.

**63 Right to remove, retain, and make copies of document produced under section 61**

A social worker or constable to whom a document is produced for inspection under section 61 may—

- (a) remove and retain that document for so long as is necessary for a full inspection of that document;
- (b) make copies of that document.

Section 63: amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

**64 Document produced under section 61 not to be used for any other purpose**

- (1) A social worker or constable to whom a document is produced for inspection under section 61—
  - (a) shall make use of that document, and any copy of that document taken pursuant to section 63(b), only for the purposes of this Part; and
  - (b) except for the purposes of this Part, shall not disclose that document, or any copy of that document taken pursuant to section 63(b), to any other person.
- (2) Every person commits an offence and is liable on conviction to a fine not exceeding \$2,000 who contravenes subsection (1).

Section 64(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 64(2): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

**65 Use of documents in subsequent proceedings**

- (1) No document produced, pursuant to an order under section 61, to any social worker or constable shall be admissible as evidence in any proceedings under this Act or any other Act if, but for the provisions of section 62, that document could



not, by virtue of any enactment, rule of law, or privilege, have been ordered to be so produced.

- (2) No document or information shall be privileged from being given in evidence in any proceedings under this Act or any other Act, and no objection to the admissibility of any document or information in any such proceedings shall be upheld, merely because the document or information was obtained as a result of the production of any document pursuant to an order under section 61.

Section 65(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

**66 Government departments may be required to supply information**

- (1) Every government department, agent, or instrument of the Crown and every statutory body shall, when required, supply to every care and protection co-ordinator, social worker, or constable such information as it has in its possession relating to any child or young person where that information is required—
- (a) for the purposes of determining whether that child or young person is in need of care or protection (other than on the ground specified in section 14(1)(e)); or
- (b) for the purposes of any proceedings under this Part.
- (2) No information obtained pursuant to subsection (1)—
- (a) shall be used for the purposes of investigating any offence;
- (b) shall be admissible as evidence in any proceedings other than proceedings under this Part.
- (3) Nothing in subsection (1) limits or affects the Official Information Act 1982.

Section 66(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

*Proceedings in respect of children and young  
persons in need of care or protection*

**67 Grounds for declaration that child or young person is in  
need of care or protection**

A court may, on application, where it is satisfied on any of the grounds specified in section 14(1) that a child or young person is in need of care or protection, make a declaration that the child or young person is in need of care or protection.

Compare: 1974 No 72 s 27(2); 1977 No 126 s 7(1)

**68 Application for declaration that child or young person is  
in need of care or protection**

An application for a declaration that a child or young person is in need of care or protection may be made by—

- (a) a social worker; or
- (b) a constable; or
- (c) with the leave of the court, any other person.

Compare: 1974 No 72 s 27(1)

Section 68(b): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

**69 Joint applications**

An application for a declaration that a child or young person is in need of care or protection may be made jointly by a social worker or constable and a parent or guardian or other person having the care of the child or young person.

Section 69: amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

**70 No application to be made unless family group conference  
has been held**

- (1) Subject to subsection (2), no application for a declaration that a child or young person is in need of care or protection may be made unless a family group conference has been held under this Part (or, in the case of an application on the ground specified in section 14(1)(e), under Part 4) in relation to the matter that forms the ground on which the application is made.
- (2) Subsection (1) does not apply where—

- (a) the child or young person in respect of whom the application is made has been placed in the custody of the chief executive under section 39 or section 42; or
  - (b) the applicant believes that the interests of the child or young person in respect of whom the application is made require that an interim restraining order be granted as a matter of urgency, and an application for such an order is made at the same time as the application; or
  - (ba) an application for a custody order under section 78 is made at the same time as the application, and the applicant believes,—
    - (i) where the application is made on the ground specified in section 14(1)(e),—
      - (A) that it is not possible to make suitable alternative arrangements for the custody of the child in respect of whom the application is made pending the determination of the application; or
      - (B) that it is in the public interest that the child be held in custody pending the determination of the application;
    - (ii) in any other case, that the interests of the child or young person in respect of whom the application is made require that such a custody order be granted as a matter of urgency; or
  - (c) the application is made on the ground specified in section 14(1)(g) and, after reasonable enquiries, it is not possible to ascertain the whereabouts of any member of the family, whanau, or family group of the child or young person to whom the application relates.
- (3) Where, pursuant to any of paragraphs (a) to (ba) of subsection (2), an application for a declaration under section 67 is made without a family group conference having been held, the Registrar shall forthwith refer the application to,—
- (a) in the case of an application made on the ground specified in section 14(1)(e), a youth justice co-ordinator; or
  - (b) in any other case, a care and protection co-ordinator—  
for the purposes of convening a family group conference.

Section 70(2)(a): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 70(2)(a): amended, on 1 November 1989, by section 6(1)(a) of the Children, Young Persons, and Their Families Amendment Act 1989 (1989 No 70).

Section 70(2)(b): replaced, on 8 January 1995, by section 9(1) of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 70(2)(ba): inserted, on 8 January 1995, by section 9(1) of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 70(3): replaced, on 8 January 1995, by section 9(2) of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

**71 Court may make declaration in absence of proof of  
responsibility for neglect or ill-treatment of child or  
young person**

Where—

- (a) an application for a declaration that a child or young person is in need of care or protection is made on any of the grounds specified in paragraph (a) or paragraph (b) of section 14(1); and
- (b) the court is satisfied that, but for the failure of the evidence to establish that a parent or guardian of the child or young person or a person having the care of the child or young person is culpable in relation to the harm suffered by the child or young person, the grounds for making the declaration are made out,—

the court may find those grounds made out.

Compare: 1974 No 72 s 29A; 1983 No 129 s 6(1)

**72 Court not to make declaration unless family group  
conference held**

- (1) Subject to subsection (2), the court shall not make a declaration under section 67 that a child or young person is in need of care or protection unless a family group conference has been held under this Part (or, in the case of an application on the ground specified in section 14(1)(e), under Part 4) in relation to the matter that forms the ground of the application.
- (2) Nothing in subsection (1) applies in respect of any application to which section 70(2)(c) applies.
- (3) Where an application is made to the court for a declaration under section 67, the court may, at any stage of the hearing of

that application, on the application of any party to the proceedings or of its own motion, direct a care and protection co-ordinator to convene a family group conference in relation to the matter that forms the ground of the application.

**73 Court not to make declaration unless satisfied that child's or young person's need for care or protection cannot be met by other means**

- (1) The court shall not make a declaration under section 67 that a child or young person is in need of care or protection unless it is satisfied that it is not practicable or appropriate to provide care or protection for the child or young person by any other means, including the implementation of any decision, recommendation, or plan made or formulated by a family group conference convened in relation to that child or young person.
- (2) In deciding whether or not to make a declaration under section 67 that a child or young person is in need of care or protection on any of the grounds specified in paragraph (a) or paragraph (b) of section 14(1), the court shall take into account, among other things, any evidence before the court—
  - (a) that the kind of harm suffered by the child or young person will neither continue nor be repeated:
  - (b) that a parent or guardian or other person having the care of the child or young person will be capable of ensuring that the kind of harm suffered by the child or young person will be neither continued nor repeated.

*Counselling*

**74 Court may require parties to undergo counselling**

- (1) Where an application is made to the court for a declaration under section 67 in relation to a child or young person, the court may direct all or any of the following persons to participate in counselling of a nature specified by the court:
  - (a) the child or young person in respect of whom the application is made:
  - (b) any parent or guardian of the child or young person or any person having the care of the child or young person:

- (c) where the application is accompanied by or joined with an application for a restraining order or an interim restraining order, any person in respect of whose conduct that order or interim order is sought.
- (2) Where a direction made under subsection (1) does not specify the person who is to undertake the counselling, the direction shall be referred to the Registrar of the court, and that Registrar shall, on receipt of the direction, refer to an appropriate counsellor the person or persons in respect of whom the direction is given.
- (3) In determining, for the purposes of any direction made under subsection (1), the nature of the counselling and the person who is to carry out the counselling, the court or Registrar, as the case may be, shall have regard to the views of the person or persons in respect of whom that direction is given.

Compare: 1980 No 94 s 10

#### **75 Counsellor to arrange meeting and submit report on outcome**

- (1) Where a direction is made under section 74(1), the counsellor who is to undertake the counselling shall—
  - (a) arrange to meet the person or persons in respect of whom the direction is given; or
  - (b) by letter sent by post request that person or those persons to attend before the counsellor at a specified time and place—for the purpose of the counselling.
- (2) As soon as practicable after a direction is made under section 74, the person undertaking the counselling pursuant to that direction shall submit a written report to the court on the outcome of that counselling.

Compare: 1980 No 94 s 11

#### **76 Fees**

Any fees charged by any counsellor in respect of any counselling carried out pursuant to any direction made under section 74 shall, to the extent that those fees are reasonable, be paid out of a Crown Bank Account from money appropriated by Parliament for the purpose.

Section 76: amended, on 25 January 2005, pursuant to section 83(7) of the Public Finance Act 1989 (1989 No 44).

**77 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 to any person in the course of carrying out that person's functions as a counsellor pursuant to a direction made under section 74.
- (2) Except to the extent that it is necessary for a counsellor to do so in the proper discharge of that person's functions, every person who acts as a counsellor pursuant to a direction made under section 74 commits an offence and is liable on conviction to a fine not exceeding \$1,000 who discloses to any other person any information, statement, or admission received by or made to that person in the exercise of that person's functions pursuant to such a direction.

Compare: 1980 No 94 s 18

Section 77(2): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

*Custody of child or young person pending  
determination of proceedings*

Heading: replaced, on 8 January 1995, by section 10 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

**78 Custody of child or young person pending determination of proceedings**

- (1) In any proceedings in a court under Part 2 in relation to a child or young person, the court may, on the application of any party to the proceedings, or a barrister or solicitor representing the child or young person, or of its own motion, make an order relating to the custody of the child or young person pending the determination of the proceedings.
- (2) Without limiting the generality of subsection (1), the court may make an order under that subsection in relation to a child or young person in the following cases:
  - (a) where the child or young person has been placed in the custody of the chief executive pursuant to section 39 or

- section 40 or section 42 and is brought before the court pursuant to section 45:
- (b) where the court is satisfied that the child or young person is in need of care or protection for the period of the order:
  - (c) in the case of an application for a declaration under section 67 on the ground specified in section 14(1)(e), where—
    - (i) it is not possible to make suitable alternative arrangements for the custody of the child pending the determination of the application; or
    - (ii) it is in the public interest that the child be held in custody pending the determination of the application:
  - (d) where the court has made a declaration under section 67 and has adjourned the proceedings pending their disposition:
  - (e) where an application for a variation or discharge of any order (or the variation or discharge of any condition of any order) is made to the court under section 125, at any time before such application is finally disposed of:
  - (f) where a report is furnished to the court pursuant to section 135, at any time before the court has completed its consideration of the report and accompanying revised plan under section 137.
- (3) An order under subsection (1) may be made on such terms and conditions as the court thinks fit.

Section 78: replaced, on 8 January 1995, by section 10 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 78(2)(a): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

## **79 Persons who may be granted custody under section 78**

- (1) An order made under section 78 may place a child or young person in the custody of any of the following persons:
- (a) the chief executive:
  - (b) an iwi social service:
  - (c) a cultural social service:
  - (d) the director of a child and family support service:



- (e) any other person.
- (2) The court shall not make an order under section 78 placing any child or young person in the custody of any person (other than the chief executive) unless that person consents to the making of the order.

Section 79(1)(a): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 79(1)(b): replaced, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 79(1)(c): replaced, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 79(2): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

## **80 Effect of order made under section 78**

Section 104, section 105 (other than paragraph (a), paragraph (b)(i), and paragraph (c) of subsection (1) of that section), section 106, and section 107, so far as applicable and with all necessary modifications, shall apply with respect to every order made under section 78 as if it were an order made under section 101.

## **81 Placement of child or young person under order made under section 78**

- (1) Where, pursuant to an order made under section 78, a child or young person is placed in the custody of any person (being the chief executive or an iwi social service or a cultural social service or the director of a child and family support service), that order is sufficient authority for that person to place the child or young person—
  - (a) with a member of the child's or young person's family, whanau, or family group:
  - (b) where the child or young person is placed in the custody of the chief executive, in a residence.
- (2) Subject to subsection (1), the person in whose custody a child or young person is so placed may, from time to time, during the currency of the order, change the placement of the child or young person.

Compare: 1974 No 72 s 43(8)

Section 81: replaced, on 8 January 1995, by section 11 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 81(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 81(1)(b): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**82 Child or young person may be returned to person who previously had care**

- (1) This section applies where a child or young person is placed in the custody of the chief executive, an iwi social service, a cultural social service, or the director of a child and family support service pursuant to an order made under section 78.
- (2) Subject to subsection (5), where this section applies, the person in whose custody the child or young person is placed may, at any time before the order expires or is discharged, if that person considers it appropriate to do so, return the child or young person to the custody of the parent or guardian or other person who had the care of the child or young person immediately before the order was made.
- (3) The person so returning the child or young person may impose such conditions relating to the supervision of the child or young person as that person thinks fit.
- (4) Subject to subsection (5), where,—
  - (a) pursuant to subsection (2), a child or young person is returned to the custody of another person; and
  - (b) at any time before the order made under section 78 expires or is discharged, the person so returning the child or young person considers that it is no longer desirable in the interests of the child or young person that he or she be in the custody of that other person,—the person may direct that other person to return the child or young person to the custody of that person.
- (5) No person shall—
  - (a) return a child or young person to the custody of any other person pursuant to subsection (2); or
  - (b) issue a direction under subsection (4) in relation to a child or young person—

without first consulting with the barrister or solicitor representing that child or young person.

- (6) Where a person gives a direction under subsection (4),—
- (a) any social worker acting under the specific or general authority of that person may—
    - (i) remove the child or young person to whom the direction relates, using such force as is reasonably necessary for the purpose; and
    - (ii) place the child or young person with such person, or (where the person giving the direction is the chief executive) in such residence, as the person giving the direction thinks fit:
  - (b) subsections (2) and (3) of section 105 shall apply, so far as applicable and with all necessary modifications, in relation to the removal of the child or young person pursuant to the direction.

Section 82: replaced, on 8 January 1995, by section 11 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 82(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 82(6)(a)(ii): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

### *Orders under this Part*

#### **83 Orders of court on making of declaration**

- (1) Where the court makes a declaration under section 67 relating to a child or young person, it may do 1 or more of the following things:
- (a) discharge the child or young person, or any parent or guardian or other person having the care of the child or young person, or both, from the proceedings without further order:
  - (b) order that the child or young person, or any parent or guardian or other person having the care of the child or young person, or both, come before the court, if called upon within 2 years of the making of the order, so that the court may take further action under this section:

- (c) order 1 or more of the following persons to receive counselling from such person or persons, and subject to such conditions, as are specified by the court:
    - (i) the child or young person:
    - (ii) any parent or guardian or other person having the care of the child or young person:
    - (iii) any person in respect of whose conduct a restraining order or an interim restraining order was sought or made in the proceedings:
  - (d) make a services order under section 86:
  - (e) make a restraining order under section 87:
  - (f) make a support order under section 91:
  - (g) make a custody order under section 101:
  - (h) make an order under section 110 appointing a guardian of the child or young person.
- (2) Where the court makes an order under subsection (1)(c), sections 74 to 77 shall apply, with all necessary modifications, with respect to that order as if it were a direction made under section 74(1).

Compare: 1974 No 72 s 31(1)(b), (c), (d), (h); 1983 No 129 s 7(1)

#### **84 Power to make other orders where declaration made on ground of child's offending**

- (1) Where the court makes a declaration under section 67 in relation to a child, and the declaration is made on the ground specified in section 14(1)(e), the court may, in addition to or instead of making any order referred to in section 83(1), make any 1 or more of the following orders:
- (a) an order admonishing the child:
  - (b) where the court is satisfied that any person (other than the child) suffered—
    - (i) any emotional harm; or
    - (ii) any loss of or damage to property—through or by means of the child's offending, an order directing the child, or any parent or guardian of the child, to pay to the person who suffered the emotional harm or the loss of or damage to property such sum as it thinks fit by way of reparation:

- (c) an order directing the child, or any parent or guardian or other person having the care of the child, to deliver to the person who appears to the court to be entitled to it any property in the possession of the child or in the possession of any person for the child:
  - (d) an order for the forfeiture of property to the Crown in any case where the forfeiture of that property would have been obligatory or could have been ordered under any enactment applicable to the offence if the child were an adult and had been convicted of an offence by a District Court.
- (2) Any sum ordered to be paid pursuant to subsection (1)(b) in respect of the loss of or damage to property shall be limited to the cost of replacement or (as the case may require) the cost of repair, and shall not include any loss or damage of a consequential nature.
- (3) No order shall be made under subsection (1)(b) against the chief executive or any other person who has been appointed to be a guardian of the child under section 110.
- (4) No order shall be made under subsection (1)(b) in respect of the parent or guardian of the child unless that parent or guardian has been informed by the court of the proposal to make the order and has been given an opportunity to make representations to the court.

Compare: 1974 No 72 s 31(1)(e), (f), (g); 1985 No 120 s 22(5); 1987 No 168 s 4

Section 84(3): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

## **85 Recall to come before court**

- (1) Where the court makes an order under section 83(1)(b), the court may, at any time during the duration of the order, direct, on the application of—
  - (a) a social worker; or
  - (b) a constable; or
  - (c) the applicant in the proceedings in which the order was made,—

the issue to the person in respect of whom the order was made of a summons, in a form prescribed for the purposes of this subsection by rules of court, to appear before the court.

- (2) Where a person appears before the court on a summons issued under subsection (1), the court may consider the matter and after taking into account such factors as may be relevant since the making of the order, exercise any of the powers conferred on it under section 83 or section 84 except—
- (a) the power conferred by section 83(1)(b); and
  - (b) where any power conferred by paragraph (b), paragraph (c), or paragraph (d) of section 84(1) was exercised in the first instance, any such power.

Compare: 1974 No 72 s 31(2)

Section 85(1): amended, on 13 September 2002, by section 6 of the Family Courts Amendment Act 2000 (2000 No 65).

Section 85(1)(b): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

### *Services orders*

#### **86 Services orders**

- (1) Where the court makes a declaration under section 67 in relation to a child or young person, it may—
- (a) make an order directing the chief executive or any other person or organisation named in the order to provide such services and assistance as may be specified in the order for such period and on such terms and conditions as may be specified to a parent or guardian or other person having the care of the child or young person;
  - (b) make an order directing the chief executive or any other person or organisation named in the order to provide such services and assistance as may be specified in the order for such period and on such terms and conditions as may be specified to the child or young person.
- (2) The court shall not make an order under subsection (1) unless the chief executive (where the order is to be directed to the chief executive) or the person or organisation that would be required to provide services and assistance pursuant to the order (in any other case)—

- (a) is given notice of the court's intention to consider making the order; and
  - (b) is given an opportunity to appear and be heard by the court before the order is made; and
  - (c) subject to subsection (3), consents to the making of the order.
- (3) An order directing the chief executive to provide services and assistance may be made under this section without the consent of the chief executive, but only if the court, after having regard to any reasons advanced on behalf of the chief executive as to why the order should not be made, is satisfied—
- (a) that requiring the chief executive to provide those services and assistance is not clearly impracticable; and
  - (b) that the child or young person in respect of whom the court proposes to make an order under this section is in the care of a person or organisation clearly consistently with the principles set out in sections 5, 6, and 13.

Section 86: replaced, on 8 January 1995, by section 12 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 86(1)(a): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 86(1)(b): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 86(2): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 86(3): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 86(3)(a): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

### **86A Interim services orders**

Where an application is made to the court for a declaration under section 67 in relation to a child or young person, the court may, on application by the applicant, or a barrister or solicitor representing the child or young person, or of its own motion, make such an order as it is empowered to make under section 86 pending the determination of the application.

Section 86A: inserted, on 8 January 1995, by section 12 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

*Restraining orders***87 Restraining orders**

- (1) Where the court makes a declaration under section 67 in relation to a child or young person, it may, on or at any time after making that declaration, make an order restraining any person named in the order from doing all or any of the following things:
- (a) residing with the child or young person:
  - (b) using or threatening violence or causing or threatening to cause physical harm to the child or young person:
  - (c) molesting the child or young person by watching or besetting the child's or young person's place of residence, work, or education, or by following or waylaying the child or young person in any public place within the meaning of section 2 of the Summary Offences Act 1981, or by contacting the child or young person in any way:
  - (d) molesting any person with whom the child or young person is residing by watching or besetting that person's place of residence, work, or education, or by following or waylaying that person in any public place within the meaning of section 2 of the Summary Offences Act 1981, or by contacting that person in any way.
- (2) Subject to any rules of court empowering the court to make an order under this section on an *ex parte* application, the court shall not make an order under this section restraining the conduct of any person unless that person has been informed by the court of the proposal to make the order and has been given an opportunity to make representations to the court.

Section 87(2): amended, on 13 September 2002, by section 6 of the Family Courts Amendment Act 2000 (2000 No 65).

**88 Interim restraining orders**

Where an application is made to the court for a declaration under section 67 in relation to a child or young person, the court may, on application by the applicant, or a barrister or solicitor representing the child or young person, or of its own motion, make such an order as it is empowered to make under section 87 pending the determination of the application.



**89 Offence to contravene restraining order or interim restraining order**

Every person commits an offence and is liable on conviction to imprisonment for a term not exceeding 3 months, or to a fine not exceeding \$2,000, who does any act in contravention of a restraining order or an interim restraining order.

Section 89: amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

**90 When restraining order shall cease to have effect**

Where the court makes an order under section 87 or section 88 in relation to a child or young person, that order shall cease to have effect when that child or young person attains the age of 20 years or sooner marries or enters into a civil union.

Section 90: amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

*Support orders*

**91 Support orders**

- (1) Where the court makes a declaration under section 67 in relation to a child or young person, it may make an order directing the chief executive or any other person or organisation named in the order to provide support to that child or young person for such period (not exceeding 12 months) as is specified in the order.
- (2) The court shall not make an order under subsection (1) unless the chief executive (where the order is to be directed to the chief executive) or the person or organisation that would be required to provide support pursuant to the order (in any other case)—
  - (a) is given notice of the court's intention to consider making the order; and
  - (b) is given an opportunity to appear and be heard by the court before the order is made; and
  - (c) subject to subsection (3), consents to the making of the order.
- (3) An order directing the chief executive to provide support may be made under this section without the consent of the chief executive, but only if the court, after having regard to any

reasons advanced on behalf of the chief executive as to why the order should not be made, is satisfied—

- (a) that requiring the chief executive to provide those services and assistance is not clearly impracticable; and
- (b) that the child or young person in respect of whom the court proposes to make an order under this section is in the care of a person or organisation clearly consistently with the principles set out in sections 5, 6, and 13.

Section 91: replaced, on 8 January 1995, by section 13 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 91(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 91(2): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 91(3): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 91(3)(a): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

## **92 Interim support orders**

Where an application is made to the court for a declaration under section 67 in relation to a child or young person, the court may, on application by the applicant, or a barrister or solicitor representing the child or young person, or of its own motion, make such an order as it is empowered to make under section 91 pending the determination of the application.

## **93 Duty to provide support**

Where an order is made under section 91 or section 92 in relation to a child or young person, it is the duty of the chief executive (where the order is directed to the chief executive) or the person or organisation directed to provide support pursuant to the order (in any other case)—

- (a) to monitor the standard of care, protection, and control being provided to, or exercised over, that child or young person; and
- (b) to provide, or co-ordinate the provision of, such services and resources (including financial services and resources), whether from the community or otherwise, as will ensure that appropriate care, protection, and control

are provided to, or exercised over, that child or young person.

Section 93: replaced, on 8 January 1995, by section 14 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 93: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**94 Duty of chief executive to appoint social worker to provide support**

Where, pursuant to section 91 or section 92, the chief executive is directed to provide support to a child or young person, the chief executive shall from time to time appoint a social worker to provide support to the child or young person on behalf of the chief executive.

Compare: 1974 No 72 s 45A; 1983 No 129 s 12(1)

Section 94 heading: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 94: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**95 Conditions of support order or interim support order**

Where the court makes an order under section 91 or section 92 directing a person or organisation specified in the order to provide support to a child or young person, the following conditions shall apply:

- (a) the social worker or person or organisation that is to provide the support may, at all reasonable times, visit and enter the building or place in which the child or young person is living:
- (b) the child or young person shall not reside at an address at which, or with a person with whom, that social worker or person or organisation has directed the child or young person not to reside:
- (c) every person—
  - (i) who is a parent or guardian or other person having the care of the child or young person; and
  - (ii) with whom the child or young person is residing—

shall ensure that the social worker or person or organisation knows at all times of the address at which the child or young person is residing for the time being:

- (d) in the case of a child or young person in respect of whom a declaration is made on the ground specified in section 14(1)(d) or (e), the child or young person shall not associate with any specified person, or with persons of any specified class, with whom the social worker or person or organisation has, in writing, warned the child or young person not to associate.

Compare: 1974 No 72 s 46(1); 1983 No 129 s 12(1)

## **96 Power of court to impose additional conditions**

- (1) The court, in making an order under section 91 or section 92 directing a person or organisation to provide support to a child or young person, may, in its discretion, impose any or all of the following conditions:
  - (a) in the case of a child or young person in respect of whom a declaration is made on the ground specified in section 14(1)(d) or (e),—
    - (i) that the child or young person shall not associate with any specified person or with persons of any specified class:
    - (ii) that the child or young person attend and remain at, for such weekday, evening, and weekend hours each week and for such number of months as the court thinks fit, any specified centre that is approved by the department and that conducts educational, recreational, instructional, cultural, or work programmes, or sporting activity, and take part in such activity as may be required by the person in charge of the centre:
    - (iii) in the case of a child in respect of whom a declaration is made on the ground specified in section 14(1)(e), such other conditions as the court thinks fit to reduce the likelihood of further offending by the child:
  - (b) that the child or young person shall undergo any specified medical examination and treatment or any specified

psychological or psychiatric examination, counselling,  
and therapy:

- (c) such conditions relating to the child's or young person's place of residence as the court thinks fit.
- (2) The court shall not impose a condition under subsection (1)(a)(ii) without the consent of the child or young person.

Compare: 1974 No 72 s 47(1)(d), (e), (g), (i); 1983 No 129 s 12(1)

**97 Court may impose conditions in respect of parent, guardian, etc, of child or young person**

- (1) The court, in making an order under section 91 or section 92 directing any person or organisation to provide support to a child, or to a young person of or over the age of 14 years and under 16 years, may impose such conditions as the court thinks fit for the purpose of assisting any parent or guardian or other person having the care of the child or young person, or any other person residing with the child or young person, to carry out their duties and responsibilities and to promote co-operation between the parents or other persons, the child or young person, and the social worker or person or organisation that is to provide support to the child or young person.
- (2) The court shall not impose any conditions under subsection (1) unless the parent or guardian or other person having the care of, or residing with, the child or young person has been given an opportunity to make representations to the court and the court has regard to those representations.

**98 Court not to impose condition requiring medical treatment without person's consent**

The court shall not impose any condition under section 96 or section 97 requiring any person to undergo any medical, psychiatric, or psychological examination or treatment, or any psychological or psychiatric counselling or therapy, unless consent to the examination, treatment, or counselling is given—

- (a) in the case of a child or young person under the age of 16 years—
  - (i) by a parent or guardian (not being the chief executive) of the child or young person; or

- (ii) if there is no such parent or guardian in New Zealand or no such parent or guardian can be found with reasonable diligence or is capable of giving consent, by a person in New Zealand who has been acting in the place of a parent; or
  - (iii) if there is no person in New Zealand who has been so acting, or if no such person can be found with reasonable diligence or is capable of giving consent, by the court or the chief executive:
- (b) in the case of any other person, by that person.

Compare: 1974 No 72 s 47(1)(e); 1983 No 129 s 12(1)

Section 98(a)(i): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 98(a)(iii): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

## **99 Person or organisation providing support to child or young person to report to court**

Where, pursuant to section 91, any person or organisation is directed to provide support to a child or young person, that person or organisation shall, on the expiry of the period specified in the order, furnish to the court a report in writing containing an assessment of the effectiveness of the order, the child's or young person's response to it, and such other information as that person or organisation considers relevant.

## **100 Failure to observe conditions of support order**

- (1) Where the court makes an order under section 91 or section 92 directing any person or organisation to provide support to a child or young person, the chief executive or that person or organisation may, in any case where the child or young person or a parent or guardian or other person having the care of, or residing with, the child or young person has failed to comply with a condition of the order (including any condition imposed under section 96 or section 97), apply to the court for a declaration that the child or young person or the parent or guardian or other person having the care of, or residing with, the child or young person has failed to comply with the condition.

- (2) The court may, on any application under subsection (1), where it is satisfied that any child or young person or any parent or guardian or other person having the care of, or residing with, the child or young person has failed, without reasonable excuse, to comply with the condition of the order, make such a declaration and make any order under section 127 as if an application had been made under section 125 in relation to the order.
- (3) Every application under this section shall be served on—
  - (a) the child or young person to whom the order relates; and
  - (b) any parent or guardian or other person having the care of the child or young person; and
  - (c) if the application relates to any person residing with the child or young person, that person.

Compare: 1974 No 72 s 48(1)–(3)

Section 100(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

### *Custody orders*

#### **101 Custody orders**

- (1) Where the court makes a declaration under section 67 in relation to a child or young person, it may make an order placing that child or young person in the custody of any of the following persons for such period as may be specified in the order:
  - (a) the chief executive:
  - (b) an iwi social service:
  - (c) a cultural social service:
  - (d) the director of a child and family support service:
  - (e) any other person.
- (2) Any such order may be made on such terms and conditions as the court thinks fit.
- (3) The court shall not make an order under subsection (1) placing any child or young person in the custody of any person (other than the chief executive) unless that person consents to the making of the order.

Section 101(1)(a): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 101(1)(b): replaced, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 101(1)(c): replaced, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 101(3): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

## **102 Interim custody orders**

- (1) Where the court makes a declaration under section 67, it may, instead of making a final order under section 101, make an interim custody order under that section.
- (2) No interim custody order made pursuant to this section shall continue in force for more than 6 months after the date on which it is made.
- (3) Where an interim custody order is made pursuant to this section, the court may, on application by any person who was the applicant in the proceedings in which the order was made, or any person on whom the application in those proceedings was served in accordance with section 152, or the person in whose custody the child or young person was placed,—
  - (a) make 1 but only 1 further interim custody order under section 101; or
  - (b) make a final order under that section; or
  - (c) make such other order referred to in section 83(1) or section 84(1) as the court thinks fit; or
  - (d) dismiss the application.

## **103 Court may impose conditions to facilitate return of child or young person**

Where the court makes an order under section 101 placing a child or young person in the custody of the chief executive or an iwi social service or a cultural social service or the director of a child and family support service, it may impose such conditions as it thinks fit for the purpose of facilitating the return of the child or young person to the parents or guardians or other persons previously having the care of the child or young person.

Section 103: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 103: amended, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).



**104 Effect of custody order**

- (1) Where the court makes an order under section 101 placing a child or young person in the custody of any person,—
  - (a) that person has the role of providing day-to-day care for the child or young person as if a parenting order had been made under section 48(1) of the Care of Children Act 2004 giving that person the role of providing day-to-day care for the child or young person; and
  - (b) except to the extent that they are preserved by the court in any order made under section 121, all the rights, powers, and duties of every other person having custody of the child or young person shall be suspended and shall have no effect; and
  - (c) for the purposes of section 92 of the Care of Children Act 2004,—
    - (i) the order constitutes an order about the role of providing day-to-day care for the child or young person; and
    - (ii) the person in whose custody the child or young person is placed is a person who, under the order, has the role of providing day-to-day care for the child or young person.
- (2) Any custody order shall be sufficient authority for any constable or any social worker or any other person authorised in that behalf by the chief executive to place the child or young person to whom the order relates—
  - (a) where the order places the child or young person in the custody of the chief executive, with such person, or in such residence, as the principal manager of the department for the area in which the court is situated may direct;
  - (b) where the order places the child or young person in the custody of an iwi social service or a cultural social service, with such person as the convener of the social service directs;
  - (c) where the order places the child or young person in the custody of the director of a child and family support service, with such person or in such residence as that director directs;

- (d) where the order places the child or young person in the custody of any other person, with that person.
- (3) Any person authorised by subsection (2) to place any child or young person with any person or in any residence—
  - (a) may use such force as is reasonably necessary for that purpose:
  - (b) may exercise that authority from time to time in order to return the child or young person to that person or residence:
  - (c) may, for the purpose of exercising that authority, exercise the powers conferred by section 105(2), and the provisions of subsections (2) and (3) of section 105 shall apply accordingly with all necessary modifications.

Section 104(1)(a): replaced, on 1 July 2005, by section 151 of the Care of Children Act 2004 (2004 No 90).

Section 104(1)(c): replaced, on 1 July 2005, by section 151 of the Care of Children Act 2004 (2004 No 90).

Section 104(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 104(2): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 104(2)(a): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 104(2)(b): replaced, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

## **105 Living arrangements for child or young person placed in custody of chief executive**

- (1) Where the court makes an order under section 101 placing a child or young person in the custody of the chief executive,—
  - (a) the chief executive may transfer the child or young person from one residence under this Act to any other residence under this Act:
  - (b) any social worker, acting with the specific or general authority of the chief executive, may arrange for the child or young person—
    - (i) to be placed in any residence:
    - (ii) to be placed in any school or other institution that provides care or training or physical or mental health care:

- (iii) to undertake employment or any training for employment:
  - (c) any social worker, acting with the specific or general authority of the chief executive, may arrange for the child or young person to live temporarily with the parents or guardians or other person previously having the care of the child or young person or with any other person, on such terms and conditions as the social worker may specify:
  - (d) any social worker, acting with the specific or general authority of the chief executive, may at any time cancel any arrangement made under paragraph (b) or paragraph (c) and, after any such cancellation, may remove the child or young person to a residence or to such other place as the social worker may decide, using such force as is reasonably necessary for that purpose.
- (2) For the purpose of removing any child or young person pursuant to subsection (1)(d), a social worker may enter and search any dwellinghouse, building, aircraft, ship, carriage, vehicle, premises, or place, with or without assistance and by force if necessary.
- (3) The social worker exercising any powers under subsection (2) shall, on first entering any dwelling house, building, aircraft, ship, carriage, vehicle, premises, or place, and, if requested, at any subsequent time—
  - (a) produce evidence of identity; and
  - (b) disclose that those powers are being exercised under subsection (2).

Section 105 heading: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 105(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 105(1)(a): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 105(1)(b): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 105(1)(c): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 105(1)(d): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**106 Living arrangements where child or young person placed in custody of iwi social service, etc**

- (1) Where the court makes an order under section 101 placing a child or young person in the custody of an iwi social service or a cultural social service or the director of a child and family support service, the convener of the social service or the director of that support service, as the case may require,—
- (a) may from time to time direct that the child or young person be removed from the person with whom or the residence in which that child or young person was placed pursuant to section 104 and placed with some other person or in some other residence; and
  - (b) may request any social worker or any constable to assist in carrying out any direction given under paragraph (a), and any social worker or constable so assisting may use such force as is reasonably necessary for that purpose.
- (2) For the purposes of assisting in the carrying out of any direction given under subsection (1)(a), any social worker or constable may exercise the powers conferred by section 105(2), and the provisions of subsections (2) and (3) of section 105 shall apply accordingly with all necessary modifications.

Section 106: replaced, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 106(1)(b): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 106(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

**107 Person in whose custody child or young person is placed may determine access rights in absence of court order**

Where—

- (a) the court makes an order under section 101 placing a child or young person in the custody of any person; and
  - (b) the court has not made an order under section 121 granting any person access to the child or young person,—
- the person in whose custody the child or young person is placed shall, subject to any order of any court, have the sole authority to decide whether, and on what terms and conditions (if any), any person is to have access to the child or young person.

**108 When custody order shall cease to have effect**

Where the court makes an order under section 101 placing a child or young person in the custody of any person, that order shall cease to have effect when—

- (a) the order expires in accordance with section 102; or
- (b) the terms of the order expire; or
- (c) in the case of a young person, that young person attains the age of 17 years; or
- (d) in the case of a young person, that young person marries or enters into a civil union; or
- (e) the child or young person is adopted by any person other than a parent of the child or young person—

whichever first occurs.

Section 108(d): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

**109 Custody to revert on expiry of order**

Where an order made under section 101 placing a child or young person in the custody of any person expires, custody of the child or young person shall revert to the person having custody of the child or young person immediately before the order was made.

*Guardianship orders*

**110 Guardianship orders**

- (1) Where the court makes a declaration under section 67 in relation to any child or young person, it may make an order appointing any of the following persons to be a guardian of the child or young person:
  - (a) the chief executive;
  - (b) an iwi social service;
  - (c) a cultural social service;
  - (d) the director of a child and family support service;
  - (e) any other person.
- (2) Subject to subsection (3), where the court makes an order under subsection (1) appointing any person to be a guardian of a child or young person, the court shall appoint that person to be—
  - (a) the sole guardian of the child or young person; or

- (b) a guardian of the child or young person in addition to any other guardian.
- (3) The court shall not make an order under subsection (1) appointing the director of a child and family support service as the sole guardian of a child or young person.

Compare: 1974 No 72 s 31(1)(d)(i); 1983 No 129 s 7(1)

Section 110(1)(a): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 110(1)(b): replaced, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 110(1)(c): replaced, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

#### **111 Person not to be appointed as guardian without consent**

The court shall not make an order under section 110 appointing any person (other than the chief executive) as a guardian unless—

- (a) it gives notice of its intention to consider making the order to that person; and
- (b) that person is given an opportunity to appear and be heard by the court before the court makes such an order; and
- (c) that person consents to the making of the order.

Section 111: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

#### **112 Chief executive may be appointed as guardian for specific purpose**

Any order under section 110 appointing the chief executive as a guardian may specify that the appointment is for a particular purpose only.

Section 112 heading: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 112: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

#### **113 Court may impose conditions to facilitate return of child or young person**

Where the court makes an order under section 110 appointing the chief executive or an iwi social service or a cultural social

service to be the sole guardian of a child or young person, it may impose such conditions as it thinks fit for the purpose of facilitating the return of the child or young person to the parents or guardians or other persons previously having the care of the child or young person.

Section 113: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 113: amended, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

#### **114 Effect of guardianship order**

- (1) Where the court makes an order under section 110 appointing any person as a guardian of any child or young person (whether as sole guardian or as a guardian in addition to any other person),—
  - (a) that person shall be a guardian of that child or young person as if that person had been appointed under section 27 of the Care of Children Act 2004; and
  - (b) if the child or young person is, at the time of the making of the order, under the guardianship of the court under an order made under the Care of Children Act 2004, that guardianship is suspended during the time when the person appointed under section 110 is the guardian (subject to section 117(2)).
- (2) Where the court makes an order under section 110 appointing any person as the sole guardian of any child or young person,—
  - (a) except to the extent that they are preserved by any other order made under this Act, all of the rights, powers and duties of every other person who is the guardian of that child or young person, or who may become a guardian during the time when the person appointed under that section is the guardian, shall be suspended and shall have no effect; and
  - (b) for the purposes of section 92 of the Care of Children Act 2004,—
    - (i) the order constitutes an order about the role of providing day-to-day care for the child or young person; and

- (ii) the person in whose custody the child or young person is placed is a person who, under the order, has the role of providing day-to-day care for the child or young person; and
- (c) subject to any custody order made by the court under section 101, the child or young person shall be deemed to have been placed in the custody of that person pursuant to that section, and the provisions of sections 104 to 107, so far as applicable and with all necessary modifications, shall apply accordingly.

Compare: 1974 No 72 s 49(1); 1983 No 129 s 13

Section 114(1)(a): amended, on 1 July 2005, by section 151 of the Care of Children Act 2004 (2004 No 90).

Section 114(1)(b): replaced, on 3 June 1998, by section 8 of the Guardianship Amendment Act 1998 (1998 No 48).

Section 114(1)(b): amended, on 1 July 2005, by section 151 of the Care of Children Act 2004 (2004 No 90).

Section 114(2)(b): replaced, on 1 July 2005, by section 151 of the Care of Children Act 2004 (2004 No 90).

## 115 Disputes between guardians

Where—

- (a) pursuant to section 110, any person is appointed as guardian of a child or young person in addition to any other guardian; and
  - (b) those guardians are unable to agree on any matter concerning the exercise of their guardianship,—
- any of those guardians may apply to the court for its direction, and the court may make such order relating to the matter as it thinks fit.

Compare: 1968 No 63 s 13

## 116 Review of guardian's decision or refusal to give consent

- (1) For the purposes of this section **young person** means a boy or girl of or over the age of 14 years but under 20 years.
- (2) Where—
  - (a) a young person is affected by a decision or by a refusal of consent by a guardian appointed under section 110; and



- (b) that decision or refusal of consent is in respect of an important matter,—  
that young person may apply to the court for a review of that decision or refusal.
- (3) Where an application is made under this section in respect of a decision or refusal, the court may, if it thinks it reasonable in the circumstances to do so, review the decision or refusal and make such order in respect of that decision or refusal as it thinks fit.
- (4) Any consent given by the court pursuant to this section shall have the same effect as if it had been given by the guardian.
- (5) Nothing in this section limits or affects—
  - (a) the provisions of the Marriage Act 1955 with respect to consents for minors to marry;
  - (b) the provisions of the Civil Union Act 2004 with respect to consents for people under the age of 18 years to enter civil unions;
  - (c) the provisions of the Care of Children Act 2004 with respect to consents for people under the age of 18 years to become parties to de facto relationships.

Compare: 1968 No 63 s 14; 1971 No 149 s 3

Section 116(5): replaced, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

#### **117 When guardianship orders to cease to have effect**

- (1) Every guardianship order made under section 110 shall cease to have effect when—
  - (a) the young person to whom it relates attains the age of 20 years or sooner marries or enters into a civil union;  
or
  - (b) the child or young person to whom it relates is adopted by any person other than its parents—  
whichever occurs first.
- (2) A guardianship order made under section 110 ceases to have effect if, after it is made, a court having jurisdiction under section 31 of the Care of Children Act 2004—
  - (a) orders that the child or young person to whom the order relates be placed under the guardianship of the court under that Act; or

- (b) orders that the child or young person must continue to be under the guardianship of the court, if the child or young person was under the guardianship of the court at the time of the making of the order under section 110.
- (3) Subsection (2) does not apply if the court making an order under that subsection orders that a guardianship order under section 110 continues in force.

Compare: 1974 No 72 s 49(7), (8); 1983 No 129 s 13

Section 117(1)(a): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 117(2): replaced, on 3 June 1998, by section 8 of the Guardianship Amendment Act 1998 (1998 No 48).

Section 117(2): amended, on 1 July 2005, by section 151 of the Care of Children Act 2004 (2004 No 90).

Section 117(3): replaced, on 3 June 1998, by section 8 of the Guardianship Amendment Act 1998 (1998 No 48).

#### **118 Reversion of guardianship on expiry or discharge of guardianship order**

Where an order made under section 110 expires or is discharged, guardianship of the child or young person in respect of whom the order is made shall revert to the person who would have been the guardian of the child or young person if the order had never been made unless some other person has in the meantime become entitled to guardianship by virtue of an order made under the Adoption Act 1955 in which case guardianship shall revert to the person so entitled.

Compare: 1974 No 72 s 49(9); 1983 No 129 s 13

#### **119 Guardianship of child or young person on death of person appointed as guardian under this Act**

On the death of any person (being a person referred to in subsection (1)(e) of section 110) appointed the guardian of a child or young person pursuant to an order made under that section, and who at the time of that person's death was the sole guardian of the child or young person, guardianship of the child or young person shall vest,—

- (a) where an iwi social service or a cultural social service was the sole guardian of the child or young person immediately before that person's appointment, in that iwi

social service or cultural social service as if that social service had been appointed the sole guardian of the child or young person:

- (b) in any other case, in the chief executive as if the chief executive had been appointed the sole guardian of the child or young person.

Section 119(a): replaced, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 119(b): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

*Effect of custody and guardianship orders on  
jurisdiction under Care of Children Act 2004*

Heading: amended, on 1 July 2005, by section 151 of the Care of Children Act 2004 (2004 No 90).

**120 Restriction on making of guardianship and parenting  
orders under Care of Children Act 2004**

- (1) If a child or young person is subject to an order made under section 78 or section 101 or section 110 of this Act, none of the following may be made under the Care of Children Act 2004:
  - (a) an order in respect of the guardianship of that child or young person; and
  - (b) an order about the role of providing day-to-day care for that child or young person; and
  - (c) an order for contact with that child or young person.
- (1A) Subsection (1) is subject to subsection (2) and section 117(2).
- (2) Nothing in subsection (1) affects the power of a court having jurisdiction under section 31 of the Care of Children Act 2004 to make an order under that section in respect of any child or young person who is subject to an order made under section 78 or section 101.

Section 120 heading: amended, on 1 July 2005, by section 151 of the Care of Children Act 2004 (2004 No 90).

Section 120(1): replaced, on 1 July 2005, by section 151 of the Care of Children Act 2004 (2004 No 90).

Section 120(1A): inserted, on 1 July 2005, by section 151 of the Care of Children Act 2004 (2004 No 90).

Section 120(2): replaced, on 3 June 1998, by section 8 of the Guardianship Amendment Act 1998 (1998 No 48).

Section 120(2): amended, on 1 July 2005, by section 151 of the Care of Children Act 2004 (2004 No 90).

*Access and exercise of other rights*

**121 Court may make orders for access and exercise of other rights by parents and other persons**

- (1) Where an application is made to the court under section 44 in respect of any child or young person, the court may make an order granting access to that child or young person to the applicant.
- (2) Where the court—
  - (a) makes an order under section 78 relating to the custody of a child or young person pending the determination of any proceedings; or
  - (b) makes a custody order or an interim custody order under section 101 in relation to a child or young person; or
  - (c) makes an order under section 110 appointing the chief executive or any other person the sole guardian of a child or young person,—

it may, on making the order, or at any time after making the order, on application made by any parent of the child or young person or any other person, make an order—
  - (d) granting access to that child or young person to that parent or other person:
  - (e) conferring on that parent or other person such rights in relation to the child or young person as it thinks fit.
- (3) Any order made under subsection (1) or subsection (2) may be made on such terms and conditions as the court thinks fit.

Section 121(2)(a): amended, on 8 January 1995, by section 15 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 121(2)(c): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**122 Enforcement of access rights**

- (1) The court may at any time, on the application of any person entitled to access to a child or young person under an order made under section 121, issue a warrant authorising any social worker or any constable or any other person named in the warrant to take possession of the child or young person and

deliver him or her to the person entitled to access in accordance with the order.

- (2) The power conferred on the court by subsection (1) may, if the court thinks fit, be exercised on the making of the order.
- (3) Where, pursuant to this section, the court declines to enforce a right of access under an order made under section 121, it may of its own motion vary or discharge the order accordingly.

Compare: 1968 No 63 s 19(2), (3), (8); 1979 No 52 s 3(1); 1980 No 95 s 9(c)

Section 122(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

### **123 Power of entry**

For the purpose of executing any warrant issued under section 122, any social worker or constable or any other person named in the warrant may enter and search any dwelling house, building, aircraft, ship, carriage, vehicle, premises, or place, with or without assistance and by force if necessary.

Compare: 1968 No 63 s 19(4)

Section 123: amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

### **124 Person executing warrant to produce evidence of authority and identity**

*[Repealed]*

Section 124: repealed, on 2 September 1996, by section 2(2) of the Children, Young Persons, and Their Families Amendment Act 1996 (1996 No 112).

## *Variation and discharge of orders*

### **125 Application for variation or discharge of orders made under this Part**

- (1) Any 1 or more of the persons specified in section 126 may, subject to that section, apply to the court for the variation or discharge of any of the following orders, or for the variation or cancellation of any condition of any such order:
  - (a) an order made under section 78 relating to the custody of a child or young person pending the determination of any proceedings:
  - (b) an order made under section 83(1)(c) requiring any person to receive counselling:

- (c) an order made under section 84(1)(b) directing the payment of reparation for any emotional harm or the loss of or damage to property:
  - (d) any services order or interim services order made under section 86 or section 86A:
  - (e) any restraining order or interim restraining order made under section 87 or section 88:
  - (f) any custody order or interim custody order made under section 101:
  - (g) any guardianship order made under section 110:
  - (h) any order made under section 121 granting access to, or conferring rights in respect of, any child or young person.
- (2) Any 1 or more of the persons specified in section 126 may, subject to that section, apply to the court for the variation, suspension, or discharge of any support order or interim support order made under section 91 or section 92, or for the variation, suspension, or cancellation of any condition of any such order.

Compare: 1974 No 72 s 64

Section 125(1)(a): amended, on 8 January 1995, by section 16(1) of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 125(1)(d): replaced, on 8 January 1995, by section 16(2) of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

## **126 Persons who may apply for variation or discharge of order**

The following persons may make an application under section 125 in respect of an order specified in that section:

- (a) the child or young person in respect of whom the order was made:
- (b) any parent or guardian of that child or young person:
- (c) any barrister or solicitor representing the child or young person:
- (d) any near relative of that child or young person:
- (e) any member of that child's or young person's whanau or family group:
- (f) any person on whom the application for the declaration under section 67 in respect of which the order was made has been served in accordance with section 152:
- (g) the chief executive:

- (h) the director of any child and family support service:
- (i) any iwi social service or cultural social service:
- (j) in respect of an order made under section 83(1)(c), any person required to receive counselling pursuant to that order:
- (k) in respect of any services order or interim services order made under section 86 or section 86A, any person or organisation required to provide services or assistance pursuant to the order:
- (l) in respect of any restraining order or interim restraining order made under section 87 or section 88, any person named in that order:
- (m) in respect of any support order or interim support order made under section 91 or section 92, any person or organisation directed, pursuant to that order, to provide support to a child or young person:
- (n) in respect of any custody order or interim custody order made under section 101, or any order made under section 78, any person granted custody of the child or young person by that order:
- (o) with the leave of the court, any other person.

Section 126(g): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 126(i): replaced, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 126(k): replaced, on 8 January 1995, by section 17 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

#### **126A Court may direct holding of family group conference to consider application**

- (1) Where an application is made under section 125, the court, at any stage of the proceedings, may direct a care and protection co-ordinator to convene a family group conference for the purpose of considering such matters relating to the child or young person as the court directs, and may adjourn the hearing of the application until the conference has been held.
- (2) The provisions of sections 20 to 36 shall apply with all necessary modifications with respect to the convening of a family group conference for the purposes of this section.

Section 126A: inserted, on 8 January 1995, by section 18 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

**127 Court may vary or discharge order**

- (1) On the hearing of any application under section 125(1) for the variation or discharge of any order, or the variation or discharge of any condition of any order, the court may—
  - (a) vary the order in such manner as it thinks fit:
  - (b) discharge the order:
  - (c) discharge the order and substitute any other order referred to in section 83(1) or section 84(1):
  - (ca) make any order referred to in section 83(1) or section 84(1) in addition to the order (whether or not the court exercises any other power specified in paragraph (a) or any of paragraphs (d) to (g) in relation to the order):
  - (d) vary any condition of the order in such manner as it thinks fit:
  - (e) discharge any condition of the order:
  - (f) discharge any condition of the order and substitute any condition that could have been imposed when the order was first made:
  - (g) impose a further condition of the order.
- (2) On the hearing of any application under section 125(2) for the variation, suspension, or discharge of any support order or interim support order made under section 91 or section 92, or for the variation, suspension, or cancellation of any condition of any such order, the court may—
  - (a) vary the order in such manner as it thinks fit:
  - (b) suspend the order for such period as may be specified:
  - (c) discharge the order:
  - (d) discharge the order and substitute any other order referred to in section 83(1) or section 84(1):
  - (da) make any order referred to in section 83(1) or section 84(1) in addition to the order (whether or not the court exercises any other power specified in paragraph (a) or paragraph (b) or any of paragraphs (e) to (i) in relation to the order):
  - (e) vary any condition of the order in such manner as it thinks fit:



- (f) suspend any condition of the order for such period as may be specified:
  - (g) discharge any condition of the order:
  - (h) discharge any condition of the order and substitute any condition that could have been imposed when the order was first made:
  - (i) impose a further condition of the order.
- (3) Where the court makes any order under this section, the court may, where it considers it necessary or desirable to do so, make such order under section 134 as it thinks fit with respect to any plan or revised plan in force concerning the child or young person.

Compare: 1974 No 72 s 64

Section 127(1)(ca): inserted, on 8 January 1995, by section 19(1) of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 127(2)(da): inserted, on 8 January 1995, by section 19(2) of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 127(3): replaced, on 8 January 1995, by section 19(3) of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

### *Plans for children and young persons*

#### **128 Court to obtain and consider plan for child or young person before making certain orders**

- (1) Where the court proposes to make any 1 or more of the orders specified in subsection (2) in respect of any child or young person, the court shall, before making any such order, obtain, in relation to that child or young person, a plan prepared in accordance with sections 129 and 130.
- (2) The orders referred to in subsection (1) are as follows:
  - (a) a services order under section 86:
  - (b) a support order under section 91 in respect of any child or young person:
  - (c) an order (other than an interim order) under section 101 placing any child or young person in the custody of any person:
  - (d) an order under section 110 appointing any person as the sole guardian of a child or young person.
- (3) Where, pursuant to subsection (1), the court is required to obtain a plan in relation to a child or young person, that plan shall

be prepared notwithstanding that a plan prepared pursuant to this section is already in force in relation to that child or young person, and on the preparation of that plan any plan already in force in relation to the child or young person shall cease to be in force.

- (4) Notwithstanding anything in subsection (1), where—
- (a) the court proposes to make an order in respect of a child or young person; and
  - (b) but for this subsection, the court would be required, pursuant to subsection (1), to obtain a plan in respect of the order; and
  - (c) the making of the order would be in accordance with a decision, recommendation, or plan made or formulated by a family group conference; and
  - (d) that conference has already formulated, in respect of the child or young person, a plan that complies with the requirements of section 130; and
  - (e) either—
    - (i) that plan was prepared in consultation with the chief executive or a social worker; or
    - (ii) the chief executive consents to that plan being treated as a plan obtained by the court pursuant to subsection (1),—

the court may treat that plan as a plan obtained by the court pursuant to subsection (1), and that subsection and the other provisions of this Act that relate to plans obtained pursuant to that subsection shall apply accordingly as if the plan had been prepared by the chief executive.

Section 128(2)(a): amended, on 8 January 1995, by section 20(1) of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 128(4): inserted, on 8 January 1995, by section 20(2) of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 128(4): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 128(4)(e)(i): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 128(4)(e)(ii): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**129 Court to direct who is to prepare plan**

- (1) Where, pursuant to section 128, the court is required to obtain a plan in respect of any order, the plan shall be prepared by such person as the court directs.
- (1A) Where—
- (a) a person is directed, pursuant to subsection (1), to prepare a plan; and
  - (b) that person is not a social worker; and
  - (c) that plan has any implications for the chief executive,—the plan shall be of no effect unless it has been prepared in consultation with the chief executive or his or her representative, and contains an express statement to the effect.
- (1B) For the purposes of subsection (1A), a plan has implications for the chief executive if it proposes that—
- (a) the chief executive be required to provide services or assistance pursuant to a services order under section 86; or
  - (b) the chief executive be required to provide support pursuant to a support order under section 91; or
  - (c) a child or young person be placed in the custody or care of the chief executive; or
  - (d) the chief executive be appointed as the sole guardian, or as an additional guardian, of a child or young person; or
  - (e) a child or young person receive counselling or other services under this Act, where that counselling or those services would be provided at the department's expense; or
  - (f) either—
    - (i) a child or young person be placed in the custody or care of any person or organisation; or
    - (ii) any person or organisation be appointed as the sole guardian, or as an additional guardian, of a child or young person,—and that the chief executive provide financial assistance to that person or organisation; or
  - (g) any order (whether a services order under section 86 or a support order under section 91, or any other order) be made in relation to any person or organisation, and that the chief executive provide financial assistance to that

person or organisation for the purpose of assisting that person or organisation to give effect to the order.

- (2) Where the court considers that any plan prepared pursuant to section 128 is inadequate, it may direct the person who prepared the plan to furnish to the court a revised plan, and may indicate any specific matter that it requires to be dealt with in that plan.

Section 129(1A): inserted, on 8 January 1995, by section 21 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 129(1A): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 129(1A)(c): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 129(1B): inserted, on 8 January 1995, by section 21 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 129(1B): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 129(1B)(a): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 129(1B)(b): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 129(1B)(c): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 129(1B)(d): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 129(1B)(f): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 129(1B)(g): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

### 130 Content of plans

Every plan prepared pursuant to section 128 in respect of a child or young person shall—

- (a) specify the objectives sought to be achieved for that child or young person, and the period within which those objectives should be achieved:
- (b) contain details of the services and assistance to be provided for that child or young person and for any parent or guardian or other person having the care of the child or young person:

- (c) specify the persons or organisations who will provide such services and assistance:
- (d) state the responsibilities of the child or young person, and of any parent or guardian or other person having the care of the child or young person:
- (e) state personal objectives for the child or young person, and for any parent or guardian or other person having the care of the child or young person:
- (f) contain such other matters relating to the education, employment, recreation, and welfare of the child or young person as are relevant.

**131 Adjournment for purposes of obtaining plan**

- (1) Any adjournment for the purposes of obtaining a plan pursuant to section 128 shall not exceed 28 days unless the court in any special case otherwise determines, but may otherwise be on such conditions as the court thinks fit.
- (2) Where any proceedings are adjourned for the purposes of obtaining any plan pursuant to section 128, the person responsible for preparing that plan shall make all reasonable endeavours to ensure that the plan is filed with the court at least 2 working days before the date set for the hearing of those proceedings to resume.

**132 Access to plans**

- (1) Subject to section 133, a copy of every plan furnished to the court pursuant to section 128 shall be given by the Registrar of the court—
  - (a) to every person entitled to appear and be heard on the application to which the plan relates and to any barrister or solicitor appearing for that person:
  - (b) to any lay advocate, barrister or solicitor, or other person representing the child or young person to whom the application relates or a parent or guardian or other person usually having the care of the child or young person:
  - (c) to the chief executive:
  - (d) to any other person whom the court considers has a proper interest in receiving a copy of the plan.

- (2) Every such copy shall, wherever possible, be supplied not later than 1 working day before the sitting of the court.

Section 132(1)(c): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**133 Court may order plan not to be disclosed**

The court may order that the whole or any part of a plan given to any person pursuant to section 132(1) shall not be disclosed to any person specified in the order where it is satisfied that such disclosure would be, or would be likely to be, detrimental to the physical or mental health, or the emotional well-being, of any child or young person or other person to whom the plan relates.

**134 Court to set date for review of plan**

- (1) Where a plan is prepared pursuant to section 128 in respect of any child or young person, the court shall, on making any of the orders referred to in subsection (2) of that section in respect of that child or young person, fix a date by which a review of that plan is to be carried out.
- (2) The date fixed pursuant to subsection (1) on the making of an order shall be,—
- (a) where the order is made in respect of a child under the age of 7 years, not later than 6 months from the date of the making of the order:
  - (b) in any other case, not later than 12 months from the date of the making of the order.
- (3) The court shall not fix a date pursuant to subsection (1) that is later than the date on which any order made, or proposed to be made, pursuant to this Part in respect of the child or young person is to expire.
- (4) On fixing a date pursuant to subsection (1), the court may also direct who is to review the plan pursuant to section 135. If the court does not make such a direction, the person who prepared the plan shall be deemed to have been directed pursuant to this subsection to review the plan.
- (5) The court may at any time, on the application of any party to the proceedings, or a barrister or solicitor representing the child or young person, or of its own motion, amend any direc-

tion made or deemed to have been made under subsection (4), or revoke any such direction and substitute another direction.

Section 134(2)(a): amended, on 1 November 1989, by section 6(1)(c) of the Children, Young Persons, and Their Families Amendment Act 1989 (1989 No 70).

Section 134(4): inserted, on 8 January 1995, by section 22(1) of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 134(5): inserted, on 8 January 1995, by section 22(1) of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

### **135 Review of plan**

- (1) Subject to section 127(3), the person who is directed, pursuant to section 134, to review a plan prepared under section 128 in respect of a child or young person shall, not later than the date fixed pursuant to section 134 for the review of that plan, review that plan and furnish to the court a report setting out the results of that review, together with a revised plan in respect of that child or young person.
- (2) Section 130 shall apply to a revised plan as if it were a plan required to be prepared pursuant to section 128.
- (3) Every report furnished to the court pursuant to subsection (1) in respect of the review of a plan shall—
  - (a) state which of the objectives set out in the plan have been achieved and which of those objectives are yet to be achieved:
  - (b) state, in respect of those objectives that are yet to be achieved, what action is required to achieve those objectives:
  - (c) state, in respect of any order made by the court under this Part in relation to the child or young person to whom the plan relates, whether that order should continue in force, or be varied, suspended, or discharged, and whether any condition of that order should be continued in force, or be varied, suspended, or discharged, and the reasons for those recommendations:
  - (d) state whether the court should make any other order under this Part in relation to that child or young person, and the reasons for that recommendation:
  - (e) state, in respect of those persons who were required to be given a copy of the plan pursuant to section 132,

whether each of those persons agrees with the recommendations contained in the report.

- (4) On the request of the person required to review a plan under subsection (1), a care and protection co-ordinator may convene a family group conference for the purpose of reviewing the plan.
- (5) The provisions of sections 20 to 36 shall apply with all necessary modifications with respect to the convening of a family group conference for the purposes of subsection (4).

Section 135(1): replaced, on 8 January 1995, by section 23(1) of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 135(4): inserted, on 8 January 1995, by section 23(2) of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 135(5): inserted, on 8 January 1995, by section 23(2) of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

### **136 Access to reports and revised plans**

The provisions of sections 132 and 133 shall apply, with such modifications as may be necessary, with respect to every report, and every revised plan, furnished to the court pursuant to section 135.

### **137 Court to consider report and make directions**

- (1) Where a report is furnished to the court pursuant to section 135 in respect of the review of any plan prepared in relation to any child or young person, the court shall consider the report and the accompanying revised plan, and may do any 1 or more of the following things:
  - (a) in relation to any order that is in force under this Part and that relates to that child or young person,—
    - (i) make any order under section 127 as if an application had been made under section 125 in relation to that order; or
    - (ii) direct any person to make an application under section 125 in relation to that order:
  - (b) make, in respect of that child or young person, any order referred to in section 83(1) or section 84(1):
  - (c) direct a care and protection co-ordinator to convene a family group conference for the purpose of considering



such matters relating to that child or young person as the court may specify:

- (d) require any person to appear before the court for the purpose of being examined as to any matter relating to, or arising out of,—
    - (i) the plan prepared pursuant to section 128:
    - (ii) the report furnished under section 135 on the review of that plan:
    - (iii) the revised plan accompanying that report:
  - (e) where the court considers that the report furnished under section 135, or the revised plan, or both, are inadequate, direct the person who prepared the report to furnish to the court a further report, or a further revised plan, or both, and may indicate any specific matter that it requires to be dealt with in that report or plan:
  - (f) make any order that it is empowered to make under section 178 or section 181 or section 186 or section 187 in relation to the hearing of an application for a declaration under section 67, and the provisions of those sections, of sections 179, 180, 182, 183, 184, and 185, and of sections 188 to 194 shall apply with such modifications as may be necessary with respect to every report required to be furnished to the court under this paragraph.
- (1A) When considering the report and revised plan, the court may, but need not, give to any person the opportunity to be heard.
  - (2) The provisions of section 199 shall apply with respect to any person required to appear before the court pursuant to subsection (1)(d) as if that person had been called by the court as a witness.
  - (3) The court shall not make any order under paragraph (a)(i) or paragraph (b) of subsection (1) unless—
    - (a) the report furnished to the court under section 135 recommends that the order be made, and the court is satisfied that every person to whom a copy of that report is required to be given agrees with that recommendation; or
    - (b) a family group conference recommends that the order be made.

- (4) Nothing in section 128 shall apply in respect of any order that the court proposes to make pursuant to subsection (1)(b).
- (5) Where a report is furnished to the court pursuant to section 135 in respect of the review of any plan prepared in relation to any child or young person, any order that is in force under this Part and that relates to that child or young person shall, unless the court otherwise directs, and subject to section 108(c) to (e) and section 117 and to any order made pursuant to this section, continue in force until the court has completed its consideration of the report in accordance with this section and has determined what (if any) decision it should make with respect to that order.

Section 137(1): amended, on 31 March 2014, by section 4(1) of the Children, Young Persons, and Their Families Amendment Act 2013 (2013 No 76).

Section 137(1A): inserted, on 31 March 2014, by section 4(2) of the Children, Young Persons, and Their Families Amendment Act 2013 (2013 No 76).

### **138 Court to set date for further review of plan**

- (1) After considering a report furnished pursuant to section 135 in respect of the review of a plan, and after taking such action (if any) under section 137 as it thinks fit, the court shall, if any order referred to in section 128(2) is to continue in force in respect of the child or young person to whom the plan relates, fix a date by which a review of the revised plan that accompanied that report is to be carried out.
- (2) Section 134 shall apply, with all necessary modifications, with respect to—
  - (a) the fixing of a date for the review of a revised plan; and
  - (b) the person who is to review a revised plan.
- (3) Where, pursuant to subsection (1), the court fixes a date for the review of a revised plan, this section and sections 135 to 137 shall apply, with all necessary modifications, with respect to every such revised plan as if it were a plan prepared pursuant to section 128.

Section 138(2): replaced, on 8 January 1995, by section 24 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

*Agreements for care of children and young  
persons*

**139 Agreements for temporary care of children and young  
persons by chief executive, iwi social services, etc**

- (1) Subject to this section, any parent or guardian or other person having the care of a child or young person who is temporarily unable or unwilling to care for the child or young person may,—
- (a) with the agreement of the chief executive, place the child or young person in the care of the chief executive for a period not exceeding 28 days; or
  - (b) with the agreement of an iwi social service or a cultural social service, place the child or young person in the care of that social service for a period not exceeding 28 days; or
  - (c) with the agreement of the director of a child and family support service, place the child or young person in the care of the director for a period not exceeding 28 days.
- (2) If the parent or guardian or other person having the care of the child or young person is, or will be, unable to resume the care of the child or young person at the end of the period during which the child or young person is in the care of any person pursuant to subsection (1), the period may, with the agreement of that person, be extended for one further period of up to 28 days.

Section 139: replaced, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 139 heading: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 139(1)(a): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**140 Agreements for extended care of children and young  
persons by chief executive, iwi social service, etc**

- (1) Subject to this section and to sections 143 to 145 and section 147, where every person who is a parent or guardian or person having the care of a child or young person agrees to do so, those persons may,—

- (a) with the agreement of the chief executive, place the child or young person in the care of the chief executive for a period of more than 28 days; or
  - (b) with the agreement of an iwi social service or a cultural social service, place the child or young person in the care of that social service for a period of more than 28 days; or
  - (c) with the agreement of the director of a child and family support service, place the child or young person in the care of the director for a period of more than 28 days.
- (2) No agreement may be made under subsection (1) providing for the placement of any child or young person in the care of any person for any period that exceeds,—
  - (a) in the case of a child who is under 7 years of age, 6 months;
  - (b) in the case of any other child or any young person, 12 months.

Section 140: replaced, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 140 heading: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 140(1)(a): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

#### **141 Agreements for extended care of severely disabled children and young persons**

- (1) This section applies to any child or young person who is so mentally or physically disabled that suitable care for that child or young person can be provided only if that child or young person is placed in the care of an organisation or body approved under section 396 to provide care for such a child or young person.
- (2) Subject to this section and to sections 143 to 145 and section 147, where every person who is a parent or guardian or person having the care of a child or young person to whom this section applies agrees to do so, those persons may,—
  - (a) with the agreement of an iwi social service or a cultural social service, place the child or young person in the care of that social service; or

- (b) with the agreement of a director of a child and family support service, place the child or young person in the care of the director.
- (3) No agreement may be made under subsection (2) providing for the placement of any child or young person in the care of any person for any period that exceeds 1 year, but any such agreement may from time to time be extended for such period (not exceeding 1 year in each instance) as a family group conference may approve.
- (3A) On and after the date on which section 28 of the Children, Young Persons, and Their Families (Vulnerable Children) Amendment Act 2014 comes into force, the time periods referred to in subsection (3) apply only to an agreement, or an extension to an agreement, that is entered into or agreed to on or after that date.
- (4) No agreement may be made under subsection (2) providing for the placement of any child or young person in the care of any person (in this subsection referred to as the proposed caregiver) unless a person or organisation authorised pursuant to subsection (5) (not being a person employed by the proposed caregiver) certifies,—
  - (a) that the proposed caregiver has appropriate facilities and adequate staffing to care for the child or young person; or
  - (b) where, pursuant to section 362, the proposed caregiver intends to place the child or young person in the charge of some other person or organisation, that the proposed caregiver has appropriate facilities and adequate staffing to supervise the placement and to ensure that adequate and appropriate care is provided to the child or young person.
- (5) The Director-General of Health may from time to time, on application made to the Director-General, authorise any suitable person or organisation to issue certificates for the purposes of subsection (4).
- (6) The Director-General of Health may grant an authority under subsection (5) subject to such conditions as the Director-General of Health thinks fit, and may at any time revoke any such

authority, or revoke, vary, or add to any condition imposed under this subsection.

- (7) The Director-General of Health may from time to time, under section 41 of the State Sector Act 1988, delegate to any district health board (within the meaning of the New Zealand Public Health and Disability Act 2000) the powers conferred on the Director-General of Health by subsections (5) and (6) and, for that purpose and for that purpose only, sections 41 and 42 of the State Sector Act 1988 apply as if every district health board were an employee of the Ministry of Health.

Section 141(1): amended, on 8 January 1995, by section 25(1) of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 141(2)(a): replaced, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 141(3): amended, on 1 July 2014, by section 28(1) of the Children, Young Persons, and Their Families (Vulnerable Children) Amendment Act 2014 (2014 No 41).

Section 141(3A): inserted, on 1 July 2014, by section 28(2) of the Children, Young Persons, and Their Families (Vulnerable Children) Amendment Act 2014 (2014 No 41).

Section 141(4): replaced, on 8 January 1995, by section 25(2) of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 141(5): inserted, on 8 January 1995, by section 25(2) of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 141(6): inserted, on 8 January 1995, by section 25(2) of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 141(7): replaced, on 1 January 2001, by section 111(1) of the New Zealand Public Health and Disability Act 2000 (2000 No 91).

## **142 Agreements with persons providing residential disability care**

- (1) This section applies to any child or young person who is a disabled person within the meaning of the Disabled Persons Community Welfare Act 1975.
- (2) Subject to this section, sections 143 to 145, and section 147, where every person who is a parent or guardian or person having the care of a child or young person to whom this section applies agrees to do so, those persons may, with the agreement of an operator, place the child or young person in the operator's care.

- (3) No agreement may be made under subsection (2) providing for the placement of any child or young person in the care of any operator for any period that exceeds 1 year; but any such agreement may from time to time be extended for any period (not exceeding 1 year in each instance) a family group conference approves.
- (4) Where, pursuant to an agreement made under subsection (2), a child or young person is placed in the care of an operator, that operator may place the child or young person in the charge of any person whom the operator considers suitable to provide for the care, control, and upbringing of the child or young person.
- (5) Section 363 applies, with all necessary modifications, in respect of any placement made under subsection (4) as if it were a placement made under section 362.
- (6) In this section, **operator** means a residential disability care operator within the meaning of section 58(4) of the Health and Disability Services (Safety) Act 2001.

Section 142: replaced, on 1 October 2002, by section 58(1) of the Health and Disability Services (Safety) Act 2001 (2001 No 93).

**143 All parents or guardians not required to be party to agreement**

Where a parent or guardian or person having the care of a child or young person—

- (a) consents in writing to the making of the agreement; or
  - (b) cannot after reasonable enquiries be found; or
  - (c) is incapable of entering into the agreement,—
- an agreement may be made under section 140 or section 141 or section 142 with respect to the child or young person without that parent or guardian or person being a party to the agreement.

**144 Agreement not to be made without consent of child or young person**

- (1) Subject to subsection (2), no agreement shall be made under section 140 or section 142 with respect to—
  - (a) a child of or over the age of 12 years; or
  - (b) a young person—

unless that child or young person consents in writing to the making of the agreement.

- (2) The consent of a child or young person to whom section 142 applies is not required under subsection (1) of this section if the child or young person is unable, by reason of that child's or young person's disability, to understand the nature of the agreement.
- (3) Before an agreement is entered into under section 140 or section 141 or section 142, the wishes of the child or young person shall, where practicable, be ascertained and given due consideration in concluding the terms of the agreement.

Compare: 1974 No 72 s 11(2)

**145 Agreement not to be made without approval of family group conference**

- (1) No agreement may be made under section 140 or section 141 or section 142 unless, before the agreement is made,—
  - (a) a family group conference is held to consider whether such an agreement should be made; and
  - (b) in the case of a proposed agreement under section 141 or 142, the family group conference has thoroughly explored what services and supports, such as those provided or funded by the Ministry of Health, are available to, or in respect of, the child or young person in his or her home environment; and
  - (c) the family group conference approves the making of the agreement; and
  - (d) a care and protection co-ordinator issues a certificate to the effect,—
    - (i) in all cases, that the requirements of paragraphs (a) and (c) have been complied with; and
    - (ii) in the case of a proposed agreement under section 141 or 142, that the family group conference has thoroughly explored the matters referred to in paragraph (b); and
    - (iii) in all cases, that the co-ordinator is satisfied that, having regard to the objects, considerations, and principles in sections 4, 5, 6, and 13, the agree-



ment is an appropriate care option for the child or young person.

- (2) A care and protection co-ordinator must convene or reconvene a family group conference for the purpose of considering—
  - (a) whether an agreement should be entered into under section 140 or section 141 or section 142 in relation to any child or young person:
  - (b) whether an agreement entered into under section 141 or section 142 should be extended or terminated.
- (3) The provisions of sections 20 to 36 shall apply with all necessary modifications with respect to the convening or reconvening of a family group conference for the purposes of this section.

Section 145(1)(b): replaced, on 1 July 2014, by section 29(1) of the Children, Young Persons, and Their Families (Vulnerable Children) Amendment Act 2014 (2014 No 41).

Section 145(1)(c): replaced, on 1 July 2014, by section 29(1) of the Children, Young Persons, and Their Families (Vulnerable Children) Amendment Act 2014 (2014 No 41).

Section 145(1)(d): inserted, on 1 July 2014, by section 29(1) of the Children, Young Persons, and Their Families (Vulnerable Children) Amendment Act 2014 (2014 No 41).

Section 145(2): amended, on 1 July 2014, by section 29(2) of the Children, Young Persons, and Their Families (Vulnerable Children) Amendment Act 2014 (2014 No 41).

#### **146 Form and terms of agreements**

- (1) Every agreement entered into under section 140 or section 141 or section 142 shall—
  - (a) be in writing:
  - (b) specify the term of the agreement:
  - (c) specify the manner in which it may be terminated and, unless so specified, shall provide that the agreement may be terminated by either party on giving 7 days notice in writing:
  - (d) contain provisions relating to the care and control of the child or young person during the term of the agreement, including, but not limited to, provisions relating to—
    - (i) the educational, social, cultural, and religious needs of the child or young person:

- (ii) a programme for the provision of services and assistance for the benefit of the child or young person:
  - (iii) the rights and obligations of the parents or guardians towards the child or young person:
  - (iv) access to the child or young person by the parents or guardians or any other person.
- (2) Notwithstanding anything in subsection (1)(c), an agreement entered into under section 140 or section 141 or section 142 shall be terminated if a family group conference decides that the agreement should be terminated.

**147 Further restrictions on making of agreements**

- (1) No agreement relating to a child or young person shall be entered into under section 140 by any person (being the chief executive or an iwi social service or a cultural social service or a director of a child and family support service) in any case where that person is not satisfied that a parent or guardian of the child or young person, or a person usually having the care of the child or young person, will resume the care of the child or young person on the termination of the agreement.
- (2) No agreement relating to a child or young person shall be entered into under section 140 or section 141 or section 142 by any person (being the chief executive or an iwi social service or a cultural social service or a director of a child and family support service or a residential disability care operator within the meaning of section 58(4) of the Health and Disability (Safety) Act 2001) in any case where no parent or guardian, or a person usually having the care of the child or young person, or a member of the child's or young person's family, whanau, or family group, is willing to maintain contact with the child or young person during the term of the agreement.

Section 147(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 147(1): amended, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 147(2): amended, on 1 October 2002, by section 58(1) of the Health and Disability Services (Safety) Act 2001 (2001 No 93).

Section 147(2): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 147(2): amended, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

**148 Effect of agreements**

Where a child or young person is placed in the care of any person pursuant to an agreement under section 139 or section 140 or section 141 or section 142, that person shall have, in respect of that child or young person, the same powers and responsibilities in all respects as if that child or young person had been placed in the custody of that person pursuant to an order under section 101.

Compare: 1974 No 72 s 11(3)

**149 Agreement may provide for consent to medical treatment**

Any agreement entered into under section 139 or section 140 or section 141 or section 142 may authorise the person in whose care a child or young person is placed pursuant to that agreement to consent to the carrying out, on that child or young person, of any medical, surgical, or dental procedure (including a blood transfusion), and where any person is so authorised that person shall be deemed to be a guardian of the child or young person for the purposes of section 36(3) of the Care of Children Act 2004.

Section 149: amended, on 1 July 2005, by section 151 of the Care of Children Act 2004 (2004 No 90).

**Part 3**

**Provisions relating to procedure in respect  
of proceedings under Parts 2 and 3A**

Part 3 heading: replaced, on 1 November 1999, by section 6 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

*Courts having jurisdiction under Parts 2 and 3A*

Heading: replaced, on 1 November 1999, by section 6 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

**150 Jurisdiction of Family Courts**

Subject to sections 151 and 341, all proceedings under Part 2 or Part 3A shall be heard and determined in a Family Court.

Compare: 1974 No 72 s 25(1)

Section 150: amended, on 1 November 1999, by section 6 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

**151 Jurisdiction of District Courts in cases of urgency**

The following proceedings may be heard and determined in a District Court in any case where it is expedient that the proceedings be dealt with urgently and it is impracticable for the matter to be heard and determined as a matter of urgency in a Family Court:

- (a) an application under section 44:
- (b) any proceedings under section 45:
- (c) an application under section 78:
- (d) an application under section 88 for an interim restraining order.

*Service of applications***152 Service of application for declaration**

- (1) Subject to section 155, every application for a declaration under section 67 that a child or young person is in need of care or protection shall be served, in accordance with rules of court, on the following persons:
  - (a) each parent or guardian of the child or young person:
  - (b) if the child or young person is not residing with any of his or her parents or guardians, any person with whom the child or young person is living and who has had the care of the child or young person for a period of not less than 6 months immediately before the application was made:
  - (c) if the child or young person is in the custody or under the guardianship of the chief executive, the principal manager of the department for the area in which the child or young person is residing:

- (d) if the child or young person is in the custody or under the guardianship of an iwi social service or a cultural social service, that social service:
- (e) if the child or young person is in the custody of the director of a child and family support service, that director:
- (f) any other person specified by the court.

- (2) Any person served with proceedings under subsection (1) shall be entitled to appear and be heard as a party to the proceedings.

Compare: 1974 No 72 s 27(4)–(6)

Section 152(1): amended, on 13 September 2002, by section 6 of the Family Courts Amendment Act 2000 (2000 No 65).

Section 152(1)(c): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 152(1)(d): replaced, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

### **153 Notice of application for declaration to be given to child or young person**

Where an application is made for a declaration under section 67 in respect of any child of or over the age of 12 years or any young person, the Registrar of the court in which that application is filed shall ensure that a copy of the application is given to that child or young person.

### **154 Service of application for variation or discharge of order**

- (1) Subject to section 155, every application under section 125 shall be served, in accordance with rules of court, on the following persons:

- (a) every person who would have been entitled, under section 126(b), (c), (j), (k), (l), (m), or (n), to make an application under section 125 in respect of the order to which the application relates:
- (b) the applicant for the declaration under section 67 in respect of which the order was made:
- (c) the chief executive:
- (d) any other person specified by the court.

- (2) Any person served with proceedings under subsection (1) shall be entitled to appear and be heard as a party to the proceedings.

Section 154(1): amended, on 13 September 2002, by section 6 of the Family Courts Amendment Act 2000 (2000 No 65).

Section 154(1)(c): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

### **155 Court may dispense with service**

Where any person cannot be served with an application in accordance with section 152 or section 154, the court may, on such terms and conditions as it thinks fit, dispense with service on that person.

#### *Attendance of parties at hearing*

### **156 Court may require party to attend hearing**

- (1) Where the court considers that the presence of any person required to be served with an application under section 152 or section 154 or section 207L or section 207R is necessary to enable the court to hear and determine that application, the court may direct the Registrar to issue a summons in a form prescribed by rules of court requiring the person to whom it is addressed to appear before the court at the time stated in the summons.
- (2) In any case where a summons under this section has been served on any person, a Family Court Judge may, if the person to whom the summons is issued does not appear to answer to it, direct the issue of a warrant to arrest that person and bring that person before the court.
- (3) Every person commits an offence and is liable on conviction to a fine not exceeding \$1,000 who, being required to appear before the court under this section, refuses or fails without reasonable excuse to appear.

Compare: 1974 No 72 s 27(6), (8)–(11)

Section 156(1): amended, on 13 September 2002, by section 6 of the Family Courts Amendment Act 2000 (2000 No 65).

Section 156(1): amended, on 1 November 1999, by section 6 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

Section 156(3): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

**157 Court may require child or young person to attend hearing**

- (1) Where the court considers that the presence of the child or young person in respect of whom any application is made under Part 2 or Part 3A is necessary to enable the court to hear and determine that application, the court may direct the Registrar to issue a summons in a form prescribed by rules of court requiring the person who has custody of the child or young person to ensure that the child or young person is present at the hearing.
- (2) In any case where a summons under this section has been served on any person, a Family Court Judge may, if the child or young person in respect of whom the summons is issued does not appear at the hearing when required to do so, issue a warrant authorising any social worker or any constable or any other person named in the warrant to take possession of that child or young person and bring him or her before the court.
- (3) Section 123 shall apply, with all necessary modifications, in relation to every warrant issued under subsection (2) as if every such warrant were a warrant issued under section 122.
- (4) Every person commits an offence and is liable on conviction to a fine not exceeding \$1,000 who, being required pursuant to a summons issued under this section to ensure that a child or young person appears before the court, fails to take all reasonable steps to ensure that the child or young person so appears.

Compare: 1974 No 72 s 27(6)

Section 157(1): amended, on 13 September 2002, by section 6 of the Family Courts Amendment Act 2000 (2000 No 65).

Section 157(1): amended, on 1 November 1999, by section 6 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

Section 157(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 157(3): amended, on 2 September 1996, by section 2(3) of the Children, Young Persons, and Their Families Amendment Act 1996 (1996 No 112).

Section 157(4): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

*Joint hearings***158 Applications may be heard together**

The court may hear and determine an application for a declaration under section 67 or an application under section 125 (which relates to the variation, suspension, and discharge of orders made under Part 2) or an application under Part 3A in conjunction with any application under the Adoption Act 1955 or the Care of Children Act 2004 or the Family Proceedings Act 1980 or the Domestic Violence Act 1995 in any case where all the applications relate to the same child or young person (whether or not any or all of those applications also relate to any other person).

Compare: 1980 No 94 s 160(2)

Section 158: amended, on 1 July 2005, by section 151 of the Care of Children Act 2004 (2004 No 90).

Section 158: amended, on 1 November 1999, by section 6 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

Section 158: amended, on 1 July 1996, by section 131 of the Domestic Violence Act 1995 (1995 No 86).

*Appointment of persons to represent child or  
young person or assist court***159 Appointment of lawyer to represent child or young person in proceedings**

- (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 lawyer, the court or the Registrar of the court must appoint a lawyer to represent the child or young person—
  - (a) in those proceedings:
  - (b) for any other specified purpose (including in relation to other proceedings under this Act or any other Act) considered desirable.
- (2) Where a court or a Registrar appoints a lawyer under subsection (1), the court or the Registrar (as the case may be) must, so far as practicable, appoint a lawyer who is, by reason of personality, cultural background, training, and experience, suitably qualified to represent the child or young person.



- (3) Although the proceedings in respect of which any lawyer 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 lawyer's appointment for any specified purpose; or
  - (b) subject to subsection (2), appoint any other lawyer 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.

Compare: 1974 No 72 s 29(3); 1977 No 126 s 8; 1980 No 94 s 162(1), (2)

Section 159 heading: replaced, on 31 March 2014, by section 5(1) of the Children, Young Persons, and Their Families Amendment Act 2013 (2013 No 76).

Section 159(1): replaced, on 18 May 2009, by section 4(1) of the Children, Young Persons, and Their Families Amendment Act 2008 (2008 No 76).

Section 159(1): amended, on 31 March 2014, by section 5(2) of the Children, Young Persons, and Their Families Amendment Act 2013 (2013 No 76).

Section 159(2): amended, on 31 March 2014, by section 5(2) of the Children, Young Persons, and Their Families Amendment Act 2013 (2013 No 76).

Section 159(2): amended, on 18 May 2009, by section 4(2) of the Children, Young Persons, and Their Families Amendment Act 2008 (2008 No 76).

Section 159(3): replaced, on 18 May 2009, by section 4(3) of the Children, Young Persons, and Their Families Amendment Act 2008 (2008 No 76).

Section 159(3): amended, on 31 March 2014, by section 5(2) of the Children, Young Persons, and Their Families Amendment Act 2013 (2013 No 76).

Section 159(3)(a): amended, on 31 March 2014, by section 5(3) of the Children, Young Persons, and Their Families Amendment Act 2013 (2013 No 76).

Section 159(3)(b): amended, on 31 March 2014, by section 5(2) of the Children, Young Persons, and Their Families Amendment Act 2013 (2013 No 76).

## **160 Appointment of lawyer to assist court**

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

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

Section 160: replaced, on 31 March 2014, by section 6 of the Children, Young Persons, and Their Families Amendment Act 2013 (2013 No 76).

**161 Further provisions relating to appointment under section 159 or 160**

- (1) A lawyer appointed under section 159—
  - (a) must be served with all documents required to be served on the parties to the proceedings; and
  - (b) may—
    - (i) request the court to obtain any report that the court is empowered to obtain for the purposes of the proceedings;
    - (ii) act on behalf of the child or young person in respect of any matter relating to the detention of that child or young person in secure care, or the care of that child or young person in a residence.
- (2) A lawyer appointed under section 160—
  - (a) must be served with all documents required to be served on the parties to the proceedings; and
  - (b) may request the court to obtain any report that the court is empowered to obtain for the purposes of the proceedings.

Section 161: replaced, on 31 March 2014, by section 6 of the Children, Young Persons, and Their Families Amendment Act 2013 (2013 No 76).

**162 Payment of lawyer appointed under section 159 or 160**

- (1) The fees and expenses of any lawyer appointed under section 159 or 160 must—
  - (a) be determined in accordance with regulations made under section 16D of the Family Courts Act 1980 or, if no such regulations are made, by the Registrar of the court; and
  - (b) be paid in accordance with that determination out of public money appropriated by Parliament for the purpose.
- (2) An invoice rendered by a lawyer appointed under section 159 or 160 for fees and expenses must be given to the Registrar of the court in which the proceedings were heard, and the Registrar may decide to adjust the amount of the invoice.
- (3) A lawyer who is dissatisfied with the decision of the Registrar as to the amount of the invoice may, within 14 days after the date of the decision, apply to a Family Court Judge to review

the decision, and the Judge may on the application make any order varying or confirming the decision that the Judge considers fair and reasonable.

- (4) Where the fees and expenses of a lawyer appointed under section 159 or 160 have been paid under subsection (1)(b), the court may, if it thinks it is appropriate, order a party to the proceedings to refund to the Crown an amount that the court specifies in respect of those fees and expenses, and the amount ordered to be refunded is a debt due to the Crown by that party and, in default of payment of that amount, payment may be enforced, by order of a District Court or the High Court, as the case may require, in the same manner as a judgment of that court.

Section 162: replaced, on 31 March 2014, by section 7 of the Children, Young Persons, and Their Families Amendment Act 2013 (2013 No 76).

### **163 Appointment of lay advocate**

- (1) The court may, at any stage of any proceedings under Part 2 or Part 3A, on application by any party to the proceedings or of its own motion, appoint, in respect of the child or young person who is the subject of those proceedings, any person, not being a barrister or solicitor, to appear in support of that child or young person in those proceedings and, if the court thinks desirable, for such other purposes (including any other proceedings under this Act or any other enactment) as the court may specify.
- (2) Where the court appoints a lay advocate under subsection (1), it shall, so far as practicable, appoint a person who has, by reason of personality, cultural background, knowledge, and experience, sufficient standing in the culture of the child or young person in respect of whom the appointment is to be made to enable that person to carry out his or her duties under this Act.
- (3) The court may make an appointment under subsection (1) notwithstanding that the child or young person is represented in the proceedings by a barrister or solicitor.
- (4) Notwithstanding that the proceedings in respect of which any lay advocate was appointed under subsection (1) have been disposed of or that the appointment is no longer required for

any other purpose specified by the court pursuant to that subsection, the court may, if the court is satisfied that it is necessary or desirable in the interests of the child or young person to do so,—

- (a) extend that lay advocate's appointment; or
- (b) make a further appointment under subsection (1) in respect of that child or young person—

for such purpose as the court may specify.

Section 163(1): amended, on 1 November 1999, by section 6 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

#### **164 Further provisions relating to lay advocate**

- (1) The principal functions of a lay advocate appointed under section 163 are as follows:

- (a) to ensure that the court is made aware of all cultural matters that are relevant to the proceedings:
- (b) to represent the interests of the child's or young person's whanau, hapu, and iwi (or their equivalents (if any) in the culture of the child or young person) to the extent that those interests are not otherwise represented in the proceedings.

- (2) A lay advocate appointed under section 163 in respect of any proceedings—

- (a) shall be served with all documents required to be served on the parties to the proceedings; and
- (b) may—
  - (i) call any person as a witness in the proceedings:
  - (ii) cross-examine witnesses called by any party to the proceedings or by the court:
  - (iii) request the court to obtain any report that the court is empowered to obtain for the purposes of the proceedings:
  - (iv) attend any family group conference held in respect of the child or young person who is the subject of the proceedings, and make representations on behalf of the child or young person at any such conference:
  - (v) make representations on behalf of the child or young person in respect of any matter relating

to the detention of that child or young person in secure care, or the care of that child or young person in a residence.

**165 Payment of lay advocate**

- (1) The fees and expenses of any lay advocate appointed under section 163 shall, in accordance with regulations made under this Act, be paid out of a Crown Bank Account from money appropriated by Parliament for the purpose.
- (2) Notwithstanding subsection (1), the court may, if it thinks proper, order any party to the proceedings to refund to the Crown such amount as the court specifies in respect of any fees and expenses paid under that subsection, and the amount ordered to be refunded shall be a debt due to the Crown by that party and shall be recoverable accordingly in any court of competent jurisdiction.

Section 165(1): amended, on 25 January 2005, pursuant to section 83(7) of the Public Finance Act 1989 (1989 No 44).

*Attendance at hearings and right to make  
representations*

**166 Persons entitled to be present at hearing of proceedings  
in Family Court**

- (1) No person shall be present during the hearing of any proceedings in a Family Court under Part 2 or Part 3A relating to a child or young person except—
  - (a) officers of the court:
  - (b) the parents or guardians or any other person having the care of the child or young person:
  - (c) the child or young person:
  - (d) any person who is a party to the proceedings:
  - (e) any near relative of the child or young person:
  - (f) any member of the child's or young person's whanau or family group:
  - (g) where there is an appropriate iwi social service or cultural social service with respect to the child or young person, a representative of that social service:
  - (h) any director of a child and family support service or a representative of any such person:

- (i) any barrister or solicitor representing—
    - (i) any parent or guardian or other person having the care of the child or young person:
    - (ii) the child or young person:
    - (iii) any person who is a party to the proceedings:
  - (j) any barrister or solicitor appointed under section 160 to assist the court:
  - (k) any care and protection co-ordinator:
  - (l) any social worker:
  - (m) any lay advocate who appears in support of the child or young person or any parent or guardian or other person having the care of the child or young person:
  - (n) witnesses:
  - (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:
  - (o) any person whom the Judge permits to be present.
- (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.
- (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:
  - (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
  - (b) to permit a McKenzie friend to be present; or
  - (c) to exclude any person from the court.

Compare: 1974 No 72 s 23; 1980 No 94 s 159(2), (3)

Section 166(1): amended, on 1 November 1999, by section 6 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

Section 166(1)(g): replaced, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 166(1)(na): inserted, on 18 May 2009, by section 6(1) of the Children, Young Persons, and Their Families Amendment Act 2008 (2008 No 76).

Section 166(1)(nb): inserted, on 18 May 2009, by section 6(1) of the Children, Young Persons, and Their Families Amendment Act 2008 (2008 No 76).

Section 166(2): replaced, on 18 May 2009, by section 6(2) of the Children, Young Persons, and Their Families Amendment Act 2008 (2008 No 76).

Section 166(3): inserted, on 18 May 2009, by section 6(2) of the Children, Young Persons, and Their Families Amendment Act 2008 (2008 No 76).

Section 166(4): inserted, on 18 May 2009, by section 6(2) of the Children, Young Persons, and Their Families Amendment Act 2008 (2008 No 76).

**167 Child or young person may give evidence in private**

In any proceedings in a court under Part 2 or Part 3A relating to a child or young person, the Judge hearing the proceedings may, if he or she thinks it desirable to do so,—

- (a) require all or any of the following persons to withdraw from the court while the child or young person gives evidence:
  - (i) any parent or guardian or other person having the care of the child or young person:
  - (ii) any other person:
- (b) confer in private with the child or young person.

Compare: 1974 No 72 s 30(4)

Section 167: amended, on 1 November 1999, by section 6 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

**168 Other powers of court to hear proceedings in private or exclude persons not affected**

Nothing in section 166(2) or section 167 limits any other power of the court to hear proceedings in private or to exclude any person from the court.

Compare: 1980 No 94 s 159(5)

**169 Right to make representations**

- (1) In any proceedings before a court under Part 2 or Part 3A relating to a child or young person, representations may be made to the court on behalf of the child or young person by—
  - (a) the child or young person:
  - (b) any barrister or solicitor who represents the child or young person:

- (c) any lay advocate who appears in support of the child or young person:
  - (d) with the leave of the court, any other person.
- (2) Where any parent or guardian or other person having the care of a child or young person appears before a court as a party to any proceedings before that court under Part 2 or Part 3A, representations may be made to the court on behalf of that parent or guardian or other person by—
- (a) that parent or guardian or other person:
  - (b) any barrister or solicitor who represents that parent or guardian or other person:
  - (c) any lay advocate who appears in support of that parent or guardian or other person:
  - (d) with the leave of the court, any other person.

Compare: 1974 No 72 s 40(b), (c); 1983 No 129 s 9

Section 169(1): amended, on 1 November 1999, by section 6 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

Section 169(2): amended, on 1 November 1999, by section 6 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

### *Mediation conferences*

#### **170 Calling of mediation conference**

- (1) Where an application is made to the court for a declaration under section 67 (other than on the ground specified in section 14(1)(e)), or for the exercise of the court's jurisdiction under any other provision of Part 2 or Part 3A, a Family Court Judge or any of the following persons may ask the Registrar of the court to arrange for a mediation conference to be convened:
- (a) the applicant:
  - (b) the child or young person to whom the application relates:
  - (c) any barrister or solicitor who represents that child or young person:
  - (d) any other person upon whom the application has been served in accordance with section 152 or section 154.
- (2) On receiving a request under subsection (1), the Registrar shall—



- (a) appoint a time and place for the holding of the mediation conference, being as soon as reasonably practicable after the receipt of the request; and
- (b) give notice to each of the persons referred to in paragraphs (a) to (d) of subsection (1) of the time and place of the mediation conference, and request each of those persons to attend the conference.

Compare: 1980 No 94 s 13

Section 170(1): amended, on 1 November 1999, by section 6 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

#### **171 Objectives of mediation conference**

The objectives of a mediation conference are—

- (a) to identify the problem in respect of which the exercise of the court's jurisdiction is sought; and
- (b) to reach agreement on a solution for the problem.

Compare: 1988 No 4 s 67

#### **172 Procedure at mediation conference**

- (1) Every mediation conference shall be presided over by a Family Court Judge.
- (2) The following persons are entitled to be present at, and to participate in, a mediation conference:
  - (a) the child or young person to whom the proceedings in respect of which the conference is held relate, unless, in the case of a child, the presiding Judge considers that the attendance of that child would be inappropriate;
  - (b) the barrister or solicitor representing the child or young person;
  - (c) any other person to whom the notice required by section 170(2)(b) must be given;
  - (d) subject to any direction by the presiding Judge to the contrary,—
    - (i) any barrister or solicitor representing any parent or guardian or other person having the care of the child or young person who is the subject of the proceedings in respect of which the conference is held;

- (ii) any lay advocate who appears in support of that child or young person or any parent or guardian or other person having the care of that child or young person:
  - (e) with the leave of the presiding Judge, any other person.
- (3) Subject to any direction by the presiding Judge to the contrary, every mediation conference shall be held in private.
- (4) The presiding Judge may from time to time adjourn a mediation conference to such time and place as the Judge may determine.

Compare: 1988 No 4 s 68

**173 Presiding Judge to make record of proceedings at mediation conference**

- (1) Where, at a mediation conference, the parties to the proceedings in respect of which the conference is held reach agreement on the nature of the problem in respect of which the exercise of the court's jurisdiction is sought, and on the solution for that problem, the presiding Judge shall record in writing the terms of the agreement.
- (2) Where agreement is not reached on all matters, the presiding Judge shall record in writing those matters on which there is agreement and those matters on which there is no agreement.
- (3) In every case, the presiding Judge shall state in the record whether or not—
  - (a) the child or young person who is the subject of the proceedings in respect of which the conference is held was present; and
  - (b) that child or young person agreed to any matter referred to in subsection (1) or subsection (2) on which the parties reached agreement.
- (4) The record made by the presiding Judge under subsection (1) or subsection (2) shall be filed in the court in which the relevant application is filed.

Compare: 1988 No 4 s 69

**174 Power of presiding Judge to make consent orders**

- (1) Subject to subsection (2), at a mediation conference the presiding Judge may, by consent of the parties, make any declaration or order that could have been made by the court in the proceedings in respect of which the conference was held.
- (2) Where the making of any order under this Act requires the consent of any person who is not a party to the proceedings, the presiding Judge shall not make that order under subsection (1) unless that person gives that consent.
- (3) An order made under this section shall for all purposes have the same effect as if it were made by consent in proceedings before the court.

Compare: 1988 No 4 s 70

**175 Power to require attendance at mediation conference**

- (1) Where any person fails to comply with a request under section 170(2)(b) to attend a mediation conference, a District Court Judge may, on the request of the Registrar of the court, issue a summons requiring the person to attend a mediation conference at a time and place to be specified in the summons.
- (2) Section 159 of the Criminal Procedure Act 2011 applies to a summons under this section as if it were a witness summons issued under that section.

Compare: 1988 No 4 s 71

Section 175(2): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

**176 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 to any person in the course of a mediation conference.
- (2) Nothing in subsection (1) applies to a record made by a Family Court Judge under section 173, or to any consent order made under section 174, or to any proceedings for the review of any such order.

Compare: 1988 No 4 s 72

**177 Presiding Judge may hear subsequent proceedings**

The Family Court Judge who presides over a mediation conference shall be entitled to hear any subsequent proceedings under the application in respect of which the conference was held unless in all the circumstances the Judge decides, of that Judge's own motion or on application by any party,—

- (a) that it would be inappropriate for that Judge to do so; or
- (b) that there is some other sufficient reason for the application to be heard by another Judge.

Compare: 1988 No 4 s 73

*Reports***178 Medical, psychiatric, and psychological reports**

- (1) If, at any stage of any proceedings under Part 2 or Part 3A, it appears to the court to be expedient that a medical, psychiatric, or psychological report should be available to the court in respect of any child or young person to whom the proceedings relate, the court may, on application by any party to the proceedings or the barrister or solicitor representing the child or young person, or of its own motion, if it thinks fit,—
  - (a) order the child or young person to attend for a medical, psychiatric, or psychological examination; or
  - (b) where the child or young person is, or is to be, held in the custody of the chief executive or detained in any residence, order that the child or young person undergo a medical, psychiatric, or psychological examination at the place at which the child or young person is, or is to be, detained.
- (2) Subject to subsection (3) if, at any stage of any proceedings under Part 2 or Part 3A, it appears to the court to be expedient that a medical, psychiatric, or psychological report should be available to the court in respect of any parent or guardian or other person having the care of any child or young person to whom the proceedings relate or any person who it is proposed should have the care of the child or young person, the court may, on application by any party to the proceedings, or of its own motion, if it thinks fit, order the parent or guardian or other person having the care of the child or young person, or other

person, to attend for a medical, psychiatric, or psychological examination.

- (3) The court shall not make an order under subsection (2) requiring any person to undergo any medical, psychiatric, or psychological examination unless that person consents to the making of that order.
- (4) Subject to the right of the person who refuses to consent to the order to explain the reasons for that person's refusal, and to cross-examine witnesses and call evidence, the court may draw such inferences (if any) from the fact of the refusal as appear to it to be proper in the circumstances.

Compare: 1974 No 72 s 42A(1)–(2); 1977 No 126 s 13

Section 178(1): amended, on 1 November 1999, by section 6 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

Section 178(1)(b): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 178(2): amended, on 1 November 1999, by section 6 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

#### **179 Further provisions relating to medical, psychiatric, and psychological examinations**

- (1) Every medical examination carried out under subsection (1) or subsection (2) of section 178 shall be carried out by a registered medical practitioner.
- (2) Every psychiatric examination carried out under subsection (1) or subsection (2) of section 178 shall be carried out by a registered medical practitioner holding a specialist psychiatric appointment or holding vocational registration in the speciality of psychological medicine or psychiatry.
- (3) Every psychological examination carried out under subsection (1) or subsection (2) of section 178 shall be carried out by—
  - (a) a registered medical practitioner holding a psychiatric appointment or holding vocational registration in the speciality of psychological medicine or psychiatry; or
  - (b) a registered psychologist; or
  - (c) a person appointed by the court for the purpose, being a person whom the court is satisfied—

- (i) is entitled to practise as a psychologist, or in the speciality of psychological medicine or psychiatry, in that person's country of permanent residence; and
  - (ii) has qualifications that, in the view of the appropriate registering body in New Zealand, are at least equivalent to those required of a person referred to in paragraph (a) or paragraph (b).
- (4) Every child or young person who is examined under section 178(1) is, where practicable, entitled to have present during that examination 1 adult—
  - (a) who is nominated for that purpose by that child or young person or, if the age or level of maturity of the child or young person makes it impracticable for him or her to make such a nomination, by a social worker; and
  - (b) who consents to be present.

Compare: 1974 No 72 s 42A(4); 1977 No 126 s 13

Section 179(2): replaced, on 1 July 1996, by section 143(1) of the Medical Practitioners Act 1995 (1995 No 95).

Section 179(3): replaced, on 8 January 1995, by section 27 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 179(3)(a): replaced, on 1 July 1996, by section 143(1) of the Medical Practitioners Act 1995 (1995 No 95).

#### **180 Fees for reports prepared under section 178**

Where any person prepares a report pursuant to section 178, the fees and expenses of that person shall be paid by such party or parties to the proceedings as the court shall order or, if the court so decides, shall be paid out of money appropriated by Parliament for the purpose.

Compare: 1968 No 63 s 29A(6); 1980 No 95 s 17

#### **181 Court may order examination to be carried out in psychiatric hospital**

- (1) If, at any stage of the hearing of any proceedings under Part 2,—
  - (a) 2 medical practitioners have certified or given evidence that a psychiatric assessment of any child of or over the age of 10 years, or of any young person to whom the proceedings relate, should be obtained, and it appears

to the court that it would not be practicable for such assessment to be carried out outside a psychiatric hospital;  
or

- (b) 2 psychiatric reports (whether obtained pursuant to section 178(1) or otherwise) recommending detention of any such child or young person in a psychiatric hospital for further observation are available to the court,—

the court may, if it considers it expedient, make an order for the detention and examination of that child or young person in a psychiatric hospital for such period, not exceeding 5 days, as the court thinks fit.

- (2) Where an order is made under subsection (1), a Family Court Judge may, on application made at any time before the expiry of the period specified in the order, if he or she is satisfied that it is necessary to detain the child or young person to whom the order relates in a psychiatric hospital for longer than that period for the purpose of completing the assessment or observation of that child or young person pursuant to that order, extend the period for which that child or young person may be detained in that hospital for such period, not exceeding 14 days, as the Judge thinks fit.
- (3) The examination required by an order made under subsection (1) shall be carried out by a medical practitioner holding a specialist psychiatric appointment or holding vocational registration in the speciality of psychological medicine or psychiatry.
- (4) An order made under subsection (1) in respect of any child or young person is sufficient authority—
  - (a) for the detention of the child or young person by a social worker or any constable for the purpose of ensuring compliance with the order;
  - (b) for the transfer of the child or young person from a residence to a psychiatric hospital;
  - (c) for the detention of the child or young person and examination in a psychiatric hospital;
  - (d) for the return to any residence in which the child or young person was detained at the time of transfer to a psychiatric hospital.

Compare: 1974 No 72 s 42A(3), (4); 1977 No 126 s 13

Section 181(3): replaced, on 1 July 1996, by section 143(1) of the Medical Practitioners Act 1995 (1995 No 95).

Section 181(4)(a): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

**182 Release of child or young person from psychiatric hospital where detention no longer required**

Any child or young person who is detained in a psychiatric hospital pursuant to an order made under section 181(1) may be released, or may be returned to a residence, as the case may require, notwithstanding that the period for which the child or young person was ordered to be detained has not expired, if the superintendent of that psychiatric hospital certifies in writing that the assessment of the child or young person has been completed or that no further observation of the child or young person is required.

Compare: 1974 No 72 s 42A(9); 1977 No 126 s 13

**183 Review of order made under section 178 or section 181**

The court may, from time to time, review any order made under section 178 or section 181, and on any such review the court may make such order as may be just.

**184 Court may indicate matters to be dealt with in report**

Where the court makes an order under subsection (1) or subsection (2) of section 178 or under section 181(1), it may indicate any specific matter that it requires to be dealt with in any medical, psychiatric, or psychological report.

**185 Sections to have effect in place of sections 38 to 44 of Criminal Procedure (Mentally Impaired Persons) Act 2003**

In respect of any person to whom an application for a declaration under section 67 relates, the provisions of sections 178 to 183 have effect in the place of the provisions of sections 38 to 44 of the Criminal Procedure (Mentally Impaired Persons) Act 2003.

Section 185: replaced, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).



**186 Report by social worker**

- (1) Where the court makes a declaration under section 67, the court may, before making any order referred to in section 83(1) or section 84(1), obtain and consider a report from a social worker.
- (2) The court shall not make—
  - (a) a final order under section 101 placing a child or young person in the custody of the chief executive or an iwi social service or a cultural social service or the director of a child and family support service; or
  - (b) an order under section 110 appointing the chief executive or an iwi social service or a cultural social service as the sole guardian of a child or young person—unless the court has first obtained and considered a report from a social worker.
- (3) Every report obtained pursuant to this section in respect of a child or young person shall include—
  - (a) such information as is required to be included in such reports by guidelines issued from time to time in writing by the chief executive after consultation with the Principal Family Court Judge;
  - (b) such other information as may assist the court in its consideration of the matter;
  - (c) such other information as the court may direct.
- (4) Every report required pursuant to this section shall be prepared, where appropriate, in consultation with a Maatua Whangai worker.
- (5) In this section, the term **social worker** includes a person employed in the speciality of social work by the director of a child and family support service, or by an iwi social service or a cultural social service, who consents to make a report under this section.

Compare: 1974 No 72 s 41(3); 1982 No 135 s 9(1)

Section 186(2)(a): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 186(2)(a): amended, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 186(2)(b): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 186(2)(b): amended, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 186(3)(a): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 186(5): inserted, on 8 January 1995, by section 28 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

### **187 Cultural and community reports**

- (1) Where the court makes a declaration under section 67 that a child or young person is in need of care or protection, the court may, before making any order referred to in section 83(1), of its own motion, or at the request of any of the persons specified in subsection (2), require any person to report to the court on—
  - (a) the heritage and the ethnic, cultural, or community ties and values of the child or young person or the child's or young person's family, whanau, or family group:
  - (b) the availability of any resources within the community that would, or would be likely to, assist the child or young person or the child's or young person's family, whanau, or family group:
  - (c) where the declaration was made on the ground specified in section 14(1)(a) or (b), the availability of any option—
    - (i) that would be an alternative to an order under Part 2 relating to the custody or guardianship of the child or young person; and
    - (ii) that would, or would be likely to, ensure that the kind of harm suffered by the child or young person will neither continue nor be repeated.
- (2) Any of the following persons may ask the court to obtain a report under subsection (1):
  - (a) the child or young person:
  - (b) any parent or guardian or other person having the care of the child or young person:
  - (c) any barrister or solicitor representing—
    - (i) any parent or guardian or other person having the care of the child or young person:
    - (ii) the child or young person:
  - (d) any barrister or solicitor appointed under section 160 to assist the court:

- (e) any lay advocate who appears in support of the child or young person or any parent or guardian or other person having the care of the child or young person:
  - (f) any social worker after consultation, where appropriate, with a Maatua Whangai worker.
- (3) Unless it is impracticable or inappropriate to do so, the court shall ascertain and have regard to the wishes of the child or young person and the child's or young person's family, whanau, or family group in determining the person required to furnish a report under this section.
- (4) The fees and expenses of any person who furnishes a report under this section shall, if the court so directs, be paid out of money appropriated by Parliament for the purpose.

**188 Privilege for reports**

Any person who furnishes any report to the court pursuant to section 178 or section 181 or section 186 or section 187 shall not be under any civil or criminal liability in respect of the report unless that person has acted in bad faith or without reasonable care.

Compare: 1974 No 72 s 41(8); 1982 No 135 s 9(1)

**189 Adjournment for purposes of obtaining report**

- (1) Any adjournments for the purposes of obtaining a report pursuant to section 178 or section 181 or section 186 or section 187—
  - (a) shall be for the minimum period necessary to enable the report to be prepared; and
  - (b) shall in no case exceed a total of more than 28 days unless the court in any special case otherwise determines; but
  - (c) may otherwise be on such conditions as the court thinks fit.
- (2) Where any proceedings are adjourned for the purposes of obtaining any report pursuant to section 178 or section 181 or section 186 or section 187, the person responsible for preparing that report shall make all reasonable endeavours to ensure that the report is filed with the court at least 2 working days

before the date set for the hearing of those proceedings to resume.

Compare: 1974 No 72 s 42A(2); 1977 No 126 s 13

#### **190 Reports may be made orally**

The court may, unless any party to the proceedings objects, direct that any report required pursuant to section 186 (other than a report to which subsection (2) of that section applies) or section 187 be made orally to the court.

#### **191 Access to reports**

- (1) Subject to section 192, a copy of every written report furnished to the court pursuant to section 178 or section 181 or section 186 or section 187 shall be given by the Registrar of the court—
  - (a) to every person entitled to appear and be heard on the proceedings to which the report relates, and to any barrister or solicitor appearing for that person;
  - (b) to each lay advocate, barrister or solicitor, or other person representing a child or young person to whom the proceedings relate or a parent or guardian or other person usually having the care of the child or young person;
  - (c) to the chief executive;
  - (d) to any other person whom the court considers has a proper interest in receiving a copy of the report.
- (2) Every such copy shall, wherever possible, be supplied not later than 1 working day before the sitting of the court.

Compare: 1974 No 72 s 42(1); 1977 No 126 s 12(1), (2)

Section 191(1)(c): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

#### **192 Court may order report not to be disclosed**

The court may order that the whole or any part of a report given to any person pursuant to section 191(1) shall not be disclosed to any person specified in the order where it is satisfied that such disclosure would be, or would be likely to be, detrimental to the physical or mental health, or the emotional well-being,

of any child or young person or other person to whom the report relates.

Compare: 1974 No 72 s 42(5)

**193 Right to tender evidence on report**

Any person to whom a report prepared pursuant to section 178 or section 181 or section 186 or section 187 relates may tender evidence on any matter referred to in the report and brought to that person's attention as a result of the disclosure of the report to that person pursuant to section 191 or being told of its contents.

Compare: 1974 No 72 s 42(3); 1977 No 126 s 12(3)

**194 Court may call person making report as witness**

The court may if it thinks fit call as a witness the person making any report to which section 193 applies.

Compare: 1974 No 72 s 42(4)

*Miscellaneous provisions*

**195 Evidence**

*[Repealed]*

Section 195: repealed, on 31 March 2014, by section 17A(d) of the Family Courts Act 1980 (1980 No 161).

**196 Special provisions applying to disclosure of communications to medical practitioner or clinical psychologist**

- (1) A barrister or solicitor appointed pursuant to section 159 to represent a child in any proceedings under Part 2 or Part 3A may, for the purposes of section 32 of the Evidence Amendment Act (No 2) 1980, consent to the disclosure by a registered medical practitioner or a clinical psychologist in any such proceedings of any protected communication made to that registered medical practitioner or clinical psychologist by that child, and any consent so given shall be deemed to be the consent of the child given under that section.
- (2) For the purposes of this section the expressions **clinical psychologist**, **protected communication**, and **registered med-**

**ical practitioner** have the same meanings as in section 32 of the Evidence Amendment Act (No 2) 1980.

Section 196: replaced, on 1 November 1989, by section 2 of the Children, Young Persons, and Their Families Amendment Act 1989 (1989 No 70).

Section 196(1): amended, on 1 November 1999, by section 6 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

### **197 Standard of proof**

Subject to section 198, the standard of proof applying in any proceedings under Part 2 or Part 3A shall be the standard of proof applying in civil proceedings.

Section 197: amended, on 1 November 1999, by section 6 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

### **198 Special provisions applying to applications for declaration on ground of child's offending**

- (1) The court shall not make a declaration under section 67 on the ground specified in section 14(1)(e) unless—
  - (a) it would have found the child guilty of an offence if the proceedings had been pursuant to a charging document filed under the Criminal Procedure Act 2011 charging the child with the offence; and
  - (b) the court is satisfied that the child knew either that the act or omission constituting the offence was wrong or that it was contrary to law.
- (2) Nothing in section 195 or section 197 applies to any proceedings for a declaration under section 67 on the ground specified in section 14(1)(e).

Compare: 1974 No 72 s 29(2)

Section 198(1)(a): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

### **199 Power of court to call witnesses**

- (1) In any proceedings in a court under Part 2 or Part 3A (not being proceedings for a declaration under section 67 on the ground specified in section 14(1)(e)) the court may, of its own motion, call as a witness any person whose evidence may, in its opinion, be of assistance to the court.

- (2) The power conferred by subsection (1) shall include power to call as a witness any parent or guardian or other person having the care of the child or young person to whom the proceedings relate, or any person with whom any parent or guardian or other person is cohabiting, or any near relative of the child or young person.
- (3) A witness called by the court under this section shall have the same privilege to refuse to answer any question as the witness would have if the witness had been called by a party to the proceedings.
- (4) A witness called by the court under this section may be examined and re-examined by the court, or by any barrister or solicitor assisting the court, and may be cross-examined by or on behalf of any party to the proceedings or by any barrister or solicitor or lay advocate appointed to represent a child or young person to whom the proceedings relate.
- (5) Sections 159 and 161 to 165 of the Criminal Procedure Act 2011, so far as they are applicable and with the necessary modifications, shall apply with respect to every person called as a witness by the court under this section as if that person had been called by a party to the proceedings.
- (6) The expenses of any witness called by the court under this section, in accordance with the prescribed scale of witnesses expenses, shall be paid in the first instance out of a Crown Bank Account from money appropriated by Parliament for the purpose.

Compare: 1980 No 94 s 165

Section 199(1): amended, on 1 October 1999, by section 6 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

Section 199(5): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 199(6): amended, on 25 January 2005, pursuant to section 83(7) of the Public Finance Act 1989 (1989 No 44).

## **200 Court to ensure that application for declaration that child or young person in need of care or protection dealt with promptly**

Where an application is made to the court for a declaration under section 67, the court shall, so far as it is practicable,

give priority to the proceedings in order to ensure that, unless there are special reasons why a longer period is required, the hearing of the application commences not later than 60 days after the application is filed in the court.

## **201 Adjournments**

- (1) Subject to this section, the court may, from time to time, adjourn the hearing of any proceedings under Part 2 or Part 3A.
- (2) In considering—
  - (a) whether to adjourn the hearing of any such proceedings; and
  - (b) the period of any such adjournment,—the court shall have regard to the principle that proceedings under Part 2 or Part 3A should be dealt with as expeditiously as is possible.
- (3) On the granting of an adjournment under this section the court may—
  - (a) make an order under section 78 (which relates to the custody of a child or young person pending the determination of any proceedings);
  - (b) make an order under section 121 (which relates to access and other rights in respect of a child or young person).

Section 201(1): amended, on 1 November 1999, by section 6 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

Section 201(2): amended, on 1 November 1999, by section 6 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

Section 201(3)(a): amended, on 8 January 1995, by section 29 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

## **202 Orders by consent**

In any proceedings under Part 2 or Part 3A, the court may make any order (being an order that it is empowered to make in those proceedings) by the consent of all the parties to the proceedings.

Compare: 1980 No 94 s 170



Section 202: amended, on 1 November 1999, by section 6 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

### **203 Costs**

In any proceedings under Part 2 or Part 3A, the court may make such order as to costs as it thinks fit.

Compare: 1968 No 63 s 27B; 1980 No 95 s 14

Section 203: amended, on 1 November 1999, by section 6 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

### **204 Rehearings**

- (1) Where a declaration or an order has been made or refused on an application under Part 2 or Part 3A, the court may, on the application of the applicant or any other person who was a party to the proceedings or the barrister or solicitor representing the child or young person to whom the proceedings relate, grant a rehearing of the application on such conditions as it thinks fit.
- (2) Notice of any such rehearing shall be given to such persons and in such manner as the court directs.
- (3) An application for a rehearing under this section shall not operate as a stay of proceedings unless the court so orders.
- (4) If the court grants an application for a rehearing, the declaration or order shall continue to have effect unless the court orders otherwise.

Compare: 1980 No 94 s 173

Section 204(1): amended, on 1 November 1999, by section 6 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

### **205 Preventing removal of child or young person from New Zealand**

- (1) This section applies where—
  - (a) an application is made to the court for a declaration under section 67, or for an order under section 207K or section 207Q, in relation to a child or young person; and
  - (b) any District Court Judge or, if no District Court Judge is available, any Registrar (not being a constable) is satis-

fied that there are reasonable grounds for believing that any person is about to take that child or young person out of New Zealand.

- (2) Where this section applies, the District Court Judge or Registrar—
- (a) may order that any tickets or travel documents (including the passport) of the child or young person, or of the person believed to be about to take the child or young person out of New Zealand, or of both, be surrendered to the court for such period and upon such conditions as the court thinks fit; and
  - (b) may, in addition, issue a warrant directing any social worker or constable to take possession of the child or young person (using such reasonable force as may be necessary) and place the child or young person in the custody of the chief executive pending the order or further order of the court.
- (3) Any person against whom an order under subsection (2)(a) is in force may apply to the court for the discharge of the order, and the court, in its discretion, may discharge the order.
- (4) Section 123 shall apply, with all necessary modifications, in relation to every warrant issued under subsection (2) as if every such warrant were a warrant issued under section 122 (which relates to the enforcement of rights of access).

Compare: 1968 No 63 s 20; 1979 No 52 s 3(1)

Section 205(1)(a): amended, on 1 November 1999, by section 6 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

Section 205(1)(b): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 205(2)(b): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 205(2)(b): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 205(4): amended, on 2 September 1996, by section 2(4) of the Children, Young Persons, and Their Families Amendment Act 1996 (1996 No 112).

**206 Offence to take child or young person out of New Zealand where proceedings pending**

- (1) Every person commits an offence and is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$2,000 who, without the leave of the court, takes or attempts to take any child or young person out of New Zealand knowing that an application for a declaration under section 67, or for an order under section 207K or section 207Q, in respect of that child or young person is about to be made or that a determination of any such application is pending.
- (2) No proceedings for contempt of court shall be taken against any person in respect of any act to which this section applies.

Compare: 1968 No 63 s 20(3), (4); 1979 No 52 s 3(1)

Section 206(1): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 206(1): amended, on 1 November 1999, by section 6 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

**206A Leave required in certain cases to commence substantially similar proceedings**

- (1) A proceeding (a **new proceeding**) may not be commenced under Part 2 without the leave of the court if that new proceeding—
  - (a) is substantially similar to a proceeding previously filed in a Family Court by any person (a **previous proceeding**); and
  - (b) is to be commenced less than 2 years after the final direction or order was given in the previous proceeding.
- (2) The leave of the court may only be given under subsection (1) if, since the final direction or order was given in the previous proceeding, there has been a material change in the circumstances of—
  - (a) any party to the previous proceeding;
  - (b) any child or young person who was the subject of the previous proceeding.
- (3) In this section, a new proceeding is **substantially similar** to a previous proceeding if—

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

Section 206A: inserted, on 31 March 2014, by section 8 of the Children, Young Persons, and Their Families Amendment Act 2013 (2013 No 76).

## **206B Power to dismiss proceedings**

The court may dismiss proceedings before it under Part 2 if it is satisfied—

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

Section 206B: inserted, on 31 March 2014, by section 8 of the Children, Young Persons, and Their Families Amendment Act 2013 (2013 No 76).

**207 Vexatious proceedings**

- (1) The court may dismiss any proceedings before it under Part 2 if it is satisfied that they are frivolous or vexatious or an abuse of the procedure of the court.
- (2) The court may, if it is satisfied that a person has persistently instituted vexatious proceedings under Part 2 or under the corresponding provisions of any former Act (whether those proceedings were in respect of the same person or matter or different persons or matters), after giving the first-mentioned person an opportunity of being heard, order that no proceedings under Part 2, or no proceedings under that Part of any specified kind or in respect of any specified person or matter, shall be commenced by the first-mentioned person without the leave of the court.

Compare: 1980 No 94 s 163

**Part 3A**  
**Trans-Tasman transfer of protection  
orders and protection proceedings**

Part 3A: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

*Purpose of Part*

Heading: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

**207A Purpose of Part**

The purpose of this Part is to provide for the transfer of protection orders and protection proceedings from New Zealand to a State or Territory of Australia, and from a State or Territory of Australia to New Zealand, so that—

- (a) children or young persons who are the subject of protection orders can continue to receive care or protection even though they move to or from New Zealand; and
- (b) protection proceedings can be determined speedily even though the children or young persons who are the subject of the proceedings move to or from New Zealand.

Section 207A: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

### *Interpretation*

Heading: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

## **207B Interpretation**

In this Part, unless the context otherwise requires,—

**child welfare law** means—

- (a) Parts 2 and 3; or
- (b) a law of a participating State that—
  - (i) corresponds to Parts 2 and 3; or
  - (ii) is declared to be a child welfare law for the purposes of this Part by regulations made under section 447(aa)

**Children’s Court**, in relation to a participating State, means the court with jurisdiction to hear and determine protection proceedings at first instance

**interim order** means—

- (a) an order under section 207T; or
- (b) an equivalent order made under an interstate law

**interstate law**, in relation to a participating State,—

- (a) means a law that corresponds to this Part; and
- (b) includes a law that is declared to be an interstate law for the purposes of this Part by regulations made under section 447(ab)

**interstate officer**, in relation to a participating State, means—

- (a) the holder of an office or position (by whatever name called) that is an office or position the holder of which is declared, in relation to that State, to be the interstate officer for the purposes of this Part by regulations made under section 447(ac); or
- (b) the holder of the office or position (by whatever name called) that, by or under the child welfare law of that State, has principal responsibility for the care or protection of children and young persons in that State

**participating State** means a State or Territory of Australia in which an interstate law is in force

**protection order** has the meaning given to it by section 207C

**protection proceedings** means—

- (a) proceedings in a court or a Children's Court under a child welfare law for the making, variation, discharge, or revocation of a protection order or interim order, or for the extension of any period of such an order; or
- (b) proceedings in a court or a Children's Court under a child welfare law (for example, proceedings for a declaration under section 67 that a child or young person is in need of care or protection) for a declaration or finding (by whatever name called)—
  - (i) that a child or young person is in need of care or protection; and
  - (ii) that empowers the court or Children's Court to make a protection order

**review proceedings** means proceedings—

- (a) by way of an application for review under the Judicature Amendment Act 1972; or
- (b) by way of an application for mandamus, injunction, prohibition, or certiorari; or
- (c) by way of an application for a declaratory judgment

**sending State** means the participating State from which a protection order or protection proceedings are transferred to New Zealand under this Part and the interstate law of that State

**young person** includes a person—

- (a) who is 17 years old or older; and
- (b) to whom a guardianship order made under section 110 applies.

Section 207B: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

## **207C Meaning of protection order**

(1) In this Part, **protection order**—

- (a) means a final order under a child welfare law that makes the custody, guardianship, supervision, or support of a child or young person the responsibility (in whole or

- in part, and however that responsibility is described) of any 1 or more of the persons specified in subsection (2); and
- (b) includes an interim custody order made pursuant to section 102 that makes the custody of a child or young person the responsibility (in whole or in part) of any 1 or more of the persons specified in subsection (2).
- (2) The persons referred to in subsection (1) are—
- (a) a government department or statutory authority;
  - (b) a person who is the head of a government department or statutory authority or otherwise holds an office or position in, or is employed in, a government department or statutory authority;
  - (c) an organisation or body approved or authorised by or under the child welfare law to exercise or perform powers, duties, or functions conferred, imposed, or prescribed by or under the child welfare law;
  - (d) the chief executive (by whatever name called) of an organisation or body referred to in paragraph (c).

Section 207C: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

*Transfer of protection orders from New Zealand  
by chief executive*

Heading: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

**207D Chief executive may transfer protection order**

- (1) The chief executive may transfer a protection order (the **home order**) to a participating State if,—
- (a) in his or her opinion, a protection order to the same or a similar effect as the home order could be made under the child welfare law of that State; and
  - (b) the home order is not subject to an appeal to the High Court, or to any review proceedings; and
  - (c) the interstate officer of the participating State has consented in writing to the transfer and to the proposed



- terms of the protection order to be transferred (the **interstate order**); and
- (d) any consent required under section 207F has been given; and
  - (e) any consultation required under section 207G has been carried out; and
  - (f) the child or young person is not subject to—
    - (i) an order made under paragraph (c), or any of paragraphs (k) to (o), of section 283; or
    - (ii) a community-based sentence under the Sentencing Act 2002; or
    - (iii) a sentence of home detention imposed under section 80A of the Sentencing Act 2002; and
  - (g) neither the chief executive, nor any officer or employee of the department, knows of any charging document filed, or of any proceedings pending before a Youth Court or any other court, that could lead to the child or young person being made subject to an order or sentence referred to in paragraph (f).
- (2) In determining whether a protection order to the same or a similar effect as the home order could be made under the child welfare law of a participating State, the chief executive must not take into account the maximum period for which such an order can have effect in that State.
- (3) Before deciding whether to transfer a protection order, the chief executive may request a care and protection co-ordinator to convene a family group conference for the purpose of considering whether the order should be transferred, and sections 20 to 36 apply, with any necessary modification, to the convening of such a family group conference.

Section 207D: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

Section 207D(1)(f)(ii): amended, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 207D(1)(f)(ii): amended, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

Section 207D(1)(f)(iii): inserted, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 207D(1)(g): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

**207E Chief executive to have regard to certain matters**

In deciding whether to transfer a protection order, the chief executive must have regard to—

- (a) the principles referred to in sections 5, 6, and 13; and
- (b) the matters that section 130 requires a plan prepared under section 128 to specify, contain, or state; and
- (c) whether an interstate officer is in a better position to exercise powers and responsibilities under a protection order relating to the child or young person than the person exercising those powers and responsibilities under the protection order; and
- (d) the desirability of a protection order being an order under the child welfare law of the place where the child or young person resides.

Section 207E: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

**207F Consent required**

(1) This section applies if—

- (a) the home order is a support order made under section 91; or
- (b) the home order is a custody order made under section 101 placing the child or young person in the custody of any of the persons specified in paragraphs (a) to (d) of that section; or
- (c) the home order is a custody order made under section 101(e) and made subject to a condition that the chief executive or a social worker supervises the order; or
- (d) the home order is a sole guardianship order made under section 110.

(2) If this section applies, consent to the transfer of the order is required from—

- (a) each parent of the child or young person (other than a parent who resides, or intends to reside, in the relevant participating State); and

- (b) each guardian of the child or young person (other than the chief executive); and
- (c) each person who,—
  - (i) under this Act, has custody of, or is given access to, or has the care of, the child or young person; or
  - (ii) under the Care of Children Act 2004 or under an order under that Act, has the role of providing day-to-day care for, or may have contact with, that child or young person.
- (3) Despite this section, the consent of a person is not required if the chief executive is not able to locate the person after having made all reasonable efforts to locate the person.

Section 207F: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

Section 207F(2)(c): replaced, on 1 July 2005, by section 151 of the Care of Children Act 2004 (2004 No 90).

#### **207G Consultation required**

- (1) This section applies if the child or young person is subject to—
  - (a) a services order made under section 86 directing a person or organisation (other than the chief executive, or an officer or employee of the department) to provide services and assistance to the child or young person; or
  - (b) a support order made under section 91 directing a person or organisation (other than the chief executive, or an officer or employee of the department) to provide support to the child or young person.
- (2) If this section applies, the chief executive must consult the person or organisation on whether the order should be transferred.

Section 207G: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

#### **207H Conditions and duration of order to be transferred**

- (1) The chief executive may include in the proposed interstate order any conditions that may be included in a protection order of that type made in the participating State.

- (2) The chief executive must determine, and specify in the interstate order, the period for which the interstate order is to remain in force.
- (3) The period must be a period—
  - (a) that commences on the date of the registration of the interstate order in a participating State; and
  - (b) that is—
    - (i) the same as the period of the home order, if that is possible under the child welfare law of the participating State; or
    - (ii) in any other case, as similar a period as is possible under that law but in no case longer than the period of the home order.

Section 207H: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

#### **207I Notice of decision to transfer**

- (1) As soon as practicable but in any event no later than 3 working days after deciding to transfer a protection order, the chief executive must give a notice of the decision to—
  - (a) each parent of the child or young person concerned; and
  - (b) the child or young person concerned, unless he or she is incapable of understanding the notice because of his or her level of maturity.
- (2) A notice must also—
  - (a) state that the decision may be reviewed on certain grounds if, within 13 working days after the date of the decision, review proceedings are brought in the High Court and served on the chief executive; and
  - (b) inform the child, young person, or parent on whom it is served that he or she may bring review proceedings (or, as the case requires, have review proceedings brought on his or her behalf) and how, in general terms, the review proceedings may be brought.
- (3) Nothing in this section requires the chief executive to give a person a notice if the chief executive is not able to locate the person after having made all reasonable efforts to locate the person.

Section 207I: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

**207J Review of decision to transfer**

Any review proceedings in respect of a decision to transfer a protection order—

- (a) must be brought, and served on the chief executive, within 13 working days after the date of the decision, and the 13-working day period cannot be extended:
- (b) operate on and after filing as a stay of the decision until the review proceedings are withdrawn or finally determined.

Section 207J: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

*Transfer of protection orders from New Zealand  
by order of court*

Heading: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

**207K Court may order transfer of protection order**

- (1) A court may order that a protection order be transferred to a participating State if—
  - (a) the chief executive applies to the court for the order to be transferred; and
  - (b) the court has obtained and considered, in relation to the child or young person, a report from a social worker that covers the matters that section 130 requires a plan prepared under section 128 to specify, contain, or state; and
  - (c) the protection order is not subject to an appeal to the High Court, or to any review proceedings; and
  - (d) the interstate officer of the participating State has consented in writing to the transfer of the protection order and to the proposed terms of the order to be transferred; and
  - (e) the child or young person is not subject to—

- (i) an order made under paragraph (c), or any of paragraphs (k) to (o), of section 283; or
  - (ii) a community-based sentence under the Sentencing Act 2002; or
  - (iii) a sentence of home detention imposed under section 80A of the Sentencing Act 2002; and
  - (f) the chief executive certifies that neither the chief executive, nor any officer or employee of the department, knows of any charging document filed, or of any proceedings pending before a Youth Court or any other court, that could lead to the child or young person being made subject to an order or sentence referred to in paragraph (e).
- (2) Before deciding whether to order the transfer of a protection order, the court may direct a care and protection co-ordinator to convene a family group conference for the purpose of considering whether the transfer should be ordered, and sections 20 to 36 apply, with any necessary modification, to the convening of such a family group conference.
- (3) Sections 188, 189, and 191 to 194 apply to a report obtained from a social worker under subsection (1)(b) as if it were a report obtained from a social worker under section 186.

Section 207K: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

Section 207K(1)(e)(ii): amended, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 207K(1)(e)(ii): amended, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

Section 207K(1)(e)(iii): inserted, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 207K(1)(f): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

## **207L Service of application**

- (1) As soon as possible after the chief executive files in a court an application under section 207K, the Registrar of the court must serve copies of the application in accordance with section 154 as if the application were an application by the chief

executive under section 125 for the variation or discharge of the protection order to be transferred.

- (2) Section 155 (Court may dispense with service) applies, with any necessary modification, to the service of copies of the application.
- (3) A person served with proceedings under subsection (1) is entitled to appear and be heard as a party to the proceedings.

Section 207L: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

#### **207M Court to have regard to certain matters**

In considering an application under section 207K, the court must have regard to—

- (a) the principles referred to in sections 5, 6, and 13; and
- (b) whether an interstate officer is in a better position to exercise powers and responsibilities under a protection order relating to the child or young person than the person exercising those powers and responsibilities under the protection order; and
- (c) the desirability of a protection order being an order under the child welfare law of the place where the child or young person resides.

Section 207M: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

#### **207N Terms, conditions, and duration of order to be transferred**

- (1) If a court orders that a protection order (the **home order**) be transferred, the terms of the protection order to be transferred (the **interstate order**) must be terms that could be the terms of a protection order made under the child welfare law of the participating State and that the court considers to be—
  - (a) to the same or a similar effect as the terms of the home order; or
  - (b) otherwise appropriate for the child or young person.
- (2) The court may include in the interstate order any conditions that could be included in a protection order of that type made in the participating State.

- (3) In determining whether terms that could be the terms of a protection order made under the child welfare law of the participating State are to the same or similar effect as the terms of the home order, the court must not take into account the maximum period for which such an order can have effect in that State.
- (4) The court must determine, and specify in the interstate order, the period for which the interstate order is to remain in force.
- (5) The period must be a period—
  - (a) that commences on the date of the registration in the participating State of the interstate order; and
  - (b) that is possible for a protection order of the type of the proposed interstate order under the child welfare law of the participating State; and
  - (c) that the court considers appropriate.

Section 207N: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

#### **207O Appeal against order for transfer**

The following provisions apply to an appeal to the High Court under section 341 against an order that a protection order be transferred:

- (a) despite section 346(b), the appeal is on a question of law only;
- (b) despite section 342(1)(a), the appeal must be brought within 10 working days after the day on which the order was made, and the 10-working day period cannot be extended under section 342(1)(b) or otherwise;
- (c) despite section 344, the appeal operates on and after filing as a stay of the order appealed against until the appeal is withdrawn or finally determined;
- (d) the appeal must be heard and determined by the High Court as soon as possible.

Section 207O: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

#### **207P Review of order for transfer**

- (1) Any review proceedings in respect of an order that a protection order be transferred—



- (a) must be brought within 10 working days after the date of the order, and the 10-working day period cannot be extended;
  - (b) operate on and after filing as a stay of the order until the review proceedings are withdrawn or finally determined.
- (2) Subsection (3) applies if a person—
  - (a) brings review proceedings in respect of an order that a protection order be transferred; and
  - (b) has also appealed to the High Court under section 341 against that order, and the High Court has not yet started to hear the appeal.
- (3) If this subsection applies in accordance with subsection (2), the High Court must hear both matters together, unless it considers it impracticable in the particular circumstances of the case to do so.

Section 207P: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

*Transfer of protection proceedings from New  
Zealand by order of court*

Heading: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

**207Q Court may order transfer of protection proceedings**

- (1) A court may order that protection proceedings pending in the court be transferred to the Children’s Court in a participating State if—
  - (a) the chief executive applies to the court for an order that the proceedings be transferred; and
  - (b) the interstate officer of the participating State has consented in writing to the transfer of the proceedings; and
  - (c) the child or young person is not subject to—
    - (i) an order made under paragraph (c), or any of paragraphs (k) to (o), of section 283; or
    - (ii) a community-based sentence under the Sentencing Act 2002; or

- (iii) a sentence of home detention imposed under section 80A of the Sentencing Act 2002; and
  - (d) the chief executive certifies that neither the chief executive, nor any officer or employee of the department, knows of any charging document filed, or of any proceedings pending before a Youth Court or any other court, that could lead to the child or young person being made subject to an order or sentence referred to in paragraph (c).
- (2) Before deciding whether to order that protection proceedings be transferred, the court may direct a care and protection co-ordinator to convene a family group conference for the purpose of considering whether the transfer should be ordered, and sections 20 to 36 apply, with any necessary modification, to the convening of such a family group conference.

Section 207Q: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

Section 207Q(1)(c)(ii): amended, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 207Q(1)(c)(ii): amended, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

Section 207Q(1)(c)(iii): inserted, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 207Q(1)(d): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

## **207R Service of application**

- (1) As soon as possible after the chief executive files in a court an application under section 207Q, the Registrar of the court must serve a copy of the application on—
  - (a) each parent of the child or young person concerned or other person with whom the child or young person concerned is living; and
  - (b) the child or young person concerned, unless he or she is incapable of understanding the application because of his or her level of maturity.
- (2) Section 155 (Court may dispense with service) applies, with any necessary modification, to the service of a copy of the application.

- (3) A person served with proceedings under subsection (1) is entitled to appear and be heard as a party to the proceedings.

Section 207R: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

**207S Court to have regard to certain matters**

In considering an application under section 207Q, the court must have regard to—

- (a) whether any other proceedings relating to the child or young person are pending, or have previously been heard and determined, under the child welfare law in the participating State; and
- (b) the place or places where any of the matters giving rise to the proceedings in the court occurred; and
- (c) the place of residence, or likely place of residence, of the child or young person, his or her parents, and of any other people who are significant to the child or young person; and
- (d) the principles referred to in sections 5, 6, and 13; and
- (e) whether the chief executive or an interstate officer is in the better position to exercise powers and responsibilities under a protection order relating to the child or young person; and
- (f) the desirability of a protection order being an order under the child welfare law of the place where the child or young person resides.

Section 207S: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

**207T Interim order**

- (1) A court that orders that protection proceedings be transferred may also make an interim order in respect of the child or young person concerned.
- (2) An interim order—
  - (a) may release the child or young person into the care of any person, subject to any conditions that the court considers appropriate; and

- (b) may direct that supervision or support be provided to the child or young person by the interstate officer in the participating State or by any other person who could be so directed under the child welfare law of that State.
- (3) Part 2 applies, with any necessary modification, to an interim order, as if the interim order were an order made under section 78, except that an interim order—
  - (a) remains in force for the period (not exceeding 30 days) specified in the interim order:
  - (b) may be varied, or revoked, or extended, by the Children's Court in the participating State in accordance with the interstate law of that State.

Section 207T: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

#### **207U Appeal against order for transfer**

The following provisions apply to an appeal to the High Court under section 341 against an order that protection proceedings be transferred:

- (a) despite section 346(b), the appeal is on a question of law only:
- (b) despite section 342(1)(a), the appeal must be brought within 3 working days after the day on which the order was made, and the 3-working day period cannot be extended under section 342(1)(b) or otherwise:
- (c) despite section 344, the appeal operates on and after filing as a stay of the order appealed against (but not of any interim order made at the same time) until the appeal is withdrawn or finally determined:
- (d) the appeal must be heard and determined by the High Court as soon as possible.

Section 207U: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

#### **207V Review of order for transfer**

- (1) Any review proceedings in respect of an order that protection proceedings be transferred must be brought within 3 work-

ing days after the day on which the order was made, and the 3-working day period cannot be extended.

- (2) Subsection (3) applies if a person—
  - (a) brings review proceedings in respect of an order that protection proceedings be transferred; and
  - (b) has also appealed to the High Court under section 341 against that order, and the High Court has not yet started to hear the appeal.
- (3) If this subsection applies in accordance with subsection (2), the High Court must hear both matters together, unless it considers it impracticable in the particular circumstances of the case to do so.

Section 207V: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

#### **207W Transferred proceedings discontinued**

If a court orders that protection proceedings be transferred, the proceedings are discontinued in the court on the registration of the order in the Children's Court of the participating State in accordance with the interstate law of that State.

Section 207W: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

#### *Transfer of protection orders and protection proceedings to New Zealand*

Heading: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

#### **207X Registration of orders and proceedings to be transferred to New Zealand**

- (1) As soon as practicable after a decision or order is made under an interstate law for the transfer to New Zealand of a protection order, the chief executive must register the protection order in a court by filing the protection order in the office of the court.
- (2) As soon as practicable after an order is made under an interstate law for the transfer to New Zealand of protection proceedings, the chief executive must register the proceedings in a

court by filing the order, together with any interim order made at the same time, in the office of the court.

- (3) The chief executive must not register a protection order, an order that protection proceedings be transferred, or an interim order, under this section if,—
- (a) as the case requires,—
    - (i) the decision to transfer the protection order; or
    - (ii) the order that the protection order be transferred; or
    - (iii) the order that the protection proceedings be transferred,—
  - is subject to appeal, or review, or a stay; or
  - (b) the period the interstate law allows for an appeal to be brought, or a review to be sought, has not expired.

Section 207X: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

### **207Y Notice of registration**

As soon as practicable after an order is registered in a court under section 207X, the Registrar of the court must give notice of the registration to—

- (a) the appropriate officer of the Children’s Court in the sending State; and
- (b) the interstate officer of that State.

Section 207Y: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

### **207Z Effect of registration**

- (1) If a protection order is registered in a court under section 207X,—
  - (a) the order is to be treated for all purposes as a protection order of the relevant kind made by the court under Part 2 on the day on which it is registered; but
  - (b) the making of the order cannot be appealed against under section 341.
- (2) If an order made under an interstate law for the transfer to New Zealand of protection proceedings is registered in a court under section 207X, the proceedings must be treated as having

been commenced in the court on the day on which the order is registered.

- (3) If an interim order is registered in a court under section 207X,—
- (a) the order is to be treated for all purposes as if it were an order made by the court under section 78 on the day on which it is registered; but
  - (b) the making of the interim order cannot be appealed against under section 341.

Section 207Z: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

**207ZA Court to obtain plan for child or young person**

- (1) As soon as practicable after a protection order of a kind referred to in section 128(2) is registered in a court under section 207X, the court must obtain a plan in relation to the child or young person concerned, and sections 129 to 133 apply, with any necessary modification, to the obtaining of a plan required by this section, and to a plan required by this section.
- (2) A person preparing a plan required by this section must have regard to—
- (a) the terms of the protection order;
  - (b) any plan, or other document (by whatever name called) that corresponds to a plan, prepared in relation to the child or young person under the child welfare law of the sending State;
  - (c) the matters addressed in any report made to the Children's Court in the sending State in relation to the application for the transfer of the protection order.
- (3) On obtaining a plan required by this section, the court must fix a date in accordance with section 134 for the review of the plan, as if it were a plan required to be prepared under section 128, and sections 135 to 138 apply, with any necessary modification, to—
- (a) the review of the plan; and
  - (b) the resulting report and revised plan.

Section 207ZA: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

**207ZB Hearing and determination of transferred proceedings**

If an order made under an interstate law for the transfer to New Zealand of protection proceedings is registered in a court under section 207X, the court—

- (a) is not bound by any finding of fact made in the proceedings in the Children's Court in the sending State; and
- (b) may have regard to any transcript of, or evidence adduced in, the proceedings in the Children's Court in the sending State.

Section 207ZB: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

**207ZC Aboriginal or Torres Strait Islander children or young persons**

- (1) This section applies if—
  - (a) a protection order, or an order made under an interstate law for the transfer to New Zealand of protection proceedings, is registered in a court under section 207X; and
  - (b) a child or young person concerned is an Aboriginal or a Torres Strait Islander.
- (2) If this section applies in accordance with subsection (1), a court or person exercising a power conferred by or under this Act in relation to the child or young person must be guided by the principle referred to in section 5(b).

Section 207ZC: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

**207ZD Application to have registration revoked**

Any of the following persons may apply to a court to have the registration of an order under section 207X revoked:

- (a) the chief executive;
- (b) the child or young person concerned;
- (c) a parent of the child or young person concerned;
- (d) a party to the proceedings in the Children's Court in the sending State in which the decision to transfer the order or proceedings (as the case requires) was made.



Section 207ZD: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

**207ZE Service of application**

- (1) As soon as practicable after an application under section 207ZD is filed in a court, the Registrar of the court must serve a copy of the application on—
  - (a) the interstate officer of the sending State; and
  - (b) each person (other than the applicant) who could have made an application.
- (2) Section 155 (Court may dispense with service) applies, with any necessary modification, to the service of a copy of the application.
- (3) A person served with proceedings under subsection (1) is entitled to appear and be heard as a party to the proceedings.

Section 207ZE: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

**207ZF Revocation of registration**

- (1) On an application under section 207ZD, the court may revoke the registration of the order if, and only if, the court is satisfied that, at the time of registration,—
  - (a) as the case requires,—
    - (i) the interstate officer's decision to transfer the protection order; or
    - (ii) the order of the Children's Court that the protection order be transferred; or
    - (iii) the order of the Children's Court that the protection proceedings be transferred,—was subject to appeal, or review, or a stay; or
  - (b) the period the interstate law allows for an appeal to be brought, or review to be sought, had not expired.
- (2) The revocation of the registration of an order does not prevent the later re-registration of that order.

Section 207ZF: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

### 207ZG Notice of revocation

As soon as practicable after the registration of an order is revoked under section 207ZF, the Registrar of the court must give notice of the revocation to—

- (a) the appropriate officer of the Children's Court in the sending State; and
- (b) the interstate officer of that State.

Section 207ZG: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

### 207ZH Effect of revocation on plan and documents

If the court revokes the registration of an order under section 207ZF,—

- (a) the court may, on its own initiative or on an application for the purpose, make such orders as it thinks fit with respect to the preparation or review of any plan or revised plan relating to the child or young person concerned:
- (b) the Registrar of the court must send the documents filed when the order was registered to the appropriate officer of the Children's Court in the sending State.

Section 207ZH: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

### *Miscellaneous provisions*

Heading: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

### 207ZI Expiry and revival of order transferred from New Zealand

- (1) A protection order transferred from New Zealand (the **home order**) ceases to have effect under this Act on the date on which the interstate officer registers a protection order (the **interstate order**) under the interstate law in the participating State to which the home order is transferred.
- (2) If the registration of the interstate order is revoked under the interstate law in the participating State to which the home

order is transferred, then the home order is revived under this Act.

- (3) The home order is revived—
- (a) on the revocation; and
  - (b) until the time at which it would have ceased to have effect if it had not been transferred.

Section 207ZI: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

### **207ZJ Expiry and revival of ancillary orders**

- (1) This section applies if—
- (a) a child or young person is the subject of a protection order (the **home order**) that ceases to have effect in accordance with section 207ZI(1); and
  - (b) that child or young person is subject to any other order (the **ancillary order**) that is an order of a kind referred to in any of paragraphs (b) to (h) (except paragraph (e)) of section 83(1).
- (2) The ancillary order ceases to have effect under this Act at the same time as the home order ceases to have effect.
- (3) If the home order is revived in accordance with section 207ZI(2), the ancillary order is revived in the same way as the home order.

Section 207ZJ: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

### **207ZK Transfer of court file**

- (1) The Registrar of a court must send all documents filed in the court in connection with protection proceedings to the appropriate officer of the Children's Court in a participating State if—
- (a) a protection order made in the proceedings, or the proceedings themselves, are transferred to the participating State under this Part; and
  - (b) the transfer decision or order is not subject to an appeal or a review or a stay; and
  - (c) the period allowed under this Part for bringing an appeal, or bringing review proceedings, has expired.

- (2) The Registrar of the court must make a copy of all documents sent under this section, and keep the copies for the same period as the sent documents would have been kept.

Section 207ZK: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

#### **207ZL Disclosure of information to interstate officer**

- (1) This section applies to information that has come to the notice of the chief executive, or to an officer or employee of the department, in the performance of duties or exercise of powers under this Act.
- (2) Despite anything to the contrary in this Act, the chief executive may disclose to an interstate officer information to which this section applies if the chief executive considers the disclosure necessary or desirable to enable the interstate officer to perform duties or exercise powers under a child welfare law or an interstate law.

Section 207ZL: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

#### **207ZM Information disclosed to chief executive by interstate officer**

- (1) This section applies to information that an interstate officer has disclosed to the chief executive under a provision of a child welfare law or an interstate law that corresponds to section 207ZL.
- (2) Information to which this section applies is to be taken for the purposes of this Act to have been given directly to the chief executive in New Zealand instead of to the interstate officer.
- (3) This section is subject to section 207ZN.

Section 207ZM: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

#### **207ZN Department not to disclose information identifying notifier**

- (1) This section applies to information—
  - (a) to which section 207ZM applies; and

- (b) that, if disclosed, would be likely to identify, or lead to the identification of, a person (a **notifier**) who notified the interstate officer of the person's belief that a child or young person was in need of care or protection.
- (2) This section does not apply to information that is or may be evidence of any grounds that the notifier had for his or her belief.
- (3) The chief executive, or an officer or employee of the department, must not disclose information to which this section applies unless—
  - (a) the notifier has consented in writing to the disclosure; or
  - (b) the disclosure is to enable—
    - (i) the investigation, or consideration, of any need to take action under this Act in respect of the child or young person; or
    - (ii) the taking of any such action; or
  - (c) the disclosure is in accordance with subsection (4).
- (4) In proceedings in any court, or in any proceedings of a judicial nature, unless the notifier has consented in writing or the court or tribunal concerned has granted leave,—
  - (a) a witness must not be asked, and if asked is entitled to refuse to answer, a question the answer to which would be information to which this section applies; and
  - (b) information to which this section applies is not admissible as evidence.
- (5) A court or tribunal may grant leave under subsection (4) only if satisfied that the asking and answering of the question, or the admission as evidence of the information, is necessary—
  - (a) to ensure the safety and well-being of the child or young person; or
  - (b) in the interests of justice.

Section 207ZN: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

#### **207ZO Written consent of interstate officer**

A document that purports to be the written consent of an interstate officer (or of an interstate officer's authorised delegate)

for the purposes of section 207D(1)(c) or section 207K(1)(d) or section 207Q(1)(b) is sufficient evidence of that consent for the purposes of this Part, unless the contrary is proved.

Section 207ZO: inserted, on 1 November 1999, by section 3 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

## **Part 4**

### **Youth justice**

#### *Principles*

#### **208 Principles**

Subject to section 5, any court which, or person who, exercises any powers conferred by or under this Part or Part 5 or sections 351 to 360 shall be guided by the following principles:

- (a) the principle that, unless the public interest requires otherwise, criminal proceedings should not be instituted against a child or young person if there is an alternative means of dealing with the matter:
- (b) the principle that criminal proceedings should not be instituted against a child or young person solely in order to provide any assistance or services needed to advance the welfare of the child or young person, or his or her family, whanau, or family group:
- (c) the principle that any measures for dealing with offending by children or young persons should be designed—
  - (i) to strengthen the family, whanau, hapu, iwi, and family group of the child or young person concerned; and
  - (ii) to foster the ability of families, whanau, hapu, iwi, and family groups to develop their own means of dealing with offending by their children and young persons:
- (d) the principle that a child or young person who commits an offence should be kept in the community so far as that is practicable and consonant with the need to ensure the safety of the public:
- (e) the principle that a child's or young person's age is a mitigating factor in determining—

- (i) whether or not to impose sanctions in respect of offending by a child or young person; and
  - (ii) the nature of any such sanctions:
- (f) the principle that any sanctions imposed on a child or young person who commits an offence should—
  - (i) take the form most likely to maintain and promote the development of the child or young person within his or her family, whanau, hapu, and family group; and
  - (ii) take the least restrictive form that is appropriate in the circumstances:
- (fa) the principle that any measures for dealing with offending by a child or young person should so far as it is practicable to do so address the causes underlying the child's or young person's offending:
- (g) the principle that—
  - (i) in the determination of measures for dealing with offending by children or young persons, consideration should be given to the interests and views of any victims of the offending (for example, by encouraging the victims to participate in the processes under this Part for dealing with offending); and
  - (ii) any measures should have proper regard for the interests of any victims of the offending and the impact of the offending on them:
- (h) the principle that the vulnerability of children and young persons entitles a child or young person to special protection during any investigation relating to the commission or possible commission of an offence by that child or young person.

Section 208(fa): inserted, on 1 October 2010, by section 6(1) of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 208(g): replaced, on 1 October 2010, by section 6(2) of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

*Warnings and formal Police cautions***209 Consideration of warning as alternative to prosecution**

Where an enforcement officer is considering whether to institute criminal proceedings against a child or young person for an offence alleged or admitted to have been committed by that child or young person, that officer shall consider whether it would be sufficient to warn the child or young person, unless a warning is clearly inappropriate having regard to the seriousness of the offence and the nature and number of previous offences committed by the child or young person.

**210 Administration of warning**

Where, in respect of any offence alleged or admitted to have been committed by a child or young person, an enforcement officer decides that it would be sufficient to warn that child or young person, that officer may warn the child or young person, or arrange for any other person to warn the child or young person.

**211 Formal Police caution**

- (1) Where, in respect of any offence admitted or proved to have been committed by a child or young person, a family group conference recommends that a formal Police caution be given to the child or young person, a constable may caution the child or young person.
- (2) The following provisions shall apply in respect of a formal Police caution given to a child or young person:
  - (a) where practicable, the caution shall be given at a Police station;
  - (b) the caution shall be given by a constable who is of or above the level of position of sergeant, or if no such constable is available, by the most senior constable available;
  - (c) the caution shall be given in the presence of—
    - (i) a parent or guardian or other person having the care of the child or young person; or
    - (ii) an adult person nominated by the child or young person.



Section 211(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 211(2)(b): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 211(2)(b): amended, on 1 October 2008, by section 130(1) of the Policing Act 2008 (2008 No 72).

**212 Notice of warning or caution**

- (1) Every person who gives a warning pursuant to section 210, or a formal Police caution pursuant to section 211, to any child or young person shall, as soon as practicable after giving that warning or caution, give written notice specifying the offence in respect of which the warning or caution is given, and recording the fact that a warning or caution has been given in respect of that offence, to the child or young person and a parent or guardian or other person having the care of the child or young person.
- (2) Where practicable, every such notice shall be given in language that can be understood by the child or young person and the parent or guardian or other person having the care of the child or young person.

**213 Evidence of warnings and formal Police cautions and of offences to which they relate not admissible in criminal proceedings**

Where, in respect of any offence alleged or admitted or proved to have been committed by a child or young person, a warning or formal Police caution is given to that child or young person pursuant to section 210 or section 211,—

- (a) no information relating to that warning or that caution shall be disclosed, other than on behalf of the defence, in any criminal proceedings against that child or young person:
- (b) no evidence of that offence shall be admissible, on behalf of the prosecution, in any criminal proceedings against that child or young person for any other offence.

*Arrest of child or young person without warrant***214 Arrest of child or young person without warrant**

- (1) Subject to section 214A and sections 233 and 244, where, under any enactment, any enforcement officer has a power of arrest without warrant, that officer shall not arrest a child or young person pursuant to that power unless that officer is satisfied, on reasonable grounds,—
- (a) that it is necessary to arrest that child or young person without warrant for the purpose of—
    - (i) ensuring the appearance of the child or young person before the court; or
    - (ii) preventing that child or young person from committing further offences; or
    - (iii) preventing the loss or destruction of evidence relating to an offence committed by the child or young person or an offence that the enforcement officer has reasonable cause to suspect that child or young person of having committed, or preventing interference with any witness in respect of any such offence; and
  - (b) where the child or young person may be proceeded against by way of summons, that proceeding by way of summons would not achieve that purpose.
- (2) Nothing in subsection (1) prevents a constable from arresting a child or young person without warrant on a charge of any offence where—
- (a) the constable has reasonable cause to suspect that the child or young person has committed a category 4 offence or category 3 offence for which the maximum penalty available is or includes imprisonment for life or for at least 14 years; and
  - (b) the constable believes, on reasonable grounds, that the arrest of the child or young person is required in the public interest.
- (3) Every enforcement officer who arrests a child or young person without warrant shall, within 3 days of making the arrest, furnish a written report—
- (a) where that enforcement officer is a constable, to the Commissioner of Police:

- (b) where that enforcement officer is a traffic officer who is a Police employee who is not a constable, to the Commissioner of Police:
  - (c) where that enforcement officer is an officer or employee of the Public Service, to the chief executive of the department of which that person is an officer or employee:
  - (d) where that enforcement officer is an officer of a local authority, to the chief executive of that local authority.
- (4) Every report furnished pursuant to subsection (3) in respect of the arrest of any child or young person shall state the reason why the child or young person was arrested without warrant.
- Compare: Children's Services Ordinance 1986 s 31 (Australian Capital Territory)
- Section 214(1): amended, on 4 September 2013, by section 41(2) of the Bail Amendment Act 2013 (2013 No 66).
- Section 214(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).
- Section 214(2)(a): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).
- Section 214(2)(a): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).
- Section 214(2)(b): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).
- Section 214(3)(a): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).
- Section 214(3)(b): replaced, on 1 July 1992, by section 36 of the Transport Amendment Act (No 2) 1992 (1992 No 67).
- Section 214(3)(b): amended, on 1 October 2008, pursuant to section 116(d) of the Policing Act 2008 (2008 No 72).
- Section 214(3)(d): amended, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

#### **214A Arrest of child or young person in breach of bail condition**

A constable may arrest a child or young person without a warrant if—

- (a) the child or young person has been released on bail; and
- (b) the constable believes, on reasonable grounds, that—
  - (i) the child or young person has breached a condition of that bail; and

- (ii) the child or young person has on 2 or more previous occasions breached a condition of that bail (whether or not the same condition).

Section 214A: inserted, on 4 September 2013, by section 41(3) of the Bail Amendment Act 2013 (2013 No 66).

*Rights of children and young persons when  
questioned, charged with offence, or arrested*

**215 Child or young person to be informed of rights before  
questioned by enforcement officer**

- (1) Subject to sections 233 and 244, every enforcement officer shall, before questioning any child or young person whom there are reasonable grounds to suspect of having committed an offence, or before asking any child or young person any question intended to obtain an admission of an offence, explain to that child or young person—
  - (a) subject to subsection (2), if the circumstances are such that the enforcement officer would have power to arrest the child or young person without warrant, that the child or young person may be arrested if, by refusing to give his or her name and address to the enforcement officer, the child or young person cannot be served with a summons; and
  - (b) subject to subsection (2), that the child or young person is not obliged to accompany the enforcement officer to any place for the purpose of being questioned, and that if the child or young person consents to do so, that he or she may withdraw that consent at any time; and
  - (c) that the child or young person is under no obligation to make or give any statement; and
  - (d) that if the child or young person consents to make or give a statement, the child or young person may withdraw that consent at any time; and
  - (e) that any statement made or given may be used in evidence in any proceedings; and
  - (f) that the child or young person is entitled to consult with, and make or give any statement in the presence of, a barrister or solicitor and any person nominated by the child or young person in accordance with section 222.

- (2) Nothing in paragraph (a) or paragraph (b) of subsection (1) applies where the child or young person is under arrest.
- (3) Without limiting subsection (1), where, during the course of questioning a child or young person, an enforcement officer forms the view that there are reasonable grounds to suspect the child or young person of having committed an offence, the enforcement officer shall, before continuing the questioning, give the explanation required by that subsection.

Section 215(1): amended, on 8 January 1995, by section 30(1) of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 215(3): inserted, on 8 January 1995, by section 30(2) of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

**215A Rights to be explained to child or young person on request**

Subject to sections 233 and 244, where—

- (a) any enforcement officer is questioning any child or young person in relation to that child's or young person's involvement in the commission of any offence or suspected offence; and
  - (b) that child or young person makes any enquiry of that enforcement officer, being an enquiry that relates (in whole or in part), or that may reasonably be taken as relating (in whole or in part), to any of the matters set out in any of paragraphs (a) to (f) of section 215(1),—
- that enforcement officer shall explain to that child or young person such of those matters as, in the circumstances of the particular case, are appropriate to the enquiry that was made.

Section 215A: inserted, on 8 January 1995, by section 31(1) of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

**216 Enforcement officer to explain rights to child or young person who is to be charged with offence**

Subject to sections 233 and 244, where—

- (a) an enforcement officer is questioning a child or young person in relation to the commission or possible commission of an offence by that child or young person; and
  - (b) that enforcement officer makes up his or her mind to charge that child or young person with an offence,—
- the enforcement officer shall explain to that child or young person—

- (c) except where the child or young person is under arrest, the matters specified in paragraphs (a) and (b) of section 215(1); and
- (d) the matters specified in paragraphs (c) to (f) of section 215(1).

**217 Rights to be explained to child or young person who is arrested**

Subject to sections 233 and 244, every enforcement officer shall, on arresting any child or young person pursuant to section 214, explain to that child or young person the matters specified in paragraphs (c) to (f) of section 215(1).

**218 Explanations to be given in manner and language appropriate to age and level of understanding of child or young person**

Every explanation required to be given to a child or young person pursuant to section 215 or section 215A or section 216 or section 217 shall be given in a manner and in language that is appropriate to the age and level of understanding of the child or young person.

Section 218: amended, on 8 January 1995, by section 31(2) of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

**219 Explanations not required if child or young person already informed of rights**

Nothing in section 215 or section 215A or section 216 or section 217 requires any explanation to be given to a child or young person if the same explanation has been given to the child or young person not earlier than 1 hour before the later explanation would, apart from this section, be required to be given.

Section 219: amended, on 8 January 1995, by section 31(3) of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

**220 Other enactments requiring information or particulars not affected**

Nothing in section 215 or section 215A or section 216 or section 217 limits or affects any other enactment or rule of law

that imposes a requirement on any person to supply any information or particulars to an enforcement officer.

Section 220: amended, on 8 January 1995, by section 31(4) of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

*Provisions relating to admissibility of statements  
made by children and young persons*

**221 Admissibility of statements made by children and young persons**

- (1) This section applies to—
  - (a) every child or young person who is being questioned by an enforcement officer in relation to the commission or possible commission of an offence by that child or young person:
  - (b) every child or young person—
    - (i) who has been arrested pursuant to section 214; or
    - (ii) whom any enforcement officer has made up his or her mind to charge with the commission of an offence; or
    - (iii) who has been detained in the custody of an enforcement officer following arrest pursuant to section 214.
- (2) Subject to sections 223 to 225 and sections 233 and 244, no oral or written statement made or given to any enforcement officer by a child or young person to whom this section applies is admissible in evidence in any proceedings against that child or young person for an offence unless—
  - (a) before the statement was made or given, the enforcement officer has explained in a manner and in language that is appropriate to the age and level of understanding of the child or young person,—
    - (i) except where subsection (1)(b)(i) or (iii) applies, the matters specified in paragraphs (a) and (b) of section 215(1); and
    - (ii) the matters specified in paragraphs (c) to (f) of section 215(1); and
  - (b) where the child or young person wishes to consult with a barrister or solicitor and any person nominated by that child or young person in accordance with section 222,

- or either of those persons, before making or giving the statement, the child or young person consults with those persons or, as the case requires, that person; and
- (c) the child or young person makes or gives the statement in the presence of 1 or more of the following persons:
- (i) a barrister or solicitor:
  - (ii) any person nominated by the child or young person in accordance with section 222:
  - (iii) where the child or young person refuses or fails to nominate any person in accordance with section 222,—
    - (A) any person referred to in paragraph (a) or paragraph (b) of section 222(1); or
    - (B) any other adult (not being an enforcement officer).

**222 Persons who may be nominated for the purposes of section 221(2)(b) or (c)**

- (1) Subject to subsection (2), a child or young person may nominate one of the following persons for the purposes of section 221(2)(b) or (c):
- (a) a parent or guardian of the child or young person:
  - (b) an adult member of the family, whanau, or family group of the child or young person:
  - (c) any other adult selected by the child or young person:
  - (d) if the child or young person refuses or fails to nominate any person referred to in any of paragraphs (a) to (c), any adult (not being an enforcement officer) nominated for the purpose by an enforcement officer.
- (2) Where an enforcement officer believes, on reasonable grounds, that any person nominated by a child or young person pursuant to subsection (1)(a) or (b) or (c),—
- (a) if permitted to consult with the child or young person pursuant to section 221(2)(b), would attempt, or would be likely to attempt, to pervert the course of justice; or
  - (b) cannot with reasonable diligence be located, or will not be available within a period of time that is reasonable in the circumstances,—



that enforcement officer may refuse to allow the child or young person to consult with that person.

- (3) Where, pursuant to subsection (2), a child or young person is not permitted to consult with a person nominated by that child or young person pursuant to subsection (1), that child or young person shall, subject to subsection (2), be permitted to consult with any other person nominated by that child or young person pursuant to subsection (1).
- (4) It is the duty of any person nominated pursuant to subsection (1)—
  - (a) to take reasonable steps to ensure that the child or young person understands the matters explained to the child or young person under section 221(2)(a); and
  - (b) to support the child or young person—
    - (i) before and during any questioning; and
    - (ii) if the child or young person agrees to make or give any statement, during the making or giving of the statement.

Section 222(4): inserted, on 8 January 1995, by section 32 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

**223 Section 221 not to apply where statement made before requirements of that section can be met**

Nothing in section 221 applies to an oral statement made by a child or young person spontaneously and before an enforcement officer has had a reasonable opportunity to comply with the requirements of that section.

**224 Reasonable compliance sufficient**

No statement shall be inadmissible pursuant to section 221 on the grounds that any requirement imposed by that section has not been strictly complied with or has not been complied with at all, provided that there has been reasonable compliance with the requirements imposed by that section.

**225 Other enactments relating to admissibility of statements or confessions, or requiring information or particulars to be given, not affected**

Nothing in section 221 limits or affects—

- (a) any other enactment or rule of law (not being an enactment or rule of law inconsistent with the provisions of that section) relating to the admissibility of statements and confessions; or
- (b) any other enactment or rule of law that imposes a requirement on any person to supply any information or particulars to an enforcement officer.

**226 Evidence of communications during consultation not admissible**

Notwithstanding any other enactment or rule of law, no evidence of any communication (whether oral, written, or in any other form) that occurs between a child or young person and any person with whom that child or young person is consulting pursuant to section 221(2)(b) while that consultation is taking place shall be admissible on behalf of the prosecution in any proceedings against that child or young person for any offence.

*Entitlement to consult barrister or solicitor*

**227 Child or young person at enforcement agency office for questioning in relation to commission or possible commission of offence or arrested entitled to consult with barrister or solicitor**

- (1) Subject to sections 233 and 244, an enforcement officer shall, in relation to any child or young person who is at an enforcement agency office for questioning in relation to the commission or possible commission of an offence by that child or young person, as soon as practicable after the child or young person arrives at the enforcement agency office, inform that child or young person that the child or young person is entitled to consult with a barrister or solicitor.
- (2) Subject to sections 233 and 244, every enforcement officer who arrests a child or young person shall, on arresting the child or young person, inform the child or young person that the child or young person is entitled to consult with a barrister or solicitor at the enforcement agency office to which the child or young person is to be taken following arrest or, if the child

or young person is arrested at an enforcement agency office, at that office.

- (3) Subject to sections 233 and 244, every child or young person who is at an enforcement agency office for questioning in relation to the commission or possible commission of an offence by that child or young person, or who is taken to an enforcement agency office following arrest, or who is arrested at an enforcement agency office, as the case may be, is entitled to consult privately with a barrister or solicitor at that enforcement agency office.
- (4) Nothing in subsection (3) limits section 13G(3) of the Misuse of Drugs Amendment Act 1978.

**228 Entitlement of child or young person to consult with barrister or solicitor where taken to hospital following arrest or questioned at hospital**

- (1) Subject to sections 233 and 244, every child or young person—
  - (a) who is taken to a hospital for treatment following arrest; or
  - (b) who is arrested while at a hospital for treatment; or
  - (c) who, while at any hospital for treatment, is to be questioned by an enforcement officer in relation to the commission or possible commission of an offence by that child or young person—is entitled to consult privately with a barrister or solicitor at that hospital.
- (2) Nothing in subsection (1) limits section 13G(3) of the Misuse of Drugs Amendment Act 1978.

*Notification of parents and other persons where  
child or young person being questioned or is  
arrested*

**229 Parents or guardians or other persons to be informed where child or young person at enforcement agency office for questioning in relation to commission or possible commission of offence or is arrested**

- (1) Subject to sections 233 and 244, an enforcement officer shall, in relation to any child or young person who is at an enforce-

ment agency office for questioning in relation to the commission or possible commission of an offence by that child or young person, or who is at an enforcement agency office following arrest, as soon as practicable after the child or young person arrives at the enforcement agency office for questioning, or is taken to the enforcement agency office following arrest, or in the case of a child or young person who is arrested at an enforcement agency office, is arrested, as the case may be,—

- (a) inform a person nominated by the child or young person in accordance with section 231 that the child or young person is at the enforcement agency office for questioning or has been arrested and that the child or young person may be visited at the enforcement agency office; and
- (b) where—
  - (i) the person nominated by the child or young person for the purposes of paragraph (a) is not a parent or guardian or other person having the care of the child or young person; or
  - (ii) the child or young person refuses or fails to nominate any person in accordance with section 231,—

unless it is impracticable to do so, inform the parents or guardians or other persons having the care of the child or young person that the child or young person is at the enforcement agency office for questioning or has been arrested.

- (2) Subject to sections 233 and 244, every person who is informed pursuant to subsection (1)(a) that a child or young person has been taken to an enforcement agency office or arrested—
  - (a) is entitled to visit that child or young person at the enforcement agency office; and
  - (b) shall, as soon as practicable after that person arrives at the enforcement agency office to visit the child or young person, have explained to him or her by an enforcement officer, in language that can be understood by that person, the matters specified in paragraphs (c) to (f) of section 215(1); and

- (c) subject to subsection (3), is entitled to consult privately with that child or young person during that visit.
- (3) Nothing in subsection (2)(c) entitles any person to consult privately with a child or young person (being a child or young person who has been arrested)—
  - (a) in the absence of any enforcement officer who is for the time being guarding that child or young person; or
  - (b) otherwise than subject to such reasonable conditions as may be necessary to ensure the safety of the child or young person or to prevent the commission of any offence.

Compare: Children's Services Ordinance 1986 ss 29, 32 (Australian Capital Territory)

**230 Evidence of communications during visit not admissible**

Notwithstanding any other enactment or rule of law, no evidence of any communication (whether oral, written, or in any other form) that occurs between a child or young person who is at an enforcement agency office and any person who is visiting that child or young person pursuant to section 229(2) while that visit is taking place shall be admissible on behalf of the prosecution in any proceedings against that child or young person for any offence.

**231 Persons who may be nominated for the purposes of section 229(1)(a)**

- (1) Subject to subsection (2), a child or young person may nominate one of the following persons for the purposes of section 229(1)(a):
  - (a) a parent or guardian of the child or young person;
  - (b) an adult member of the family, whanau, or family group of the child or young person;
  - (c) any other adult selected by the child or young person;
  - (d) if the child or young person refuses or fails to nominate any person referred to in any of paragraphs (a) to (c), any adult (not being an enforcement officer) nominated for the purpose by an enforcement officer.
- (2) Where an enforcement officer believes, on reasonable grounds, that any person nominated by a child or young per-

son pursuant to subsection (1)(a) or (b) or (c), if permitted to visit the child or young person pursuant to section 229(2)(a), would attempt, or would be likely to attempt, to pervert the course of justice, that enforcement officer may refuse to allow that person to visit the child or young person.

- (3) Where, pursuant to subsection (2), a person nominated by a child or young person pursuant to subsection (1) is not permitted to visit that child or young person, any other person nominated by that child or young person pursuant to subsection (1) shall, subject to subsection (2), be permitted to visit that child or young person pursuant to section 229(2)(a).
- (4) It is the duty of any person nominated pursuant to subsection (1)—
  - (a) to take reasonable steps to ensure that the child or young person understands the matters explained to the child or young person under section 221(2)(a); and
  - (b) to support the child or young person—
    - (i) before and during any questioning; and
    - (ii) if the child or young person agrees to make or give any statement, during the making or giving of the statement.

Section 231(4): inserted, on 8 January 1995, by section 33 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

**232 Notice of offence with which child or young person charged to be given to parents or guardians or other persons having care of child or young person**

- (1) Where a child or young person who has been arrested is charged with the commission of an offence, an enforcement officer shall, as soon as practicable, give oral or written notice specifying the nature of the charge to—
  - (a) the child or young person; and
  - (b) a parent or guardian or other person having the care of the child or young person; and
  - (c) the person nominated by the child or young person pursuant to section 231.
- (2) Every such notice shall be given in language that can be understood by all the persons who are required, by subsection (1), to be given that notice.

*Breath-alcohol and blood-alcohol provisions of  
Land Transport Act 1998 not affected*

Heading: amended, on 10 May 2011, by section 100(3) of the Land Transport (Road Safety and Other Matters) Amendment Act 2011 (2011 No 13).

**233 Breath-alcohol and blood-alcohol provisions of Land Transport Act 1998 not affected**

Nothing in the provisions of sections 214 to 232 limits or affects the powers of an enforcement officer under any of the provisions of sections 68 to 72 of the Land Transport Act 1998.

Section 233: replaced, on 1 March 1999, by section 215(1) of the Land Transport Act 1998 (1998 No 110).

*Custody of child or young person following  
arrest or pending hearing*

**234 Custody of child or young person following arrest**

Subject to sections 235, 236, and 244, where a child or young person is arrested with or without warrant, a constable shall—

- (a) release the child or young person; or
- (b) where the child or young person may be released on bail under section 21 of the Bail Act 2000, release the child or young person on bail; or
- (c) deliver the child or young person into the custody of—
  - (i) any parent or guardian or other person having the care of the child or young person; or
  - (ii) with the agreement of the child or young person, any iwi social service or cultural social service; or
  - (iii) with the agreement of the child or young person, any other person or organisation approved by the chief executive or a constable for the purpose.

Compare: 1974 No 72 s 43(1); 1982 No 135 s 10; 1983 No 129 s 10(1)

Section 234: amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 234(b): replaced, on 1 January 2001, by section 74(2) of the Bail Act 2000 (2000 No 38).

Section 234(c)(ii): replaced, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 234(c)(iii): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 234(c)(iii): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**235 Child or young person who is arrested may be placed in custody of chief executive**

- (1) Notwithstanding section 234 but subject to section 244, a constable, in relation to any child or young person who has been arrested and if subsection (1A) applies,—
- (a) must place the child or young person in the custody of the chief executive in accordance with subsection (2); and
  - (b) must do so as soon as practicable and not later than 24 hours after the arrest.
- (1A) This subsection applies if—
- (a) the constable believes, on reasonable grounds, that—
    - (i) the child or young person is not likely to appear before the court; or
    - (ii) the child or young person may commit further offences; or
    - (iii) it is necessary to prevent—
      - (A) the loss or destruction of evidence relating to an offence committed by the child or young person or an offence that the constable has reasonable cause to suspect the child or young person of having committed; or
      - (B) interference with any witness in respect of any such offence; or
  - (b) the child or young person has been arrested under section 214A and is likely to continue to breach any condition of bail.
- (2) A child or young person shall be placed in the custody of the chief executive pursuant to this section by—
- (a) delivering the child or young person to a social worker; and
  - (b) presenting to the social worker, on the prescribed form, details relating to—
    - (i) the identity of the child or young person; and



- (ii) the circumstances of the arrest of the child or young person; and
  - (iii) the date and time of the intended appearance of the child or young person before the court having jurisdiction in the matter in relation to which the child or young person was arrested.
- (3) Placement of a child or young person in the custody of the chief executive under subsection (1) shall be sufficient authority for the detention of the child or young person by a social worker or in a residence under this Act, or under the care of any suitable person approved by a social worker.
- (4) No constable shall exercise the power conferred by subsection (1) merely because the constable believes that any child or young person is in need of care or protection (as defined in section 14).

Compare: 1974 No 72 s 43(2), (5); 1982 No 135 s 10; 1983 No 129 s 10(2), (3)

Section 235 heading: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 235(1): replaced, on 4 September 2013, by section 41(4) of the Bail Amendment Act 2013 (2013 No 66).

Section 235(1A): inserted, on 4 September 2013, by section 41(4) of the Bail Amendment Act 2013 (2013 No 66).

Section 235(2): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 235(3): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 235(4): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

## **236 Young person who is arrested may be detained in Police custody**

- (1) Notwithstanding the provisions of sections 234 and 235 but subject to section 244, where a senior social worker and a constable, being a senior sergeant or a constable who is of or above the level of position of inspector, are satisfied on reasonable grounds—
  - (a) that a young person who has been arrested is likely to abscond or be violent; and

- (b) that suitable facilities for the detention in safe custody of that young person are not available to the chief executive,—  
the young person may, on the joint certificate in the prescribed form of that senior social worker and that constable, be detained in Police custody for a period exceeding 24 hours and until appearance before the court.
- (2) Where a senior social worker and a constable issue a joint certificate under subsection (1), there shall, within 5 days after the day on which the certificate is issued, be furnished by the senior social worker to the chief executive and by the constable to the Commissioner of Police—
  - (a) a copy of the certificate; and
  - (b) a written report stating—
    - (i) the circumstances in which the certificate came to be issued; and
    - (ii) the duration of the period for which the young person has been detained, or is likely to be detained, in Police custody.

Compare: 1974 No 72 s 43(3), (4); 1982 No 135 s 10

Section 236(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 236(1): amended, on 1 October 2008, pursuant to section 116(b) of the Policing Act 2008 (2008 No 72).

Section 236(1)(b): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 236(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 236(2): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

## **237 Child or young person who is arrested to be brought before court as soon as possible**

Subject to section 244, a child or young person to whom section 235 or section 236 applies shall be brought before a Youth Court or, as the case requires, a Family Court, as soon as possible, to be dealt with according to law.

Compare: 1974 No 72 s 43(5); 1982 No 135 s 10; 1983 No 129 s 10(3)

**238 Custody of child or young person pending hearing**

- (1) Where a child or young person appears before a Youth Court, the court shall—
- (a) release the child or young person; or
  - (b) release the child or young person on bail; or
  - (c) order that the child or young person be delivered into the custody of the parents or guardians or other persons having the care of the child or young person or any person approved by a social worker for the purpose; or
  - (d) subject to section 239(1), order that the child or young person be detained in the custody of the chief executive, an iwi social service, or a cultural social service; or
  - (e) subject to section 239(2), order that the young person (but cannot under this paragraph order that the child) be detained in Police custody.

(1A) *[Expired]*

(1B) *[Expired]*

(1C) *[Expired]*

- (2) The court shall not refuse bail to a child or young person merely because the court considers that the child or young person is in need of care or protection (as defined in section 14).

Compare: 1974 No 72 s 43(6); 1982 No 135 s 10

Section 238(1)(d): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 238(1)(d): amended, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 238(1)(e): amended, on 1 October 2010, by section 7(1) of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 238(1A): expired, on 1 July 2004, by section 239A.

Section 238(1B): expired, on 1 July 2004, by section 239A.

Section 238(1C): expired, on 1 July 2004, by section 239A.

**239 Restrictions on power of court to order child or young person to be detained in custody**

- (1) The court shall not make an order under section 238(1)(d) for the detention of a child or young person in the custody of the chief executive or an iwi social service or a cultural social service unless it appears to the court that pending the determin-

ation of the charge, or if the order is being considered under section 296F(3), pending the determination of the breach application or variation or cancellation application,—

- (a) the child or young person is likely to abscond; or
- (b) the child or young person may commit further offences; or
- (c) it is necessary to prevent the loss or destruction of evidence relating to the offence with which the child or young person is charged or prevent interference with any witness in respect of any such offence.

- (2) The court shall not make an order under section 238(1)(e) for the detention of a young person in Police custody unless the court is satisfied—

- (a) that the young person is likely to abscond or be violent; and
- (b) that suitable facilities for the detention in safe custody of that young person are not available to the chief executive.

- (3) *[Expired]*

Compare: 1974 No 72 s 43(6); 1982 No 135 s 10

Section 239(1): amended, on 1 October 2010, by section 8 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 239(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 239(1): amended, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 239(2): amended, on 1 October 2010, by section 7(2) of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 239(2)(a): amended, on 1 October 2010, by section 7(2) of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 239(2)(b): amended, on 1 October 2010, by section 7(2) of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 239(2)(b): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 239(3): expired, on 1 July 2004, by section 239A.

**239A Expiry of sections 238(1A) to (1C), and 239(3)**

Sections 238(1A) to (1C) and 239(3) expire at the close of 30 June 2004.

Section 239A: inserted, on 30 June 2002, by section 163 of the Sentencing Act 2002 (2002 No 9).

**240 Conditions of bail**

- (1) Where a child or young person is released on bail pursuant to section 238(1)(b), the court may impose as a condition of that child's or young person's release that the child or young person shall not during a specified period be absent from home or engage in a particular activity without the consent of the parents or guardians or other persons having the care of the child or young person.

- (2) The power conferred by subsection (1) is in addition to the powers conferred on a court by section 30 of the Bail Act 2000.

Section 240(2): replaced, on 1 January 2001, by section 74(2) of the Bail Act 2000 (2000 No 38).

Section 240(2): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

**241 Review of orders made under section 238**

A Youth Court or the High Court may, from time to time, re-view any order made under section 238.

Compare: 1974 No 72 s 43(7); 1982 No 135 s 10

**242 Order under section 238 sufficient authority for detention of child or young person**

- (1) The making of an order under section 238(1)(d) for the detention of a child or young person in the custody of the chief executive shall be sufficient authority—
  - (a) for the detention of the child or young person in a residence under this Act; and
  - (b) for the detention of the child or young person in Police custody for a period of not more than 24 hours at any one time if a senior social worker and a constable, being a senior sergeant or a constable who is of or above the level of position of inspector, are satisfied on reasonable grounds—

- (i) that the child or young person is likely to abscond or be violent; and
  - (ii) that suitable facilities for the detention in safe custody of that child or young person are not available to the chief executive.
- (2) The making of an order under section 238(1)(e) for the detention of a young person in Police custody shall be sufficient authority for the detention of the young person in Police custody.

Compare: 1974 No 72 s 43(8); 1982 No 135 s 10

Section 242(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 242(1)(b): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 242(1)(b): amended, on 1 October 2008, pursuant to section 116(b) of the Policing Act 2008 (2008 No 72).

Section 242(1)(b)(ii): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 242(2): amended, on 1 October 2010, by section 7(3) of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

## **243 Other powers to grant bail not affected**

Nothing in section 238 limits the inherent jurisdiction of the High Court or the provisions of any Act under which a child or young person may be granted bail, except that any powers conferred by any such provisions on a District Court shall, where the person charged is a child or young person (other than one charged with murder or manslaughter), be exercised by a Youth Court.

Compare: 1974 No 72 s 43(11); 1982 No 135 s 10

### *Powers under Immigration Act 2009 not affected*

Heading: amended, at 2 am on 29 November 2010, pursuant to section 406(1) of the Immigration Act 2009 (2009 No 51).

**244 Immigration Act 2009 (other than sections 342 to 354)  
not affected**

Nothing in sections 214 to 243 limits or affects any provision of the Immigration Act 2009 other than sections 342 to 354 (offence provisions) of that Act.

Section 244: replaced, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

*Prosecution of children and young persons*

**245 Proceedings not to be instituted against young person  
unless youth justice co-ordinator consulted and family  
group conference held**

- (1) Where a young person is alleged to have committed an offence, and the offence is such that if the young person is charged he or she will be required pursuant to section 272 to be brought before a Youth Court then, unless the young person has been arrested, no charging document in respect of that offence may be filed unless—
  - (a) the person intending to commence the proceedings believes that the institution of criminal proceedings against the young person for that offence is required in the public interest; and
  - (b) consultation in relation to the matter has taken place between—
    - (i) the person intending to commence the proceedings or another person acting on that person's behalf; and
    - (ii) a youth justice co-ordinator; and
  - (c) the matter has been considered by a family group conference convened under this Part.
- (2) Notwithstanding anything in subparagraph (i) of paragraph (b) of subsection (1), where the person intending to commence the proceedings is not an enforcement officer, the consultation required by that paragraph shall be consultation between a youth justice co-ordinator and an enforcement officer authorised in that behalf by the person intending to commence the proceedings.

Compare: 1974 No 72 s 26; 1977 No 126 s 6(1)

Section 245(1): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 245(1)(a): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 245(1)(b)(i): replaced, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 245(2): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

#### **246 Procedure where young person arrested and brought before court**

Where a young person is arrested for an offence (other than murder or manslaughter or a traffic offence not punishable by imprisonment) and is brought before a Youth Court to answer the charge, the following provisions shall apply:

- (a) if, after consulting with the barrister or solicitor representing the young person or with a youth advocate, the young person denies the charge, then the charge shall be dealt with in accordance with sections 273 to 276:
- (b) in any other case the court shall not enter a plea to the charge but shall—
  - (i) direct a youth justice co-ordinator to convene a family group conference in relation to the matter; and
  - (ii) adjourn the proceedings until that family group conference had been held.

#### **247 Youth justice co-ordinator to convene family group conference**

Where—

- (a) pursuant to section 18(3), a youth justice co-ordinator is required to convene a family group conference; or
- (b) after any consultations under section 245(1)(b) in relation to any offence alleged to have been committed by a young person, a youth justice co-ordinator is notified by an enforcement officer that the person intending to commence the proceedings desires that the young person be charged with that offence; or
- (c) pursuant to section 246(a), a young person denies a charge and the court makes an order under section



- 238(1)(d) or (e) for the detention of the young person pending the determination of the charge; or
- (d) pursuant to section 246(b)(i), a youth justice co-ordinator is directed by a court to convene a family group conference; or
  - (e) a charge against a young person is proved before a Youth Court, and a family group conference has not had an opportunity to consider ways in which the court might deal with the young person for the offence that forms the basis of that charge,—
- a youth justice co-ordinator shall, subject to sections 248 to 250, fix the date on which and the time and place at which a family group conference is to be held.

Section 247(b): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

**248 Family group conference not required in certain cases**

- (1) Nothing in section 245(1)(c) or section 246(b) or section 247(b) or (d) or (e) or section 281 requires a family group conference to be held in respect of any offence alleged or proved to have been committed by a young person if—
  - (a) the offence is alleged or proved to have been committed on a date that is earlier than the date on which—
    - (i) the young person was convicted and sentenced in the High Court or a District Court; or
    - (ii) a Youth Court made an order under section 283 in respect of that young person—for any other offence (not being an offence the maximum penalty for which is less than the maximum penalty that may be imposed in respect of the first-mentioned offence); or
  - (b) the young person is subject to a sentence of imprisonment or a community-based sentence (as those terms are defined in section 4(1) of the Sentencing Act 2002), or to a sentence of home detention imposed under section 80A of the Sentencing Act 2002, or to any order made under any of paragraphs (k) to (o) of section 283,—and, subject to subsection (5), in either case, a youth justice co-ordinator is of the view that the holding of a family group

conference would serve no useful purpose, and the family or whanau or family group of the young person agree with that view.

(2) Where—

- (a) a family group conference has been convened pursuant to section 247 in relation to any offence alleged or proved to have been committed by a child or young person; and
- (b) before the family group conference has made any decision, recommendation, or plan pursuant to section 260 in relation to that offence, that child or young person is alleged or proven to have committed any other offence (being an offence in respect of which a family group conference would be required to be held pursuant to section 247),—

the family group conference may make in respect of the latter offence any decision, recommendation, or plan that it is empowered to make under section 260, and it shall not be necessary to convene a separate family group conference in relation to that latter offence.

(3) Nothing in section 245(1)(c) or section 246(b) or section 247(b) or (d) or (e) or section 281 requires a family group conference to be held in respect of any offence alleged or proved to have been committed by a young person if—

- (a) the requirement to convene a conference under any of those sections arose within 6 weeks of the completion of a previous family group conference—
  - (i) that was convened under this Part in respect of any other offence; and
  - (ii) that had the opportunity to consider how that offence should be dealt with; and
- (b) subject to subsections (4) and (5), a youth justice co-ordinator—
  - (i) is of the view that the holding of a family group conference would serve no useful purpose; and
  - (ii) is satisfied that—
    - (A) the family, whanau, or family group of the young person; and

- (B) each of the persons who would be entitled to attend a family group conference under any of paragraphs (d) to (n) of section 251—  
agree with that view.
- (4) Before forming a view as to whether or not a family group conference would serve a useful purpose under subsection (3), the youth justice co-ordinator shall—
  - (a) consult with—
    - (i) the family, whanau, or family group of the young person concerned; and
    - (ii) the persons who would be entitled to attend the family group conference pursuant to any of paragraphs (d) to (n) of section 251; and
  - (b) have regard to—
    - (i) the response of the young person to any decisions, recommendations, or plans made or formulated by the previous family group conference; and
    - (ii) the seriousness and extent of the offending alleged or proved to have been committed by the young person and that gives rise to the requirement to hold a family group conference.
- (5) Before forming a view as to whether or not a family group conference would serve a useful purpose under subsection (1) or subsection (3), the youth justice co-ordinator shall consider whether a family group conference is necessary for the purpose of considering whether the young person should be required to make reparation for any offence.

Section 248: replaced, on 8 January 1995, by section 34 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 248(1)(b): amended, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 248(1)(b): amended, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

## **249 Time limits for convening of family group conferences**

- (1) Every family group conference to which section 247(a) applies shall be convened not later than 21 days after the date on which

the youth justice co-ordinator received the report in relation to which the family group conference is required to be held.

- (2) Every family group conference to which paragraph (b) of section 247 applies shall be convened not later than 21 days after the date on which the notification referred to in that paragraph is received by the youth justice co-ordinator.
- (3) Every family group conference to which section 247(c) applies shall be convened not later than 7 days after the date on which the court made the order under section 238(1)(d) or (e) for the detention of the young person pending the determination of the charge.
- (4) Every family group conference to which section 247(d) applies shall be convened,—
  - (a) where the young person in respect of whom that conference is to be held is detained in custody pursuant to an order under section 238(1)(d) or (e), not later than 7 days after the date of the making of that order; or
  - (b) in any other case, not later than 14 days after the date on which the direction requiring that conference to be held was given.
- (5) Every family group conference to which section 247(e) applies shall be convened not later than 14 days after the date on which the court finds that the charge against the young person is proved.
- (6) Unless there are special reasons why a longer period is required,—
  - (a) every family group conference to which subsection (3) or subsection (4) applies shall be completed within 7 days after it is convened;
  - (b) every other family group conference shall be completed within 1 month after it is convened.

Section 249(6): replaced, on 8 January 1995, by section 35 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

## **250 Consultation on convening of family group conference**

- (1) Every youth justice co-ordinator shall, before convening a family group conference pursuant to this Part in respect of a child or young person, make all reasonable endeavours to

consult with the child's or young person's family, whanau, or family group in relation to—

- (a) the date on which, and the time and place at which, the conference is to be held; and
- (b) the persons who should attend the conference; and
- (c) the procedure to be adopted at the conference,—

and, subject to subsection (2) and to sections 249 and 251, shall, so far as it is practicable and consistent with the principles of this Act, give effect to the wishes of the child's or young person's family, whanau, or family group in relation to those matters.

- (2) The youth justice co-ordinator shall also make all reasonable endeavours to consult with—

- (a) any victim of the offence or alleged offence to which the conference relates; and

- (b) either,—

- (i) in the case of a conference required to be convened under section 18(3), the applicant or intended applicant for a declaration under section 67 in relation to the child to whom the conference relates; or

- (ii) in the case of any other proceedings or proposed proceedings for the offence or alleged offence to which the conference relates, the prosecutor of, or the person intending to commence those proceedings—

in relation to the date on which, and the time and place at which, the conference is to be held, and, in convening the conference, shall take into account, in relation to those matters, the views of the person or persons consulted.

Section 250: replaced, on 8 January 1995, by section 36 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 250(2)(b)(ii): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

## **251 Persons entitled to attend family group conference**

- (1) Subject to subsection (2), the following persons are entitled to attend a family group conference convened under this Part:

- (a) the child or young person in respect of whom the conference is held:
- (b) every person who is—
  - (i) a parent or guardian of, or a person having the care of, that child or young person; or
  - (ii) a member of the family, whanau, or family group of that child or young person:
- (c) the youth justice co-ordinator who is convening the conference, or any youth justice co-ordinator who is acting for that person:
- (d) the prosecutor or the person intending to commence the proceedings for the offence or alleged offence to which the conference relates, or a representative of that person:
- (e) if the prosecutor or the person intending to commence those proceedings is not an enforcement officer acting in that capacity, a representative of the appropriate enforcement agency:
- (f) any victim of the offence or alleged offence to which the conference relates, or a representative of that victim:
- (g) any barrister or solicitor or youth advocate or lay advocate representing the child or young person:
- (h) a social worker, in any case where—
  - (i) the chief executive is a guardian of the child or young person; or
  - (ii) the chief executive has the role of providing day-to-day care for the child or young person under the Care of Children Act 2004, or is entitled to custody of the child or young person under an order or agreement made under Part 2 of this Act; or
  - (iii) the chief executive is required, pursuant to an order made under section 91, to provide support to the child or young person; or
  - (iv) the young person is under the supervision of the chief executive pursuant to an order made under section 283(k) or section 307 or section 311:
- (i) a representative of an iwi social service, of a cultural social service, or of the director of a child and family support service, if that service or that director—

- (i) is a guardian of the child or young person; or
  - (ii) has the role of providing day-to-day care for the child or young person under the Care of Children Act 2004, or is entitled to custody of the child or young person under an order or agreement made under Part 2 of this Act:
- (j) if the young person is subject to a community-based sentence (as that term is defined in section 4(1) of the Sentencing Act 2002) or a sentence of home detention imposed under section 80A of the Sentencing Act 2002,—
  - (i) a probation officer:
  - (ii) in the case of a young person who is subject to a sentence of community work (within the meaning of that Act), a representative of the agency on whose behalf the young person is required to perform any work for the purposes of the sentence:
  - (iii) in the case of a young person who is subject to a sentence of supervision, intensive supervision, or a sentence of home detention (within the meaning of that Act), any person or agency, or a representative of any person or agency, that provides any course or conducts any programme that the young person is required to undertake as a condition of the sentence or to undergo under the sentence:
- (k) if the child or young person is under the guardianship of the court under the Care of Children Act 2004, any person appointed as agent for the court under that Act, or any representative of that person:
- (l) where the child or young person is subject to an order made under section 91, a representative of the person or organisation required, pursuant to that order to provide support to that child or young person:
- (m) where the young person is under the supervision of any person (not being the chief executive), or any organisation, pursuant to an order made under section 283(k) or section 307, that person or a representative of that organisation:

- (n) where a community work order made under section 283(l) is in force with respect to the young person, the social worker or person or a representative of the organisation supervising the order:
  - (o) any other person whose attendance at that conference is in accordance with the wishes of the family, whanau, or family group of the child or young person as expressed under section 250.
- (2) Where, pursuant to subsection (1)(f), any victim of an offence or alleged offence attends a family group conference in person and not by a representative, that person may be accompanied by any reasonable number of persons (being members of his or her family, whanau, or family group or any other persons) who attend the conference for the purpose of providing support to that victim.
- (3) A person who attends a family group conference pursuant to subsection (2) shall not be a member of the conference.
- (4) No person who attends a family group conference pursuant to any of paragraphs (c) to (n) (other than paragraph (k)) of subsection (1) or pursuant to subsection (2) is entitled to be present during any discussions or deliberations held among the members of the family, whanau, or family group of the child or young person in respect of whom the conference is held, unless those members request that person to attend.

Section 251(1)(d): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 251(1)(e): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 251(1)(h)(i): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 251(1)(h)(ii): replaced, on 1 July 2005, by section 151 of the Care of Children Act 2004 (2004 No 90).

Section 251(1)(h)(iii): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 251(1)(h)(iv): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 251(1)(i): replaced, on 1 July 2005, by section 151 of the Care of Children Act 2004 (2004 No 90).

Section 251(1)(j): replaced, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).



Section 251(1)(k): replaced, on 3 June 1998, by section 8 of the Guardianship Amendment Act 1998 (1998 No 48).

Section 251(1)(k): amended, on 1 July 2005, by section 151 of the Care of Children Act 2004 (2004 No 90).

Section 251(1)(m): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 251(2): replaced, on 8 January 1995, by section 37 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 251(3): inserted, on 8 January 1995, by section 37 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 251(4): inserted, on 8 January 1995, by section 37 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

**252 Child or young person in custody to be permitted to attend family group conference**

- (1) Any child or young person who is entitled to attend a family group conference pursuant to section 251(1)(a) and who is detained in the custody of the chief executive or the Police or in any prison shall be permitted to attend that conference, unless it is impracticable for the child or young person so to attend.
- (2) Nothing in subsection (1) entitles any child or young person to whom this section applies to attend a family group conference otherwise than subject to such reasonable conditions as may be necessary to prevent the child or young person from absconding while the child or young person is attending that conference.
- (3) Where a child or young person to whom this section applies is entitled to attend a family group conference and wishes to do so, the person having the custody of the child or young person shall, without further authority than this section, cause that child or young person to be taken to the place where that conference is to be held for the purpose of attending the conference.

Section 252(1): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 252(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**253 Notification of convening of family group conference**

- (1) Subject to subsection (2), every youth justice co-ordinator who convenes a family group conference shall take all reasonable

steps to ensure that notice of the date on which, and the time and place at which, the conference is to be held is given to every person who is entitled to attend that conference.

- (2) No notice is required to be given pursuant to subsection (1) to any person whose whereabouts cannot, after reasonable enquiries, be ascertained.
- (3) Every notice required by subsection (1) shall be given a reasonable time before the conference is to be held.
- (4) Failure to notify any person in accordance with this section shall not affect the validity of the proceedings of a family group conference unless it is shown that the failure is likely to have materially affected the outcome of that conference.

**254 Youth justice co-ordinator to ascertain views of persons unable to attend family group conference**

- (1) Every youth justice co-ordinator who convenes a family group conference shall take all reasonable steps to ascertain the views of any person who is entitled to attend the conference but who has notified the youth justice co-ordinator that he or she or it is unable, for any reason, to do so.
- (2) Where, in respect of any family group conference, a youth justice co-ordinator ascertains the views of any person pursuant to subsection (1), that co-ordinator shall ensure that those views are made known at that conference.

**255 Youth justice co-ordinator must ensure that relevant information and advice made available to family group conference**

- (1) Every youth justice co-ordinator who convenes a family group conference must take all reasonable steps to ensure that all information and advice the co-ordinator considers is required by the conference to carry out its functions (including information and advice relating to the health and education needs of every child or young person in respect of whom the conference is convened) is made available to the conference.
- (2) If it is appropriate for any person to attend a family group conference for the purpose of conveying to that conference any information or advice required by that conference to carry out

its functions, that person may attend that conference for that purpose, but may otherwise attend the conference only with the agreement of the conference.

- (3) Subsection (2) is subject to section 251.

Section 255: replaced, on 1 October 2010, by section 9 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

**256 Procedure at family group conference**

- (1) Subject to this Part, a family group conference may regulate its procedure in such manner as it thinks fit.
- (2) Subject to sections 5(f) and 249(6), a family group conference may from time to time be adjourned to a time and place determined by the conference.

**257 Department to provide administrative services to family group conferences**

The department shall provide such administrative services as may be necessary to enable a family group conference to discharge its functions.

**258 Functions of family group conference**

A family group conference convened under section 247 shall have such of the following functions as are appropriate in the circumstances of the particular case:

- (a) where the conference is convened under paragraph (a) of that section,—
- (i) to consider, in relation to the child in respect of whom the conference was convened, such matters relating to the care or protection of that child as the conference thinks fit; and
- (ii) where the conference considers that the child is in need of care or protection, to make such decisions or recommendations, and to formulate such plans, in relation to that child as the conference considers necessary or desirable, having regard to the principles set out in sections 5, 6, and 13:
- (b) where the conference is convened in relation to an alleged offence in respect of which proceedings have not

been commenced under this Part, to consider whether the young person should be prosecuted for that offence or whether the matter can be dealt with in some other way, and to recommend to the relevant enforcement agency accordingly:

- (ba) if the conference is convened under section 247(b) or (d) in relation to an offence alleged to have been committed by a child, to consider,—
  - (i) if the conference is convened under section 247(b), whether the public interest requires that criminal proceedings should be instituted against the child in accordance with section 272(1)(b) or (c) or, if the conference is convened under section 247(d), whether the public interest requires that criminal proceedings instituted against the child should be continued in accordance with Part 4; and
  - (ii) whether the child is in need of care or protection on the ground specified in section 14(1)(e) and, if so, whether the public interest requires that instead of criminal proceedings being instituted or continued that the matter should be dealt with under Part 2, whether by way of an application for a declaration under section 67 on that ground made in respect of that child, or in some other way:
- (c) where the young person in respect of whom the conference is convened is detained in the custody of the chief executive or the Police pending the determination of a charge, to make a recommendation to the court in relation to the custody of the young person pending that determination:
- (d) where the conference is convened in relation to an offence in respect of which proceedings have been commenced under this Part, to consider whether the offence alleged to have been committed by that young person should be dealt with by the court or whether the matter can be dealt with in some other way, and to recommend to the court accordingly:

- (e) where the charge against the young person is admitted or proved, to consider how the young person should be dealt with for that offence, and to recommend to the court accordingly.

Section 258(ba): inserted, on 1 October 2010, by section 10 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 258(c): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**259 Family group conference to ascertain whether child or young person admits offence**

- (1) Every family group conference convened under this Part (other than a family group conference convened under paragraph (c) or paragraph (e) of section 247) shall seek to ascertain whether the child or young person in respect of whom the conference is held admits any offence alleged to have been committed by that child or young person.
- (2) Where the child or young person does not admit the offence, or the family group conference is unable to ascertain whether the child or young person admits the offence, the conference shall not make or formulate any decision, recommendation, or plan if that decision, recommendation, or plan cannot be made or formulated without assuming that the child or young person committed the offence.

**259A Family group conference must consider attendance at parenting education, mentoring, and alcohol or drug rehabilitation programmes**

Every family group conference convened under this Part must, in complying with section 208(fa), consider—

- (a) whether the young person should be required to attend all or any of the following:
  - (i) a parenting education programme;
  - (ii) a mentoring programme;
  - (iii) an alcohol or drug rehabilitation programme; and
- (b) whether a parent or guardian or other person having the care of the young person should be required to attend a parenting education programme.

Section 259A: inserted, on 1 October 2010, by section 11 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

**260 Family group conference may make decisions and recommendations and formulate plans**

- (1) Subject to section 259(2), a family group conference convened under this Part may make such decisions and recommendations and formulate such plans as it considers necessary or desirable in relation to the child or young person in respect of whom the conference was convened.
- (2) Except as provided in section 258(a)(ii), in making such decisions and recommendations and formulating such plans, the conference shall have regard to the principles set out in section 208.
- (3) Without limiting the generality of subsection (1), a family group conference may—
  - (a) recommend that any proceedings commenced against the child or young person for any offence should proceed or be discontinued:
  - (b) recommend that a formal Police caution should be given to the child or young person:
  - (c) recommend that an application for a declaration under section 67 should be made in respect of the child:
  - (d) recommend appropriate penalties that might be imposed on the young person:
  - (e) recommend that the child or young person make reparation to any victim of the offence.

**261 Family group conference may make decisions, recommendations, and plans relating to care or protection of child or young person**

- (1) Where any family group conference convened under this Part considers that the child or young person in respect of whom that conference is held is in need of care or protection (within the meaning of section 14), that conference may, if it has received information and advice on care or protection matters under section 255(1), make or formulate such decisions, recommendations, and plans as it considers necessary or desirable

in relation to the care or protection of the child or young person.

- (2) Every such decision, recommendation, or plan shall be deemed to have been made or formulated pursuant to section 29, and the provisions of sections 30 to 38 shall apply, so far as applicable and with all necessary modifications, with respect to the decision, recommendation, or plan.
- (3) Every family group conference to which this section applies shall be deemed, for the purposes of Parts 2 and 3, to be a family group conference convened pursuant to Part 2.

Section 261(1): amended, on 1 October 2010, by section 12 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

**262 Youth justice co-ordinator to make record of decisions, recommendations, and plans of family group conference**

Every youth justice co-ordinator who convenes a family group conference shall cause to be made a written record of the details of the decisions and recommendations made, and the plans formulated, by that conference pursuant to section 260 or section 261.

**263 Youth justice co-ordinator to seek agreement to decisions, recommendations, and plans of family group conference**

- (1) Where a family group conference makes any decision or recommendation, or formulates any plan, pursuant to section 260 or subsection (4), the youth justice co-ordinator who convened that conference shall—
  - (a) where the conference was convened under section 247(a) on the basis of a report from an enforcement officer,—
    - (i) communicate that decision, recommendation, or plan to that enforcement officer (or any person acting for that enforcement officer), and to every person who will be directly involved in the implementation of the decision, recommendation, or plan; and
    - (ii) seek the agreement of that enforcement officer (or any person acting for that enforcement of-

- ficer), and of every other person to whom that decision, recommendation, or plan is communicated pursuant to subparagraph (i), to that decision, recommendation, or plan:
- (b) where the conference was convened under section 247(b) or (d) or (e),—
    - (i) communicate that decision, recommendation, or plan to the prosecutor or the person intending to commence the proceedings for the offence or alleged offence to which the conference relates (or to any person acting for that person), and to every person who will be directly involved in the implementation of the decision, recommendation, or plan; and
    - (ii) seek the agreement of that person, and of every other person to whom that decision, recommendation, or plan is communicated pursuant to subparagraph (i), to that decision, recommendation, or plan:
  - (c) where the conference was convened under section 247(c), communicate that decision, recommendation, or plan to the court.
- (2) Where, pursuant to paragraph (a)(i) or paragraph (b)(i) of subsection (1), a youth justice co-ordinator meets with any person for the purpose of communicating to that person any decision, recommendation, or plan made or formulated by a family group conference, the youth justice co-ordinator may be accompanied by a person nominated by that family group conference.
  - (3) Where a youth justice co-ordinator is unable to secure agreement, under subsection (1), to a decision, recommendation, or plan made or formulated by a family group conference, the youth justice co-ordinator may reconvene that conference for the purpose of enabling that conference to reconsider that decision, recommendation, or plan.
  - (4) Any family group conference reconvened under subsection (3) may confirm, rescind, or modify its previous decision, recommendation, or plan, or rescind its previous decision, recom-



mendation, or plan and make or formulate a new decision, recommendation, or plan.

- (5) Any decision, recommendation, or plan confirmed or modified under subsection (4), and any new decision, recommendation, or plan made or formulated under that subsection, shall be deemed to have been made or formulated pursuant to section 260.

Section 263(1)(b)(i): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

**264 Procedure where no agreement possible**

- (1) Where—

- (a) the members of a family group conference are unable to agree on what decisions, recommendations, or plans should be made in relation to the child or young person in respect of whom the conference was convened; or  
(b) a youth justice co-ordinator is unable to secure agreement under section 263 to the decisions, recommendations, and plans made or formulated by a family group conference,—

the youth justice co-ordinator who convened the conference shall—

- (c) adjourn the proceedings of the family group conference; and  
(d) where the conference was convened under section 247(a) or (b), report the matter to the appropriate enforcement agency; and  
(e) where the conference was convened under section 247(d) or (e), report the matter to the court.
- (2) Where a youth justice co-ordinator makes a report under subsection (1)(d) to an enforcement agency, any enforcement officer may take such action under this Act as that officer considers appropriate.

**265 Records of decisions, recommendations, and plans of family group conference to be made available to interested persons**

- (1) Every youth justice co-ordinator who convenes a family group conference shall ensure that a copy of every record made pur-

suant to section 262 in relation to that conference is given or sent to—

- (a) the child or young person in respect of whom the conference was convened; and
  - (b) every person who is a parent or guardian of that child or young person or has the care of that child or young person; and
  - (c) any barrister or solicitor, youth advocate, or lay advocate representing the child or young person; and
  - (d) the prosecutor or the person intending to commence the proceedings for the offence or alleged offence in respect of which the conference was held; and
  - (e) if the prosecutor or the person intending to commence those proceedings is not an enforcement officer acting in that capacity, the appropriate enforcement agency; and
  - (f) any victim of the offence or alleged offence in respect of which the conference was held; and
  - (g) any other person who is or will be directly affected by any decision, recommendation, or plan detailed in that record; and
  - (h) where there is an appropriate iwi social service or cultural social service with respect to the child or young person, that social service.
- (2) Where the child or young person is the subject of proceedings under this Part or Part 2, a copy of the record made pursuant to section 262 shall be made available to the court that is hearing those proceedings.

Section 265(1)(d): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 265(1)(e): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 265(1)(h): replaced, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

## **266 Department to maintain records of proceedings of family group conferences**

- (1) Every written record made pursuant to section 262 in relation to a family group conference shall be kept at the office of the department that is nearest to where the conference is held.
- (2) The following persons shall have access to any such record:

- (a) any person who is required, by section 265, to be sent a copy of that record:
  - (b) any youth justice co-ordinator:
  - (c) any social worker:
  - (d) any other person who, in the opinion of a youth justice co-ordinator, has a genuine and proper interest in the matter.
- (3) Nothing in this section limits or affects the Official Information Act 1982.

Section 266(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**267 Enforcement agencies to comply with decisions, recommendations, and plans of family group conference**  
Where—

- (a) any decision, recommendation, or plan is made or formulated by a family group conference under section 260; and
- (b) agreement to that decision, recommendation, or plan has been secured under section 263; and
- (c) that decision, recommendation, or plan relates to any offence alleged or proved to have been committed by the young person in respect of whom that conference was held; and
- (d) the implementation of that decision, recommendation, or plan involves any action on the part of any enforcement agency,—

unless it is clearly impracticable or clearly inconsistent with the principles set out in sections 5 and 208, it is the duty of that agency to give effect to that decision, recommendation, or plan by the taking of such action and steps as are necessary and appropriate in the circumstances of the particular case.

**268 Chief executive to give effect to decisions, recommendations, and plans of family group conference**

- (1) Where—

- (a) any decision, recommendation, or plan is made or formulated by a family group conference under section 260; and
- (b) the implementation of that decision, recommendation, or plan involves any action on the part of the chief executive,—

the chief executive shall consider that decision, recommendation, or plan, and, unless it is clearly impracticable or clearly inconsistent with the principles set out in sections 5 and 208, shall give effect to that decision, recommendation, or plan by the provision of such services and resources, and the taking of such action and steps, as are necessary and appropriate in the circumstances of the particular case.

- (2) Where the chief executive considers that it is clearly impracticable or clearly inconsistent with the principles set out in sections 5 and 208 to give effect to any decision, recommendation, or plan made or formulated by a family group conference, the chief executive shall notify that fact to a youth justice co-ordinator, who may reconvene the family group conference for the purpose of considering whether to make or formulate any other decision, recommendation, or plan.
- (3) Sections 250 to 269 shall apply, with all necessary modifications, with respect to every family group conference reconvened under subsection (2).

Section 268 heading: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 268(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 268(1)(b): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 268(2): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**269 Chief executive may provide financial assistance to enable decisions, etc, of family group conference to be carried out**

The chief executive may, from time to time, make such grants or provide such financial assistance as may be necessary to give effect to any decision, recommendation, or plan made or formulated by a family group conference pursuant to section 260.

Section 269 heading: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 269: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**269A Chief executive to ascertain whether victims wish to be informed of progress in implementing decisions, recommendations, and plans**

- (1) This section applies to any action or steps to be taken or completed by the child or young person in respect of whom a family group conference was convened—
  - (a) under any decision, recommendation, or plan made or formulated by the family group conference and to which agreement is obtained under section 263; and
  - (b) by way of penalty or reparation for an offence.
- (2) The chief executive must take reasonable steps—
  - (a) to ascertain whether the victim of the offence wishes to be notified of the child's or young person's progress in taking that action or completing those steps; and
  - (b) if so, to ensure that the victim of the offence is notified from time to time of that progress.
- (3) The chief executive's duty under subsection (2) must be performed by another person if that other person—
  - (a) was nominated for the purpose by the family group conference; and
  - (b) has agreed to perform that duty.

Section 269A: inserted, on 1 October 2010, by section 13 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

**270 Family group conference may reconvene to review its decisions, recommendations, and plans**

- (1) Where any decision, recommendation, or plan is made or formulated by a family group conference pursuant to this Part, a youth justice co-ordinator may from time to time, at that co-ordinator's own motion or at the request of at least 2 members of that conference, reconvene that conference for the purpose of reviewing that decision, recommendation, or plan.

- (2) Sections 250 to 269 shall apply, with all necessary modifications, with respect to every family group conference reconvened under this section.

**271 Proceedings of family group conference privileged and not to be published**

Sections 37 and 38 (which relate to privilege and the publication of the proceedings of a family group conference) shall apply, with all necessary modifications, with respect to every family group conference convened or reconvened under this Part.

*Jurisdiction of Youth Courts*

**272 Jurisdiction of Youth Courts and children's liability to be prosecuted for criminal offences**

- (1) The following are the only 3 situations in which proceedings may lawfully be commenced under the Criminal Procedure Act 2011 against a child alleged to have committed an offence:
- (a) where the child is of or over the age of 10 years, and the offence is murder or manslaughter:
  - (b) where the child is aged 12 or 13 years, and the offence is one (other than murder or manslaughter) for which the maximum penalty available is or includes imprisonment for life or for at least 14 years:
  - (c) where the child is aged 12 or 13 years and is a previous offender under subsection (1A) or (1B), and the offence is one (other than murder or manslaughter) for which the maximum penalty available is or includes imprisonment for at least 10 years but less than 14 years.
- (1A) A child is a previous offender under this subsection for the purposes of subsection (1)(c) if—
- (a) an application is made to a Family Court under section 67 for a declaration that the child is in need of care or protection on the ground that the child has committed an offence or offences the number, nature, or magnitude of which is such as to give serious concern for the wellbeing of the child; and

- (b) on that application the Family Court, having found 1 or more of the offences alleged in the application (the **earlier offences**) to be proved in accordance with section 198(1)(a) and (b), either—
    - (i) declares the child to be in need of care or protection on that ground; or
    - (ii) indicates clearly that, but for section 73 (on the child's need for care or protection being able to be met by other means), it would have made a declaration that the child is in need of care or protection on that ground; and
  - (c) for 1 or more of the earlier offences the maximum penalty available is or includes imprisonment for life or for at least 10 years.
- (1B) A child is a previous offender under this subsection for the purposes of subsection (1)(c) if—
  - (a) the child has been convicted by the High Court of murder or manslaughter; or
  - (b) the child, as a result of an election of jury trial made by the child in a Youth Court in accordance with section 66 of the Summary Proceedings Act 1957 or section 50 of the Criminal Procedure Act 2011, has been convicted by a District Court or the High Court of 1 or more offences (other than murder or manslaughter) for which the maximum penalty available is or includes imprisonment for life or for at least 14 years; or
  - (c) the child has been charged with, and a Youth Court has found proved before it the charge against the child for, 1 or more offences (other than murder or manslaughter) for which the maximum penalty available is or includes imprisonment for life or for at least 14 years.”
- (2) If a child of or over the age of 10 years is charged with murder or manslaughter, the provisions of this Act (other than sections 236, 238(1)(e), 239(2), 242(2), 276, 277, and 365(1)), and of any regulations made under this Act, apply accordingly as if that child were a young person.
- (2A) If a child aged 12 or 13 years is charged with an offence specified in subsection (1)(b) or (c) and proceedings under the

Criminal Procedure Act 2011 are commenced against the child for the offence,—

- (a) the child must be brought before a Youth Court to be dealt with in accordance with the provisions of this Act; and
  - (b) the provisions of this Act, and of any regulations made under this Act, apply accordingly as if that child were a young person but subject to the modifications in section 272A.
- (3) Any young person charged with an offence other than—
- (a) murder; or
  - (b) manslaughter; or
  - (ba) an infringement offence against the Psychoactive Substances Act 2013; or
  - (c) a traffic offence not punishable by imprisonment; or
  - (d) an infringement offence against the Sale and Supply of Alcohol Act 2012 or the Summary Offences Act 1981, or section 239A of the Local Government Act 2002.
- shall be brought before a Youth Court to be dealt with in accordance with the provisions of this Act.
- (4) If a young person is charged with murder or manslaughter, section 275 applies.
- (5) Notwithstanding subsection (3)(ba) or (c) or (d), where a young person is charged with an infringement offence referred to in subsection (3)(ba) or a traffic offence not punishable by imprisonment or an infringement offence referred to in subsection (3)(d), a Youth Court shall hear and determine that charge if—
- (a) the young person is charged with any other offence, being an offence in respect of which the young person is required to be brought before a Youth Court to be dealt with; and
  - (b) both offences arise out of the same event or series of events; and
  - (c) the court considers—
    - (i) that it is desirable that the charges be heard together; or



- (ii) that the charges can be conveniently heard together.

Compare: 1974 No 72 s 25(2)–(4); 1977 No 126 s 5

Section 272 heading: amended, on 1 October 2010, by section 14(1) of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 272(1): replaced, on 1 October 2010, by section 14(2) of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 272(1): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 272(1A): inserted, on 1 October 2010, by section 14(2) of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 272(1B): inserted, on 1 October 2010, by section 14(2) of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 272(1B)(b): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 272(2): replaced, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 272(2A): inserted, on 1 October 2010, by section 14(2) of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 272(2A): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 272(3): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 272(3)(ba): inserted, on 18 July 2013, by section 109(2) of the Psychoactive Substances Act 2013 (2013 No 53).

Section 272(3)(c): amended, on 18 December 2013, by section 416(2) of the Sale and Supply of Alcohol Act 2012 (2012 No 120).

Section 272(3)(d): inserted, on 18 December 2013, by section 416(2) of the Sale and Supply of Alcohol Act 2012 (2012 No 120).

Section 272(4): replaced, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 272(5): amended, on 18 December 2013, by section 416(3)(a) of the Sale and Supply of Alcohol Act 2012 (2012 No 120).

Section 272(5): amended, on 18 December 2013, by section 416(3)(b) of the Sale and Supply of Alcohol Act 2012 (2012 No 120).

Section 272(5): amended, on 18 July 2013, by section 109(3) of the Psychoactive Substances Act 2013 (2013 No 53).

Section 272(5): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

**272A Modifications and procedure for child aged 12 or 13 years charged with offence in section 272(1)(b) or (c)**

- (1) The modifications referred to in section 272(2A)(b) in respect of a child aged 12 or 13 years charged with an offence specified in section 272(1)(b) or (c) are as follows:
  - (a) sections 236, 238(1)(e), 239(2), 242(2), and 365(1) (on Police custody and placements in residences) do not, despite those sections referring to a young person and section 272(2A)(b), extend or apply to the child as if the child were a young person; and
  - (b) sections 276(1)(a) and 277 do not extend or apply to the child as if the child were a young person; and
  - (c) section 282(1) applies as if it empowers a Youth Court to discharge a charge even if the offence is a category 4 offence; and
  - (d) a reference in this Act or regulations under it to the charge against the child being proved before a Youth Court must be treated as including a requirement that the Youth Court is satisfied that the child knew either—
    - (i) that the act or omission constituting the offence charged was wrong; or
    - (ii) that it was contrary to law.
- (2) *[Repealed]*
- (3) *[Repealed]*
- (4) *[Repealed]*
- (5) *[Repealed]*
- (6) *[Repealed]*

Section 272A: inserted, on 1 October 2010, by section 15 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 272A(1)(b): replaced, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 272A(1)(c): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 272A(2): repealed, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 272A(3): repealed, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 272A(4): repealed, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 272A(5): repealed, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 272A(6): repealed, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

**273 Manner of dealing with offences (other than murder or manslaughter)**

- (1) This section applies if a young person is charged with an offence other than murder or manslaughter.
- (2) A Youth Court must hear and determine the charge unless—
  - (a) the offence is a category 3 or 4 offence and the young person elects trial by jury; or
  - (b) the court discharges the charge under section 282; or
  - (c) the charge is removed out of the Youth Court under section 277.
- (3) Subsection (2) is subject to section 272.

Compare: 1974 No 72 s 34(1)

Section 273: replaced, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

**274 Young person may elect trial by jury in certain cases**

- (1) If a young person is charged with a category 3 or 4 offence, other than murder or manslaughter, the young person may elect to be tried by a jury for that offence.
- (2) The young person's election must be made and dealt with under section 50 of the Criminal Procedure Act 2011, which applies with all necessary modifications.

Section 274: replaced, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

**275 Manner of dealing with offence of murder or manslaughter, or where jury trial to be held**

- (1) This section applies if a young person—
  - (a) is charged with murder or manslaughter; or
  - (b) is charged with a category 3 or 4 offence, other than murder or manslaughter, and elects to be tried by a jury; or

- (c) is to have a jury trial and be tried with a person with whom he or she is jointly charged, in accordance with section 277.
- (2) All applicable pre-trial processes must take place before a Youth Court, up to and including—
  - (a) in the case of a charge relating to a category 3 offence or category 4 offence (other than murder or manslaughter), transferring to the trial court after an adjournment for trial callover in accordance with section 57(3)(b) of the Criminal Procedure Act 2011; and
  - (b) in the case of a charge of murder or manslaughter, transferring the proceeding to the High Court in accordance with section 36(2) of the Criminal Procedure Act 2011.
- (3) For the purposes of the pre-trial processes referred to in subsection (2),—
  - (a) a Youth Court has all the powers of a District Court; and
  - (b) the Youth Court must be presided over by a Youth Court Judge, or, in the absence of a Youth Court Judge, by a District Court Judge.
- (4) In this section, applicable pre-trial processes include all applicable processes under subparts 1 to 4 of Part 3 of the Criminal Procedure Act 2011, any other provisions of that Act referred to in subsection (5); and those processes apply with the necessary modifications.
- (5) For the purpose of subsection (4), sections 60 to 62(1), 62(3) to 65, and 116 of that Act (which relate to sentence indications) apply despite Schedule 1 of this Act.
- (6) This section is subject to section 276.

Compare: 1974 No 72 s 34(2)(a), (b)

Section 275: replaced, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

## **276 Child or young person may forgo right to jury trial and elect to have proceedings determined by Youth Court**

- (1) This section applies if—
  - (a) a child aged 12 or 13 years charged with an offence specified in section 272(1)(b) or (c) elects trial by jury; or

- (b) a young person charged with a category 3 or 4 offence, other than murder or manslaughter, elects trial by jury.
- (2) The child or young person may, without leave of the court, withdraw that election at any time before the proceeding is transferred to the trial court after an adjournment for trial callover in accordance with section 57(3)(b) of the Criminal Procedure Act 2011 and, if the child or young person does so, the proceedings continue in the Youth Court as if he or she had not made that election.
- (3) If the Youth Court proposes to adjourn the proceeding for trial callover, or the child or young person at any time before the proceeding is adjourned for trial callover indicates to the court that he or she wishes to plead guilty to the offence, the Youth Court must give that child or young person the opportunity of forgoing the right to trial by jury and of electing to have the charge heard and determined in a Youth Court by a Youth Court Judge.
- (4) If a young person elects to have the charge heard and determined in a Youth Court by a Youth Court Judge, the Youth Court has the jurisdiction to hear and determine the charge and otherwise deal with the young person in accordance with this Act.
- (5) If a child elects to have the charge heard and determined in a Youth Court by a Youth Court Judge, the Youth Court has the jurisdiction to hear and determine the charge and otherwise deal with the child in accordance with this Act as if he or she were a young person (but subject to section 272A(1)(a), (c), and (d)).

Section 276: replaced, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

**277 Provisions applicable where child, young person, or adult jointly charged**

- (1) If a child or young person is charged with any offence jointly with any other person or persons (whether 1 or more young persons, adults, or children), this section applies.
- (2) If a child is jointly charged with any other person or persons, and that child is not charged with murder or manslaughter or does not elect jury trial, that child must be tried in the Youth

Court along with any co-defendants who are also not to have a jury trial.

- (3) If a child is jointly charged with any other person or persons, and that child is to have a jury trial, that child must be tried in the same court as any co-defendants who are also to have a jury trial.
- (4) Subsection (5) applies if a young person is jointly charged with any 1 or more of—
  - (a) an adult who is to have a jury trial; or
  - (b) another young person who is to have a jury trial; or
  - (c) a child who is to have a jury trial.
- (5) Subject to subsections (2) and (3), the young person must be tried with the person or persons with whom he or she is jointly charged and who are to have a jury trial, and by the same court that is to try those persons unless the Youth Court, in the interests of justice, orders otherwise.
- (6) Subject to subsections (2) and (3), if an adult is jointly charged with 1 or more children or young persons, the following provisions apply:
  - (a) if any of the co-defendants is to have a jury trial, the adult must be tried with that person in the same court; and
  - (b) if none of the co-defendants is to have a jury trial, and the adult either does not or is not eligible to elect to be tried by a jury, the adult must be tried with the co-defendants in the Youth Court, unless the Youth Court, in the interests of justice, orders otherwise.
- (7) If none of subsections (2), (3), (5), and (6) applies, the persons charged must be tried in a Youth Court by a Youth Court Judge.
- (8) In any proceedings to which this section applies, the powers of any Youth Court Judge in respect of any defendant who is not a child or young person are limited to such powers as are exercisable by the Youth Court Judge as a District Court Judge elsewhere than in a Youth Court.
- (9) If any defendant, not being a child or young person, is convicted in a Youth Court,—

- (a) any sentence imposed or order made must be one that could have been imposed or made if that defendant had been convicted following a trial in a District Court; and
  - (b) that defendant must for all purposes, including section 184 of the Criminal Procedure Act 2011, be deemed to have been convicted in a District Court.
- (10) If an adult is tried with a child or young person in the Youth Court under subsection (6)(b) or (7), the following apply in respect of the adult, with the necessary modifications:
  - (a) all applicable pre-trial processes under subparts 1 to 3 of Part 3 of the Criminal Procedure Act 2011; and
  - (b) sections 60 to 62(1), 62(3) to 65, and 116 of that Act (which relate to sentence indications).
- (11) This section is subject to sections 272A, 274, and 275.

Section 277: replaced, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

**277A Place and level of trial court for jury trial**

- (1) This section applies if a young person is to be tried by a jury.
- (2) If the offence with which the young person is charged is a category 4 offence, the trial must take place in the High Court at the place nearest to the Youth Court from which the proceedings are to be transferred.
- (3) If the offence with which the young person is charged is a category 3 offence,—
  - (a) the level of trial court is a District Court, unless an order is made under section 68 or 70 of the Criminal Procedure Act 2011 that the trial be held in the High Court; and
  - (b) the place of trial is,—
    - (i) in the case of a District Court trial, the District Court nearest to the Youth Court that adjourned the proceeding for trial callover in accordance with section 57(3)(b) of the Criminal Procedure Act 2011 that has jurisdiction to conduct jury trials; or
    - (ii) in the case of a High Court trial, the High Court at the place nearest to the Youth Court that dealt with the pre-trial processes in accordance with section 275(2).

- (4) This section is subject to—
- (a) any order made under section 4A of the District Courts Act 1947 or section 157 of the Criminal Procedure Act 2011; and
  - (b) section 139(1) of the Criminal Procedure Act 2011; and
  - (c) any regulations made under section 387 of the Criminal Procedure Act 2011 that prescribe a different place of trial.

Section 277A: inserted, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

**278 Parent or guardian may be summoned to appear when young person charged with offence**

- (1) Any Youth Court Judge or District Court Judge or Justice or Community Magistrate or Registrar (not being a constable) may, where a charging document is filed against a young person in respect of any offence, issue a summons to any parent, guardian, or person for the time being having the care of the young person, requiring that parent or guardian or person to appear before a Youth Court at a time to be named in the summons.
- (2) At the hearing of the proceedings in respect of the offence any such parent or guardian or other person may be examined in respect of any matter relating to the proceedings.
- (3) Every person commits an offence and is liable on conviction to a fine not exceeding \$1,000 who, being required to appear before a Youth Court under this section, refuses or fails, without reasonable excuse, so to appear.
- (4) In any case where a person does not appear in answer to a summons that has been served under this section, a Youth Court Judge or District Court Judge may direct the issue of a warrant to arrest that person and bring that person before the court.

Compare: 1974 No 72 s 39

Section 278(1): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 278(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 278(1): amended, on 30 June 1998, by section 7 of the District Courts Amendment Act 1998 (1998 No 76).



Section 278(3): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

**279 Court to consider recommendations of family group conference**

Where, in any proceedings under this Part in respect of any charging document filed against a young person for an offence, a family group conference has been held under section 247(b) or (d) in respect of that offence, the court shall, before hearing the charge, consider any decision, recommendation, or plan made or formulated by the family group conference in relation to that offence.

Section 279: amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

**280 Court may refer case to care and protection co-ordinator to determine whether matter should be dealt with under Part 2**

- (1) If, at any stage of the hearing of any proceedings under this Part in respect of a young person, it appears to the court that the young person may be in need of care or protection (as defined in section 14), the court may—
  - (a) refer the matter to a care and protection co-ordinator under section 19(1)(b); and
  - (b) adjourn the proceedings pending the outcome of that reference, and if an application for a declaration under section 67 is made in respect of the young person, may adjourn the proceedings until that application is determined.
- (2) Where any proceedings in respect of any charging document filed against a young person for an offence are adjourned pursuant to subsection (1), the court may, at any time, discharge the charge under section 282.

Section 280(2): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

**280A Court may refer case to person who commenced proceeding to be dealt with as child offending care or protection proceeding under Part 2**

- (1) This section applies to proceedings under this Part in respect of a child aged 12 or 13 years who is charged with an offence of the kind specified in section 272(1)(b) or (c) if, at any stage of the proceedings before an order is made under section 282 or 283, it appears to the court that—
  - (a) the child may be in need of care or protection on the ground specified in section 14(1)(e); and
  - (b) the making of an application for a declaration under section 67 on that ground in respect of the child and the offence would serve the public interest better than the continuation of the proceedings under this Part.
- (2) The court—
  - (a) may refer the matter to the person who commenced the proceedings to consider whether to make an application for a declaration under section 67 on that ground in respect of the child and the offence or to deal with the matter in some other way; and
  - (b) must, on making a referral under paragraph (a), adjourn the proceedings pending the outcome of that referral.
- (3) If the proceedings are in respect of a charging document filed against the child for an offence, and are adjourned under subsection (2),—
  - (a) the court may, at any time, discharge the charge under section 282; but
  - (b) if not discharged earlier, the charge is deemed to be discharged if, and when, an application for a declaration under section 67 on that ground in respect of the child and the offence first comes before a Family Court Judge.
- (4) A person to whom a matter in respect of a child is referred under subsection (2) must—
  - (a) consider whether to make an application for a declaration under section 67 on that ground in respect of the child and offence or to deal with the matter in some other way; and

- (b) give effect to his or her decision under paragraph (a), and ensure the Youth Court is advised promptly of the outcome of the referral.
- (5) Before referring a matter to the person who commenced the proceedings under subsection (2), the court may—
  - (a) direct a youth justice co-ordinator to convene a family group conference for the purpose of considering whether the making of an application for a declaration under section 67 on that ground in respect of the child and the offence would serve the public interest better than the continuation of the proceedings under this Part (in which case sections 250 to 259 apply to the conference with all necessary modifications); and
  - (b) adjourn the proceedings until the conference has been held.
- (6) Nothing in this section limits or affects the application to a child, in accordance with section 272(2A), of section 280, insofar as the child may be in need of care or protection on a ground other than that specified in section 14(1)(e).

Section 280A: inserted, on 1 October 2010, by section 20 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 280A heading: amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 280A(2)(a): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 280A(3): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 280A(3)(a): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 280A(3)(b): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 280A(4): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 280A(5): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

*Disposal of proceedings in Youth Court***281 Court not to make orders unless family group conference held**

- (1) Subject to section 248, where a charge against a young person is proved before a Youth Court, the court shall not make any order under section 282 or section 283 unless a family group conference has had an opportunity to consider ways in which the court might deal with the young person in relation to the charge.
- (2) A Youth Court shall not—
  - (a) if a young person appears before the court on a summons issued under section 295, exercise any of the powers conferred on it by section 295(2); or
  - (b) if the court under section 296B cancels a mentoring programme order, an alcohol or drug rehabilitation programme order, a supervision order, a community work order, a supervision with activity order, or an intensive supervision order under section 296G, substitute any other order in place of that order; or
  - (c) if the court under section 316 cancels a supervision with residence order, substitute any other order in place of that order,—
  - (d) *[Repealed]*unless a family group conference has first been convened to consider the matter, and for that purpose the court shall direct a youth justice co-ordinator to convene a family group conference in relation to the matter not later than 14 days after the date on which that direction is given.
- (3) The provisions of sections 250 to 269 (other than section 259) shall apply, so far as applicable and with all necessary modifications, to every family group conference directed to be convened pursuant to subsection (2).

Section 281(2)(a): replaced, on 1 October 2010, by section 21 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 281(2)(b): replaced, on 1 October 2010, by section 21 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 281(2)(c): replaced, on 1 October 2010, by section 21 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 281(2)(d): repealed, on 1 October 2010, by section 21 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

**281A Court to consider whether family group conference should be held**

Where, in respect of any offence, the holding of a family group conference has been waived pursuant to section 248, the court shall,—

- (a) before hearing the charge for that offence; or
- (b) before making any order or exercising any power in any proceedings relating to or arising out of that offence, in any case where subsection (1) or subsection (2) of section 281 would otherwise require a family group conference to have been held in relation to the matter,—

as the case may be, consider whether or not a family group conference should nevertheless be held in relation to the matter.

Section 281A: inserted, on 8 January 1995, by section 38 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 281A(a): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

**281B Court may direct holding of family group conference at any time**

- (1) If, at any stage of the hearing of any proceedings under this Part, it appears to the court that it is necessary or desirable for a family group conference to be held in relation to any matter relating to the young person to whom the proceedings relate, the court may direct a youth justice co-ordinator to convene a family group conference for the purpose of considering such matters relating to the young person as the court directs, and may adjourn the proceedings until the conference has been held.
- (2) The provisions of sections 250 to 269 shall apply with all necessary modifications with respect to the convening of a family group conference for the purposes of this section.

Section 281B: inserted, on 8 January 1995, by section 38 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

## **282 Power of court to discharge charge**

- (1) If a charging document is filed charging a young person with an offence in category 1, 2, or 3, a Youth Court, after an inquiry into the circumstances of the case, may discharge the charge.
- (2) A charge discharged under subsection (1) is deemed never to have been filed.
- (3) If it is satisfied that the charge against the young person is proved, the court may make an order under any of the provisions of section 283(e) to (j)—
  - (a) when it discharges the charge; or
  - (b) at any earlier time after it completes the inquiry referred to in subsection (1).
- (4) The court must not exercise the power in subsection (3)(b) unless section 281(1) is complied with.

Section 282: replaced, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

## **283 Hierarchy of court's responses if charge against young person proved**

A Youth Court before which a charge against a young person is proved may, subject to sections 284 to 290, make 1 or more of the following responses (grouped in levels of equal restrictiveness, the groups ranging from least restrictive to most restrictive):

### *Group 1 responses*

- (a) discharge the young person from the proceedings without further order or penalty:
- (b) admonish the young person:

### *Group 2 responses*

- (c) order that the young person come before the court, if called upon within 12 months after the order is made, so that the court may take further action under this section:
- (d) impose a fine that could have been imposed by a District Court if the young person were an adult and had been convicted of the offence following a trial in a District

Court, and exercise any of the powers conferred on a District Court by sections 81 and 83 of the Summary Proceedings Act 1957 (other than the power to impose a period of imprisonment in default of payment):

- (e) order the young person or, in the case of a young person who is under the age of 16 years, any parent or guardian of the young person to pay a sum towards the cost of the prosecution:
- (f) order the young person or, in the case of a young person who is under the age of 16 years, any parent or guardian of the young person to pay to the person who suffered the emotional harm or the loss of, or damage to, property such sum as it thinks fit by way of reparation if the court is satisfied that any person (other than the young person) suffered, through or by means of the offence, either or both of the following:
  - (i) emotional harm:
  - (ii) loss of, or damage to, property:
- (g) order the young person or, in the case of a young person who is under the age of 16 years, a parent or guardian of the young person to make restitution in accordance with section 377 of the Criminal Procedure Act 2011:
- (h) make an order for the forfeiture of property to the Crown if the forfeiture of that property would have been obligatory or could have been ordered under an enactment applicable to the offence if the young person were an adult and had been convicted of that offence by a District Court:
- (i) make an order under section 293A (which relates to disqualification from driving):
- (j) make an order that could have been made by a court other than a Youth Court under section 128 or 129 of the Sentencing Act 2002 (which relate to confiscation of motor vehicles) if the young person were an adult and had been convicted of the offence in a court other than a Youth Court, and, if the court makes the order, the following sections of that Act apply (to the extent they are applicable and subject to any necessary modifications):

- (i) section 128 or 129 (as the case may be):
- (ii) sections 129EA, 130, 131 to 136, 137, and 138 to 142:

*Group 3 responses*

- (ja) make an order requiring the young person (if he or she is, or is soon to be, a parent or guardian or other person having the care of a child), or a parent or guardian or other person having the care of the young person, or both, to attend, in a manner specified by the court, and for a specified period of not more than 6 months, a specified parenting education programme:
- (jb) make an order requiring the young person to attend, in a manner specified by the court, and for a specified period of not more than 12 months, a specified mentoring programme:
- (jc) make an order requiring the young person to attend, in a manner specified by the court, and for a specified period of not more than 12 months, a specified alcohol or drug rehabilitation programme:

*Group 4 responses*

- (k) make an order placing the young person under the supervision of the chief executive, or any person or organisation specified in the order, for a period not exceeding 6 months:
- (l) make a community work order under section 298:

*Group 5 response*

- (m) make a supervision with activity order under section 307:

*Group 6 response*

- (n) make a supervision with residence order under section 311:

*Group 7 response*

- (o) exercise the powers conferred by one of the following subparagraphs:
  - (i) the court may order that the young person be brought before a District Court for sentence or decision, and may enter a conviction before do-



ing so; and the Sentencing Act 2002 applies accordingly if—

- (A) the young person is of or over the age of 15 years; or
  - (B) the young person is of or over the age of 14 years and under the age of 15 years and the charge proved against him or her is a charge in respect of a category 4 offence or category 3 offence for which the maximum penalty available is or includes imprisonment for life or for at least 14 years:
- (ii) the court may, in the case of a young person charged with a category 4 offence or an offence for which the maximum penalty available is or includes imprisonment for life and if the court considers that a sentence of imprisonment for life may be appropriate, order that the young person be brought before the High Court for sentence or decision and may enter a conviction before doing so; and the Sentencing Act 2002 applies accordingly if the young person is of or over the age of 14 years.

Compare: 1974 No 72 s 36(1); 1977 No 126 s 10; 1983 No 129 s 8(1)

Section 283: replaced, on 1 October 2010, by section 23 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 283(d): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 283(g): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 283(j): replaced, on 1 August 2012, by section 5 of the Children, Young Persons, and Their Families Amendment Act 2011 (2011 No 33).

Section 283(o): replaced, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

## **284 Factors to be taken into account on sentencing**

- (1) In deciding whether to make any order under section 283 in respect of any young person, the court shall have regard to the following matters:

- (a) the nature and circumstances of the offence proved to have been committed by the young person and the young person's involvement in that offence:
  - (b) the personal history, social circumstances, and personal characteristics of the young person, so far as those matters are relevant to the offence and any order that the court is empowered to make in respect of it:
  - (c) the attitude of the young person towards the offence:
  - (d) the response of the young person's family, whanau, or family group to—
    - (i) the causes underlying the young person's offending, and the measures available for addressing those causes, so far as it is practicable to do so.
    - (ii) the young person himself or herself as a result of that offending:
  - (e) any measures taken or proposed to be taken by the young person, or the family, whanau, or family group of the young person, to make reparation or apologise to any victim of the offending:
  - (f) the effect of the offence on any victim of the offence, and the need for reparation to be made to that victim:
  - (g) any previous offence proved to have been committed by the young person (not being an offence in respect of which an order has been made under section 282 or section 35 of the Children and Young Persons Act 1974), any penalty imposed or order made in relation to that offence, and the effect on the young person of the penalty or order:
  - (h) any decision, recommendation, or plan made or formulated by a family group conference:
  - (i) the causes underlying the young person's offending, and the measures available for addressing those causes, so far as it is practicable to do so.
- (2) The court shall not make an order under any of paragraphs (k) to (o) of section 283 merely because the court considers that the young person is in need of care or protection (as defined in section 14).

Section 284(1)(i): inserted, on 1 October 2010, by section 24 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

**285 Restrictions on power of court to make certain orders under section 283**

- (1) The court shall not make an order under paragraph (c) of section 283 in any case where it makes an order under paragraph (k) or paragraph (m) or paragraph (n) of that section.
- (2) The court shall not impose a fine under paragraph (d) of section 283 unless it is satisfied that the young person on whom the fine is imposed has the capacity to pay the fine within a period of 12 months from the date on which the fine is imposed.
- (3) No orders shall be made under paragraph (f) or paragraph (g) of section 283 against the chief executive or any other person who has been appointed to be a guardian of a young person under section 110.
- (4) Where the court exercises in respect of any young person the power conferred by paragraph (o) of section 283, it shall not exercise in respect of that young person any of its powers under paragraph (a) or paragraphs (c) to (n) of that section.
- (5) The court shall not make an order under paragraph (l) or paragraph (m) or paragraph (n) of section 283 if that order would be concurrent with, or cumulative on,—
  - (a) any other order made under any of those paragraphs; or
  - (b) any community-based sentence (as that term is defined in section 4(1) of the Sentencing Act 2002; or
  - (ba) any sentence of home detention imposed under section 80A of the Sentencing Act 2002; or
  - (c) any sentence of imprisonment (as that term is so defined),—unless that other order or that sentence will expire not later than 14 days after the date of the making of the first-mentioned order.
- (6) The court may make an order under section 283(o) (that the young person be brought before a District Court or the High Court for sentence or decision) despite section 289 if,—
  - (a) but for subsection (5)(b), (ba), or (c), the court would have made an order under any of the following:
    - (i) section 283(l) (community work order under section 298);
    - (ii) section 283(m) (supervision with activity order under section 307):

- (iii) section 283(n) (supervision with residence order under section 311); and
- (b) the court considers that it would not be appropriate to make an order under any of paragraphs (a) to (k) of section 283 as an alternative to such an order; and
- (c) the order is made in respect of a young person—
  - (i) who is of or over the age of 15 years; or
  - (ii) who is of or over the age of 14 years and under the age of 15 years and against whom the charge proved is a category 4 offence or category 3 offence for which the maximum penalty available is or includes imprisonment for life or for at least 14 years.

Compare: 1974 No 72 s 36(1) proviso, (4); 1977 No 126 s 10(3)(a)

Section 285(3): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 285(5)(b): amended, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

Section 285(5)(ba): inserted, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 285(5)(c): amended, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

Section 285(6): replaced, on 1 October 2010, by section 25 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 285(6): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 285(6)(c)(ii): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

## **286 Person or organisation not to be required to supervise young person without consent**

No order shall be made under paragraph (k) or paragraph (m) of section 283, or under section 296G, placing a young person under the supervision of any person (other than the chief executive), or any organisation, unless that person or organisation agrees to supervise that young person pursuant to that order.

Section 286: amended, on 1 October 2010, by section 26 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 286: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**286A Parenting education, mentoring, or alcohol or drug rehabilitation programme order: general requirement for provider to have first agreed to provide programme concerned, and making of order subject to conditions**

- (1) This section applies to an order if it is—
  - (a) a parenting education programme order under section 283(ja); or
  - (b) a mentoring programme order under section 283(jb); or
  - (c) an alcohol or drug rehabilitation programme order under section 283(jc).
- (2) If the programme to be specified in an order to which this section applies is to be provided other than by the chief executive, that order may be made only if the provider of that programme has first agreed to provide that programme to the person to be required by the order to attend that programme.
- (3) An order to which this section applies may be made subject to any conditions the court thinks fit and specifies in the order.

Section 286A: inserted, on 1 October 2010, by section 27 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

**287 Reparation limited to direct loss**

Any sum ordered to be paid pursuant to section 283(f) in respect of the loss of or damage to property shall be limited to the cost of replacement or (as the case may require) the cost of repair, and shall not include any loss or damage of a consequential nature.

Compare: 1985 No 120 s 22(5); 1987 No 168 s 4

**288 Order in respect of parent or guardian or other person having care not to be made without first informing of proposal to make order and giving opportunity to make representations**

No order may be made under section 283 in respect of a parent or guardian or other person having the care of a young person unless that parent or guardian or other person has been—

- (a) informed by the court of the proposal to make the order; and
- (b) given an opportunity to make representations to the court.

Compare: 1974 No 72 s 36(5)

Section 288: replaced, on 1 October 2010, by section 28 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

**289 Court must impose least restrictive outcome adequate in circumstances**

- (1) A court making a response or a permitted combination of responses under section 283 (including, without limitation, under section 297(a) or (b)) must—
  - (a) assess the restrictiveness of that outcome in accordance with the hierarchy set out in section 283; and
  - (b) not impose that outcome unless satisfied that a less restrictive outcome would, in the circumstances and having regard to the principles in section 208 and factors in section 284, be clearly inadequate.
- (2) Subsection (1)(a) and (b) also apply to any outcome imposed by a court that on an application under section 296B(1)—
  - (a) declares that a young person has without reasonable excuse failed to comply satisfactorily with a requirement of an order to which section 296B applies; and
  - (b) substitutes or otherwise makes under section 296B(3)(a), (b), or (c)—
    - (i) any other order under section 283; or
    - (ii) an intensive supervision order under section 296G (which for the purposes of subsection (1)(a) must be treated as if it were a group 5 response under section 283); or
    - (iii) any order it is empowered to make under section 296E.
- (3) Subsection (1)(a) and (b) also apply to any outcome imposed by a court that on an application under section 316(1)—
  - (a) cancels a supervision with residence order made under section 311 in respect of a young person who the court

- is satisfied has, at any time while that order is in force,  
absconded from the custody of the chief executive; and
- (b) substitutes under section 316(2)(b) any other order  
under section 283 that it could have made when the  
supervision with residence order was made.

Compare: 2002 No 9 s 8(g)

Section 289: replaced, on 1 October 2010, by section 28 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

**290 Judge must record in writing reasons for supervision with residence or transfer order**

A Judge exercising the jurisdiction of the court to make an order under section 283(n) or (o) must when making the order record in writing his or her reasons for doing so.

Section 290: replaced, on 1 October 2010, by section 28 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

**290A Restriction on who may provide residential component of specified programme or activity**

- (1) This section applies to a court considering whether to impose under section 307(1)(b) or 311(2) a condition that a young person undertake a specified programme or activity as a condition of—
- (a) a supervision with activity order under section 307; or
- (b) a supervision with residence order under section 311.
- (2) The court must not impose the condition unless the residential component of the specified programme or activity is to be provided by—
- (a) the chief executive; or
- (b) a body or organisation approved under section 396.
- (3) The **residential component** of a specified programme or activity means any component of the programme or activity that cannot be undertaken satisfactorily by a young person unless he or she resides—
- (a) where that component is provided; and
- (b) with, and under the control of, the provider.

Section 290A: inserted, on 1 October 2010, by section 28 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

**291 Transfer of other charges to District Court or High Court for sentence**

Where, in any proceedings before a Youth Court, the court makes an order under paragraph (o) of section 283 in respect of any charge proved against a young person, notwithstanding anything in section 290 the court may, at the same time, make an order under that paragraph in respect of any other charge proved against that young person in those proceedings and in respect of which the court is empowered to make an order under section 283.

Section 291 heading: amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

**292 Whole or part of fine may be awarded to victim of offence suffering physical or emotional harm**

*[Repealed]*

Section 292: repealed, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

**293 Effect of order imposing fine or requiring payment of compensation or restitution or forfeiture of property**

Every order or decision made under any of the provisions of paragraphs (d) to (h) of section 283 shall have effect as if made by a District Court and as if any fine imposed or such sum ordered to be paid had been adjudged to be paid by conviction, except that—

- (a) the enforcement of every such order or decision shall be the responsibility of a Youth Court and its officers; and
- (b) no young person shall be liable to imprisonment or a sentence of community detention or home detention for failing to comply with any such order or decision; and
- (c) no costs, expenses, or fees shall be payable in respect of the enforcement of any such order or decision.

Compare: 1974 No 72 s 111(1)

Section 293(b): amended, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).



Section 293(b): amended, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

**293A Disqualification from driving**

- (1) Where a charge against a young person is proved before a Youth Court, and the offence or the circumstances in which it was committed are such that a District Court would, on entering a conviction for that offence,—
  - (a) be empowered under section 124 of the Sentencing Act 2002 to make an order disqualifying the offender from holding or obtaining a driver's licence; or
  - (b) be required or empowered under the Land Transport Act 1998 to make an order disqualifying the offender from holding or obtaining a driver's licence; or
  - (c) be required to make an order under section 65 of the Land Transport Act 1998 requiring the offender to attend an Assessment Centre and disqualifying the person from holding or obtaining a driver's licence,—then the Youth Court may make such order (being an order of any of the kinds referred to in any of paragraphs (a) to (c)) as would have been obligatory or could have been ordered under any of those sections if the young person were an adult and had been convicted of the offence in a court other than a Youth Court.
- (2) Where a Youth Court makes an order pursuant to subsection (1)(a), the provisions of sections 124 to 126 of the Sentencing Act 2002 shall apply accordingly.
- (3) Subject to subsection (5), where a Youth Court makes an order pursuant to subsection (1)(b) or (c), Parts 5 to 7 of the Land Transport Act 1998 shall apply, so far as applicable and with any necessary modifications, as if the order had been made under that Act.
- (4) In determining, for the purposes of paragraph (b) or paragraph (c) of subsection (1), whether any order would have been obligatory or could have been ordered under any of the sections referred to in either of those paragraphs, a finding (whether made before or after the commencement of this section), by a Children and Young Persons Court or a Youth Court, that a young person is proved to have committed an offence referred

to in section 32(1) or section 65(1) of the Land Transport Act 1998 (not being an offence in respect of which an order has been made under section 282 of this Act or section 35 of the Children and Young Persons Act 1974) shall be deemed to be a conviction for that offence.

- (5) Where a Youth Court makes an order pursuant to subsection (1)(c) in respect of a young person, that young person shall not be required to pay the Assessment Centre fee payable under section 65(4) of the Land Transport Act 1998 in respect of that order unless the Youth Court, being satisfied that the young person has the capacity to pay that fee within a period of 12 months from the date on which the fee is payable, so orders.

Section 293A: inserted, on 1 April 1990, by section 35(3) of the Social Welfare (Transitional Provisions) Act 1990 (1990 No 26).

Section 293A(1)(a): amended, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

Section 293A(1)(b): amended, on 1 March 1999, by section 215(1) of the Land Transport Act 1998 (1998 No 110).

Section 293A(1)(c): amended, on 1 March 1999, by section 215(1) of the Land Transport Act 1998 (1998 No 110).

Section 293A(2): amended, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

Section 293A(3): amended, on 1 March 1999, by section 215(1) of the Land Transport Act 1998 (1998 No 110).

Section 293A(4): amended, on 1 March 1999, by section 215(1) of the Land Transport Act 1998 (1998 No 110).

Section 293A(5): amended, on 1 March 1999, by section 215(1) of the Land Transport Act 1998 (1998 No 110).

## 294 Demerit points

Where—

- (a) a charge against a young person is proved before a Youth Court; and
- (b) the offence is such that, if the offender were convicted in a District Court, the New Zealand Transport Agency would be obliged under section 88 of the Land Transport Act 1998 to record demerit points in respect of the offender,—

the young person is, unless the charge is discharged under section 282, deemed, for the purposes of sections 88 to 91 of the Land Transport Act 1998 and of any regulations made under

section 167(1)(g) of that Act, to have been convicted of that offence, and the provisions of those sections of that Act and those regulations apply accordingly with all necessary modifications.

Section 294: replaced, on 1 March 1999, by section 215(1) of the Land Transport Act 1998 (1998 No 110).

Section 294: amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 294(b): amended, on 1 August 2008, by section 50(1) of the Land Transport Management Amendment Act 2008 (2008 No 47).

**295 Recall to come before court**

- (1) Where the court makes an order under section 283(c), the court may, at any time during the duration of the order, direct, on the application of a social worker or constable, the issue to the young person in respect of whom the order was made of a summons, in a form prescribed by rules of court, to appear before the court.
- (2) Where a young person appears before the court on a summons issued under subsection (1), the court may consider the matter and after taking into account such factors as may be relevant since the making of the order, exercise any of the powers conferred on it under section 283, except that,—
  - (a) where any power conferred by paragraph (d), paragraph (e), paragraph (f), paragraph (g) or paragraph (h) of that section was exercised in the first instance, the powers so exercised shall not be exercised again; and
  - (b) where the court makes a further order under paragraph (c) of that section, the court shall not, if the young person appears before the court on a summons issued under subsection (1) of this section in relation to that further order, make any further order under that paragraph.
- (3) In any case where a young person does not appear in answer to a summons that has been served under this section, a Youth Court Judge or District Court Judge may direct the issue of a warrant to arrest that young person and bring that young person before the court.

Compare: 1974 No 72 s 36(3)

Section 295(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 295(1): amended, on 13 September 2002, by section 6 of the Family Courts Amendment Act 2000 (2000 No 65).

### *Expiry of orders*

#### **296 Expiry of orders**

- (1) This section applies to an order that is—
  - (a) an order under section 283(c) (to come before the court, if called upon within 12 months after the order is made, so that the court may take further action under section 283); or
  - (b) a parenting education programme order under section 283(ja); or
  - (c) a mentoring programme order under section 283(jb); or
  - (d) an alcohol or drug rehabilitation programme order under section 283(jc); or
  - (e) an order under section 283(k) (placing the young person under the supervision of the chief executive or a specified person or organisation); or
  - (f) an order under section 283(l) (a community work order under section 298); or
  - (g) an order under section 283(m) (a supervision with activity order under section 307); or
  - (h) an order under section 283(n) (a supervision with residence order under section 311); or
  - (i) an intensive supervision order under section 296G; or
  - (j) a custody order under section 297B(5); or
  - (k) a custody order under section 307(4).
- (2) The order expires (if it does not expire sooner) when the young person in respect of whom it is made attains the age of 18 years, if it is—
  - (a) an order specified in subsection (1)(a) to (i) and made on or after 1 October 2010; or
  - (b) an order specified in subsection (1)(j) or (k) and made after the date on which the Children, Young Persons, and Their Families Amendment Act 2012 comes into force.
- (3) The order expires (if it does not expire sooner) 6 months after the young person in respect of whom it is made attains the age

of 17 years if it is an order specified in subsection (1)(a) to (i) and made before 1 October 2010.

- (4) The order expires under section 108 if it is an order specified in subsection (1)(j) and (k) and made before the date on which the Children, Young Persons, and Their Families Amendment Act 2012 comes into force.

Section 296: replaced, on 1 October 2010, by section 29 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 296(1)(i): amended, on 12 December 2012, by section 4(1) of the Children, Young Persons, and Their Families Amendment Act 2012 (2012 No 99).

Section 296(1)(j): inserted, on 12 December 2012, by section 4(1) of the Children, Young Persons, and Their Families Amendment Act 2012 (2012 No 99).

Section 296(1)(k): inserted, on 12 December 2012, by section 4(1) of the Children, Young Persons, and Their Families Amendment Act 2012 (2012 No 99).

Section 296(2): replaced, on 12 December 2012, by section 4(2) of the Children, Young Persons, and Their Families Amendment Act 2012 (2012 No 99).

Section 296(3): replaced, on 12 December 2012, by section 4(2) of the Children, Young Persons, and Their Families Amendment Act 2012 (2012 No 99).

Section 296(4): inserted, on 12 December 2012, by section 4(2) of the Children, Young Persons, and Their Families Amendment Act 2012 (2012 No 99).

*Failure to comply with, and variation and  
cancellation of, specified orders*

Heading: inserted, on 1 October 2010, by section 29 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

**296A Orders to which sections 296B and 296E apply**

- (1) Sections 296B and 296E apply to the following orders:
- (a) a parenting education programme order under section 283(ja) requiring the young person in respect of whom the order is made to attend a specified parenting education programme:
  - (b) a mentoring programme order under section 283(jb):
  - (c) an alcohol or drug rehabilitation programme order under section 283(jc):
  - (d) a supervision order under section 283(k):
  - (e) a community work order under section 298:
  - (f) a supervision with activity order under section 307:
  - (g) an intensive supervision order under section 296G.

- (2) Section 296E also applies to a parenting education programme order under section 298(ja) requiring the parent or guardian or other person having the care of the young person in respect of whom the order is made to attend a specified parenting education programme.

Section 296A: inserted, on 1 October 2010, by section 29 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

### **296B Failure to comply**

- (1) If the young person has without reasonable excuse failed to comply satisfactorily with a term, condition, or other requirement of an order specified in section 296A(1), an application for a declaration to that effect may be made by—
- (a) a social worker, if the order is one under section 283(ja), (jb), or (jc); or
  - (b) the chief executive or, as the case may be, the person or organisation specified in the order under whose supervision the young person has been placed, if the order is one under section 283(k), 296G, or 307; or
  - (c) a constable, if the order is one under section 296G and the failure to comply is with a curfew condition imposed under section 296J(1); or
  - (d) a social worker or the person or organisation supervising the order, if the order is one under section 298.
- (2) Every application under subsection (1) must be served on the young person to whom the order relates and on any parent or guardian or other person having the care of the young person.
- (3) If satisfied on an application under subsection (1) that the young person has without reasonable excuse failed to comply satisfactorily with a term, condition, or other requirement of an order to which this section applies, the court may make a declaration to that effect and may—
- (a) cancel the order, and in substitution for that order make any other order under section 283 the court thinks fit; or
  - (b) make any order the court is empowered to make under section 296E as if an application had been made under that section in relation to that order; or

- (c) if the condition concerned is one the young person's compliance with which is the subject of judicial monitoring in accordance with a direction under section 308A, cancel the order, and in substitution for that order make an intensive supervision order under section 296G.
- (4) On or after making or varying under subsection (3)(a) or (b) a supervision order or supervision with activity order in respect of a young person, the court may in accordance with section 308A(1)(a) direct that the young person's compliance with 1 or more specified conditions of the order is to be monitored judicially.
- (5) Subsection (3) is subject to section 289(2) (on the court imposing the least restrictive outcome that is adequate in the circumstances).

Section 296B: inserted, on 1 October 2010, by section 29 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

#### **296C Warrant to have young person arrested and brought before court**

- (1) This section applies if a person has made an application under section 296B(1) for a declaration that a young person has without reasonable excuse failed to comply satisfactorily with a requirement of an order specified in section 296A(1) (a **breach application**).
- (2) The person may make, to the court dealing with the breach application, an application in writing and on oath for a warrant to arrest, and to bring before that court, the young person to whom the breach application relates if the person believes on reasonable grounds that—
  - (a) all reasonable efforts have been made to locate or, as the case requires, to serve the breach application on, that young person, but those efforts have failed; or
  - (b) the breach application has been served on that young person, but he or she has failed to appear before that court.
- (3) The court dealing with the breach application may, on an application under subsection (2), issue a warrant to arrest, and to

bring before that court, the young person to whom the breach application relates if satisfied that—

- (a) all reasonable efforts have been made to locate or, as the case requires, to serve the breach application on, that young person, but those efforts have failed; or
- (b) the breach application has been served on that young person, but he or she has failed to appear before that court.

Compare: 2002 No 9 s 72(3)

Section 296C: inserted, on 1 October 2010, by section 29 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

#### **296D Execution of warrant under section 296C**

- (1) A warrant under section 296C may be executed only by a constable.
- (2) The warrant must be directed to a constable by name or generally to every constable, but in either case may be executed by any constable.
- (3) For the purpose of executing the warrant, the constable executing it may at any time enter on to any premises, by force if necessary, if he or she has reasonable grounds to believe that the young person against whom it is issued is on those premises.
- (4) Sections 445A (person executing warrant to produce evidence of authority and identity) and 445B (authority to use facsimile copy of warrant) apply to the warrant.

Compare: 2000 No 38 s 36(2)–(4); 2002 No 9 s 72(4)

Section 296D: inserted, on 1 October 2010, by section 29 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

#### **296E Variation and cancellation**

- (1) If an order specified in section 296A(1) or (2) has been made in respect of a young person or in respect of a parent or guardian or other person having the care of a young person, on an application for the purpose the court may—
  - (a) cancel the order:
  - (b) suspend the order for a period specified by the court:



- (c) suspend a condition of the order for a period specified by the court:
  - (d) impose a further condition of the order:
  - (e) vary a condition of the order.
- (2) The application may be made only by 1 or more of the following persons or organisations:
  - (a) the young person, or any parent or guardian or other person having the care of the young person:
  - (b) the provider of the parenting education, mentoring, or alcohol or drug rehabilitation programme concerned, or a social worker, if the order is one under section 283(ja), (jb), or (jc):
  - (c) the chief executive or, as the case may be, the person or organisation specified in the order under whose supervision the young person has been placed, if the order is one under section 283(k), 296G, or 307:
  - (d) a social worker or the person or organisation supervising the order, if the order is one under section 298.
- (3) The application must be served on—
  - (a) every other person or organisation specified in subsection (2) who could also have made the application; and
  - (b) the barrister or solicitor or youth advocate representing the young person.
- (4) Every person or organisation on whom the application must be served is entitled to appear and be heard at the hearing of the application.
- (5) If the application is for the suspension or variation of a condition of an order under section 283(k), 296G, or 307, the chief executive (if the order places the young person under the supervision of the chief executive), or (in any other case) the person or organisation specified in the order, may suspend the condition until the application has been heard and disposed of by the court.

Section 296E: inserted, on 1 October 2010, by section 29 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

#### **296F Interim suspension order**

- (1) This section applies if a person has made—

- (a) an application under section 296B(1) for a declaration that a young person has without reasonable excuse failed to comply satisfactorily with a requirement of an order specified in section 296A(1) (a **breach application**); or
  - (b) an application under section 296E in respect of an order specified in section 296A(1) or (2) (a **variation or cancellation application**).
- (2) The court to which the breach application or, as the case may be, the variation or cancellation application has been made may, on the application of a party to the proceedings or the youth advocate, or of its own motion, make an interim suspension order that suspends the operation of the order specified in section 296A(1) or (2) until the court disposes of the breach application or, as the case may be, the variation or cancellation application.
- (3) If the court makes an interim suspension order under this section in respect of an order specified in section 296A(1), the court may also exercise, in respect of the young person, any power conferred by section 238(1)(a) to (e).

Section 296F: inserted, on 1 October 2010, by section 29 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 296F(3): amended, on 12 December 2012, by section 5 of the Children, Young Persons, and Their Families Amendment Act 2012 (2012 No 99).

### *Intensive supervision orders*

Heading: inserted, on 1 October 2010, by section 29 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

#### **296G Intensive supervision order in response to young person's non-compliance with judicially monitored condition of supervision or supervision with activity order**

In the situation specified in section 296B(3)(c), the court may make an order placing the young person under the supervision of the chief executive or such person or organisation as may be specified in the order for a period specified in the order and of not more than 12 months.

Section 296G: inserted, on 1 October 2010, by section 29 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

**296H Duty of chief executive to provide for supervision under intensive supervision order**

If, under section 296G, a young person is placed under the supervision of the chief executive, the chief executive must from time to time appoint a social worker to supervise the young person on behalf of the chief executive.

Section 296H: inserted, on 1 October 2010, by section 29 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

**296I Conditions of intensive supervision order**

An order under section 296G is subject to—

- (a) the conditions specified in section 305 (except paragraph (b)):
- (b) a condition that the young person must report to the social worker or person or organisation—
  - (i) at least once each week during the first 3 months of the order, and at least once each month after the first 3 months of the order:
  - (ii) as and when the young person is required to do so at other times by the social worker or person or a representative of the organisation:
- (c) any additional conditions under section 306 the court imposes:
- (d) any additional conditions (imposing a curfew, with or without electronic monitoring of compliance with that curfew) the court imposes under section 296J:
- (e) a condition (if the court under this paragraph imposes one) that the young person attend and remain at, for any weekday, evening, and weekend hours each week and for any number of months the court thinks fit, any specified centre approved by the department, and take part in any activity required by the person in charge of the centre:

- (f) a condition (if the court under this paragraph imposes one) that the young person undertake any specified programme or activity.

Section 296I: inserted, on 1 October 2010, by section 29 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

**296J Additional conditions imposing curfew with or without electronic monitoring of compliance**

- (1) On or after making an order under section 296G, the court may impose, and make the order also subject to, a condition (a **curfew condition**) that the young person must, for a duration no longer than the duration of the order (the **curfew duration**), comply with a curfew requiring the young person to remain, for 1 or more specified periods of each day (the **daily curfew period**), at a specified address (the **curfew address**).
- (2) On imposing, and making an order under section 296G also subject to, a curfew condition, the court must specify in that condition the curfew duration, the daily curfew period, and the curfew address.
- (3) Every daily curfew period specified under subsection (2) must not be for a period of less than 2 hours, and the daily curfew periods for any week must not be more than 84 hours.
- (4) The young person is not in custody during the daily curfew period; but—
  - (a) during the daily curfew period, the young person must not, at any time, leave the curfew address except in the circumstances set out in subsection (5):
  - (b) during the curfew duration, the young person must co-operate with the chief executive, and must comply with any lawful direction (for example, one for the purpose of implementing an electronic monitoring condition under subsection (6)) given by the chief executive for the purpose of implementing the relevant curfew condition:
  - (c) the young person must, when required to do so by the chief executive and for the purpose of implementing an electronic monitoring condition under subsection (6), submit to the electronic monitoring of compliance with

the relevant curfew condition, which may require the young person to be connected to electronic monitoring equipment throughout the period of the order under section 296G and not just throughout the curfew duration.

- (5) A young person may leave the curfew address during the daily curfew period only—
- (a) to seek urgent medical or dental treatment; or
  - (b) to avoid or minimise a serious risk of death or injury to the young person or any other person; or
  - (c) with the approval of the chief executive,—
    - (i) to seek or engage in employment; or
    - (ii) to attend educational, training, or other rehabilitative or reintegrative activities or programmes; or
    - (iii) to attend a family group conference or other process relating to the young person's offending; or
    - (iv) to carry out any undertaking, or implement a decision, recommendation, or plan, arising from a family group conference or other process relating to the young person's offending; or
  - (d) with the approval of the chief executive and subject to any conditions imposed by the chief executive, on humanitarian grounds.
- (6) On or after imposing, and making an order under section 296G also subject to, a curfew condition, the court may, if satisfied that other conditions of the order are likely to be insufficient to secure the young person's compliance with the order, make the order also subject to a condition that the young person must for a specified period not exceeding 6 months submit to electronic monitoring of his or her compliance with the curfew condition.
- (7) A Judge exercising the jurisdiction of the court to impose an electronic monitoring condition under subsection (6) must when imposing the condition record in writing his or her reasons for doing so.

Compare: 2002 No 9 ss 69B(3)–(5), 69E(1)(a), (1)(e), (2)

Section 296J: inserted, on 1 October 2010, by section 29 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

**296K Electronic monitoring**

- (1) The purposes of an electronic monitoring condition imposed under section 296J(6) are to—
  - (a) deter the young person from breaching the requirement of the relevant curfew condition that the young person remain at the curfew address during the daily curfew period; and
  - (b) monitor the young person's compliance with that requirement.
- (2) Information about a young person that is obtained through electronic monitoring may be used only for the purposes referred to in subsection (1) and for the following purposes:
  - (a) to verify compliance with the requirement of the relevant curfew condition that the young person remain at the curfew address during the daily curfew period;
  - (b) to detect non-compliance with that requirement;
  - (c) to provide evidence of non-compliance with that requirement;
  - (d) to verify that the young person has not tampered or otherwise interfered with the ability of the electronic monitoring equipment to operate effectively and accurately.
- (3) Information may be collected during the whole of the period of the order under section 296G but may be used only if it was collected for 1 or more of the purposes set out in this section and, except for information collected for the purpose in subsection (2)(d), was collected during the curfew duration.
- (4) Any information obtained by electronic monitoring outside the curfew duration must be destroyed as soon as practicable.
- (5) The chief executive may from time to time, either generally or particularly, with the agreement of the Commissioner of Police delegate to that Commissioner all or any of the chief executive's functions or powers under this Act relating to implementation of electronic monitoring conditions imposed under section 296J(6).
- (6) Section 41(3), (5), and (7) of the State Sector Act 1988 apply with all necessary modifications to a delegation under subsection (5); but nothing in this section limits or affects section 41

of that Act or its application to the functions or powers that may be delegated under subsection (5).

- (7) Functions or powers delegated under subsection (5) must be regarded as functions or powers of the Commissioner of Police for the purposes of section 17(1) of the Policing Act 2008.

Compare: 2002 No 9 s 69F

Section 296K: inserted, on 1 October 2010, by section 29 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

**296L Powers to detain and return, and arrest, young person breaching curfew condition**

- (1) A constable or social worker may (using such reasonable force as may be necessary) detain without warrant and return to the curfew address a young person subject to a curfew condition under section 296J and found at a place other than the curfew address if the constable or social worker believes on reasonable grounds that the young person has failed to comply with the curfew condition by—
- (a) leaving, or being taken without authority, from the curfew address; or
  - (b) refusing or neglecting to return to the curfew address.
- (2) A constable may (using such reasonable force as may be necessary) arrest without warrant a young person subject to a curfew condition under section 296J and found at a place other than the curfew address if the constable believes on reasonable grounds that the young person has failed to comply with the curfew condition by—
- (a) leaving, or being taken without authority, from the curfew address; or
  - (b) refusing or neglecting to return to the curfew address.
- (3) A young person to whom this section applies does not, by reason only of an act or omission referred to in subsection (1) or (2), commit an offence against section 120 of the Crimes Act 1961.

Section 296L: inserted, on 1 October 2010, by section 29 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

**296M Review of intensive supervision order**

- (1) After making an order under section 296G, the court—
  - (a) must fix promptly dates (which must be not later than 3 months after the date on which the order is made, and at least once every 3 months after that date, but before the order expires) for review of the plan that was prepared in respect of the order in accordance with section 335 (the **plan**); and
  - (b) may direct who is to review the plan (and if it does not make a direction, the person who prepared the plan is deemed to have been directed to review it under this paragraph); and
  - (c) may, at any time, and either on its own initiative or on the application of a party to the proceedings or a barrister or solicitor or youth advocate representing the young person, amend a direction made or deemed to be made under paragraph (b), or revoke it and substitute another direction.
- (2) On or before each of the dates fixed under subsection (1)(a), the person who is directed to review the plan must review the plan and furnish to the court—
  - (a) a report setting out the results of the review; and
  - (b) a revised plan in respect of the young person.
- (3) The report furnished to the court under subsection (2) must—
  - (a) state which of the objectives set out in the plan have been achieved and which of those objectives are yet to be achieved;
  - (b) state, in respect of those objectives that are yet to be achieved, what action is required to achieve those objectives;
  - (c) recommend, in respect of any order made by the court under this Part in relation to the young person to whom the plan relates, whether that order should continue in force, or be varied, suspended, or discharged, and whether any condition of that order should be continued in force, or be varied, suspended, or discharged, and the reasons for those recommendations;
  - (d) state, in respect of those persons who were required to be given a copy of the plan pursuant to section 191 (as



applied by section 339), whether each of those persons agrees with the recommendations contained in the report.

- (4) The court must consider a report furnished to it pursuant to subsection (2) and the accompanying revised plan, and, after giving such persons (if any) as it thinks fit an opportunity to be heard, may do either or both of the following things:
- (a) exercise, in relation to the order (if it remains in force), any of the powers set out in section 296E as if an application had been made in relation to the order under that section:
  - (b) if the court considers the report furnished under subsection (2), or the revised plan, or both, to be inadequate, direct the person who prepared the report to furnish to the court a further report, or a further revised plan, or both, ensuring that the direction to that person indicates any specific matter that it requires to be dealt with in that report or plan.

Section 296M: inserted, on 1 October 2010, by section 29 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

*Powers of court where young person already  
subject to order made under this Part*

**297 Powers of court in dealing with young person subject to order made under this Part**

Where a court finds a charge against a young person proved, and that young person is subject to an order made by a court under this Part, the court may—

- (a) subject to section 285(5), make such order under section 283 as the court thinks fit in addition to the order to which the young person is subject:
- (b) revoke the order to which the young person is subject and make such order under section 283 as the court thinks fit.

*Parenting education programme orders*

Heading: inserted, on 1 October 2010, by section 30 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

**297A Written statements of terms, and how court may respond to failures to comply**

- (1) If an order under section 283(ja) is made requiring a young person who is, or is soon to be, a parent or guardian or other person having the care of a child to attend a parenting education programme, a written statement of the terms of the order must be supplied to that young person in accordance with section 340.
- (2) If an order under section 283(ja) is made requiring a parent or guardian or other person having the care of a young person to attend a parenting education programme, the court must as soon as is reasonably practicable cause to be supplied to the parent or guardian or other person a written statement specifying—
  - (a) the terms and conditions of the order:
  - (b) possible consequences of a failure to comply with the order:
  - (c) provisions for variation of the order:
  - (d) rights of appeal against the order.
- (3) Subsection (4) applies if the court is at any time satisfied in the light of a report under section 320 or of other information available to it that a person required to attend a parenting education programme by an order under section 283(ja) has failed to comply with the order.
- (4) The court may direct a care and protection co-ordinator to convene a family group conference under Part 2 for the purpose of considering matters relating to the care or protection of every child or young person in the care of the person required by the order under section 283(ja) to attend the parenting education programme.
- (5) The care and protection co-ordinator must comply with, and Part 2 applies with all necessary modifications to a conference convened in accordance with, a direction under subsection (4).

Section 297A: inserted, on 1 October 2010, by section 30 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

*Alcohol or drug rehabilitation  
programme orders*

Heading: inserted, on 1 October 2010, by section 30 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

**297B Nature of programmes, who may consent to medical treatment, and related custody orders**

- (1) **Programme**, for the purposes of section 283(jc) and this section, means a programme that is or includes all or any of the following (whether residential or non-residential in nature):
  - (a) psychiatric, psychological, or similar counselling or therapy;
  - (b) a medical, psychiatric, psychological, social, therapeutic, rehabilitative, or reintegrative programme with a focus on alcohol or drug issues.
- (2) No young person may receive or undergo any medical, psychiatric, or psychological examination or treatment that forms part of a programme that the young person is required by an order under section 283(jc) to attend unless consent to the young person's receiving or undergoing the examination or treatment has been given by or on behalf of the young person.
- (3) The consent required by subsection (2) may be given, in the case of a young person of or over the age of 16 years, by that young person and, in any other case,—
  - (a) by a parent or guardian (not being the chief executive) of the young person; or
  - (b) if there is no such parent or guardian in New Zealand or no such parent or guardian can be found with reasonable diligence or is capable of giving consent, by a person in New Zealand who has been acting in the place of a parent; or
  - (c) if there is no person in New Zealand who has been so acting, or if no such person can be found with reason-

able diligence or is capable of giving consent, by a District Court Judge or the chief executive.

- (4) This subsection applies if the court is satisfied that a programme that a young person is required by an order under section 283(jc) to attend is unable to be provided to the young person while he or she lives with the parents or guardians or other persons having the care of the young person.
- (5) If subsection (4) applies, the court may, to enable the programme referred to in subsection (4) to be provided to the young person, make an order placing the young person in the custody of the chief executive, an iwi social service, a cultural social service, or the director of a child and family support service.
- (6) The court must not make an order under subsection (5) placing a young person in the custody of a person (other than the chief executive) or organisation unless that person or organisation consents to the making of the order.
- (7) A custody order under subsection (5) has the same effect as if the young person had been placed in the custody of the relevant person or organisation under an order under section 101, except that—
  - (a) a custody order under subsection (5) expires under section 296 (and so generally not under section 108); and
  - (b) section 365 (which would empower the chief executive to place the young person in a residence established under section 364) does not apply to the young person.

Section 297B: inserted, on 1 October 2010, by section 30 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 297B(7): replaced, on 12 December 2012, by section 6 of the Children, Young Persons, and Their Families Amendment Act 2012 (2012 No 99).

### *Community work order*

#### **298 Community work order**

- (1) Subject to this section, where a charge against a young person is proved before a Youth Court, the court may order that the young person undertake work in the interests of the community for such number of hours, being not less than 20 nor more than 200, as the court may specify.

- (2) The work required to be undertaken for the purposes of a community work order shall—
- (a) be performed within such period not exceeding 12 months as the court shall specify:
  - (b) be performed under the supervision of—
    - (i) a social worker; or
    - (ii) any person or organisation (being a person or organisation approved by the chief executive either generally or in the particular case) who or which agrees to supervise the order.
- (3) No Youth Court shall make a community work order unless it is satisfied that suitable work is available for the young person to perform for the purposes of the order.

Compare: 1974 No 72 s 36(1)(ia); 1977 No 126 s 10(2)

Section 298(1): amended, on 1 October 2010, by section 31 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 298(2)(b)(ii): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

## **299 Failure to comply with community work order**

*[Repealed]*

Section 299: repealed, on 1 October 2010, by section 32 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

## **300 Variation or cancellation of community work order**

*[Repealed]*

Section 300: repealed, on 1 October 2010, by section 32 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

## **301 Procedural provisions relating to application under section 300**

*[Repealed]*

Section 301: repealed, on 1 October 2010, by section 32 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

**302 Application of Accident Compensation Act 2001 to young persons performing work under community work order**

When a young person performs any service or does any work for the purposes of a community work order, the following provisions apply:

- (a) if the young person suffers any personal injury for which he or she has cover under the Accident Compensation Act 2001 arising out of and in the course of performing that service or doing that work,—
  - (i) the personal injury is deemed, for the purposes of section 97 of that Act only, to be a work-related personal injury; and
  - (ii) the Crown is liable to pay compensation to which the young person is entitled under that section:
- (b) the cost of all other entitlements of the young person under that Act must be met from the Earners' Account in the case of a young person who is an earner and from the Non-Earners' Account in all other cases.

Section 302: replaced, on 1 April 2000, by section 9(1) of the Accident Insurance Amendment Act 2000 (2000 No 6).

Section 302 heading: amended, on 3 March 2010, pursuant to section 5(1)(b) of the Accident Compensation Amendment Act 2010 (2010 No 1).

Section 302(a): amended, on 3 March 2010, pursuant to section 5(1)(b) of the Accident Compensation Amendment Act 2010 (2010 No 1).

Section 302(a)(i): amended, on 1 April 2002, by section 337(1) of the Accident Compensation Act 2001 (2001 No 49).

**303 Effect of subsequent sentence**

Where—

- (a) a community work order is in force in respect of a young person; and
- (b) a sentence of imprisonment or a community-based sentence (as those terms are defined in section 4(1) of the Sentencing Act 2002) or a sentence of home detention under section 80A of the Sentencing Act 2002 is subsequently imposed on that young person for another offence,—

the community work order shall be deemed to be cancelled unless the court imposing that sentence otherwise orders.

Compare: 1985 No 120 s 63(1)

Section 303(b): amended, on 1 October 2007, by section 58 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 303(b): amended, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

*Provisions relating to supervision orders and  
supervision with activity orders*

**304 Duty of chief executive to provide for supervision**

Where, pursuant to section 283(k) or section 307(1), a young person is placed under the supervision of the chief executive, the chief executive shall from time to time appoint a social worker to supervise the young person on behalf of the chief executive.

Compare: 1974 No 72 s 45A; 1983 No 129 s 12(1)

Section 304 heading: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 304: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**305 Conditions of supervision order**

Where the court makes an order under section 283(k) placing a young person under the supervision of the chief executive or a person or organisation specified in the order, the following conditions shall apply:

- (a) the social worker or person or organisation under whose supervision the young person is may, at all reasonable times, visit and enter the building or place in which the young person is living:
- (b) the young person shall report to the social worker or person or organisation as and when the young person is required to do so by the social worker or person or a representative of the organisation:
- (c) the young person shall not reside at an address at which that social worker or person or organisation has directed the young person not to reside:
- (d) the young person shall only continue in employment, or continue to engage in any occupation, approved by that social worker or person or organisation:

- (e) the young person shall ensure that the social worker or person or organisation knows at all times of the address at which the young person is residing for the time being:
- (f) the young person shall not associate with any specified person, or with persons of any specified class, with whom the social worker or person or organisation has, in writing, warned the young person not to associate.

Compare: 1974 No 72 s 46(1); 1983 No 129 s 12(1)

Section 305: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

### **306 Power of court to impose additional conditions**

- (1) The court, in making an order under section 283(k) placing a young person under the supervision of the chief executive or a person or organisation specified in the order, may, in its discretion, impose any or all of the following conditions:
  - (a) that any sum required to be paid by that young person pursuant to an order made under paragraph (e) or paragraph (f) of section 283 shall be paid within such period and by such instalments as may from time to time be directed by the social worker or person or organisation under whose supervision the young person is:
  - (b) that the young person shall not own or drive a motorcycle or any other kind of motor vehicle:
  - (c) that the young person shall not associate with any specified person or with persons of any specified class:
  - (d) that the young person shall undergo any specified medical examination and treatment or any specified psychological or psychiatric examination, counselling, and therapy:
  - (e) such conditions relating to the young person's place of residence, employment, or earnings as the court thinks fit:
  - (f) such other conditions as the court thinks fit to reduce the likelihood of further offending by the young person.
- (2) The court shall not impose any condition under subsection (1) requiring any young person to undergo any medical, psychiatric, or psychological examination or treatment, or any psychological or psychiatric counselling or therapy, unless con-



sent to the examination, treatment, counselling, or therapy is given—

- (a) in the case of a young person of or over the age of 16 years, by that young person; or
- (b) in any other case,—
  - (i) by a parent or guardian (not being the chief executive) of the young person; or
  - (ii) if there is no such parent or guardian in New Zealand or no such parent or guardian can be found with reasonable diligence or is capable of giving consent, by a person in New Zealand who has been acting in the place of a parent; or
  - (iii) if there is no person in New Zealand who has been so acting, or if no such person can be found with reasonable diligence or is capable of giving consent, by a District Court Judge or the chief executive.

Compare: 1974 No 72 s 47(1)(a)–(f), (i); 1983 No 129 s 12(1)

Section 306(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 306(2)(b)(i): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 306(2)(b)(iii): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

### **307 Supervision with activity order**

- (1) If a charge against a young person is proved before a Youth Court, the court may make an order placing the young person under the supervision of the chief executive, or of any person or organisation specified in the order, for a period not exceeding 6 months, and (subject to section 290A) imposing either or both of the following conditions:
  - (a) that the young person attend and remain at, for any weekday, evening, and weekend hours each week and for any number of months the court thinks fit, any specified centre approved by the department, and take part in any activity required by the person in charge of the centre;
  - (b) that the young person undertake any specified programme or activity.

- (2) If the court makes an order under subsection (1) in respect of a young person, it may at the same time or before that order expires make an order under section 283(k)—
  - (a) placing that young person under the supervision of the chief executive or such person or organisation as is specified in the order for such period (not exceeding 6 months) as the court may specify; and
  - (b) that must come into force on the expiry of the order made under subsection (1).
- (3) This subsection applies if the court is satisfied that a programme or activity that a young person is required by a condition of an order under subsection (1) to take part in or undertake is unable to be provided to the young person while he or she lives with the parents or guardians or other persons having the care of the young person.
- (4) If subsection (3) applies, the court may, to enable the programme or activity referred to in subsection (3) to be provided to the young person, make an order placing the young person in the custody of the chief executive, an iwi social service, a cultural social service, or the director of a child and family support service.
- (5) The court must not make an order under subsection (4) placing a young person in the custody of a person (other than the chief executive) or organisation unless that person consents to the making of the order.
- (6) A custody order under subsection (4) has the same effect as if the young person had been placed in the custody of the relevant person or organisation under an order under section 101, except that—
  - (a) a custody order under subsection (4) expires under section 296 (and so generally not under section 108); and
  - (b) section 365 (which would empower the chief executive to place the young person in a residence established under section 364) does not apply to the young person.

Section 307: replaced, on 1 October 2010, by section 33 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 307(6): replaced, on 12 December 2012, by section 7 of the Children, Young Persons, and Their Families Amendment Act 2012 (2012 No 99).

**308 Conditions of supervision with activity order**

- (1) The conditions specified in section 305 shall apply to every order made under section 307(1) as if that order were an order made under section 283(k).
- (2) The court may, in making an order under section 307(1), impose any or all of the conditions specified in section 306.

**308A Judicial monitoring of compliance with conditions of supervision or supervision with activity order**

- (1) The court may direct that a young person's compliance with 1 or more specified conditions of a supervision or supervision with activity order made in respect of a young person is to be monitored judicially at the times specified in the direction (or at any other replacement monitoring times the court specifies) if—
  - (a) the order is one made or varied by the court after declaring under section 296B(3) that the young person has without reasonable excuse failed to comply satisfactorily with a term, condition, or other requirement of a supervision or supervision with activity order made in respect of the young person; or
  - (b) the order is one made by the court under section 283 after a charge against the young person in respect of an offence is proved before the court and the young person has previously been the subject of an order under section 283 made in respect of another offence and that previous order is, or is an order more restrictive than, a supervision order under section 283(k); or
  - (c) the young person has previously been convicted of an offence in a District Court or the High Court and, as a result of the conviction, sentenced by a District Court or by the High Court to—
    - (i) a community-based sentence (as defined in section 4(1) of the Sentencing Act 2002); or
    - (ii) a sentence of home detention imposed under section 80A of the Sentencing Act 2002; or
    - (iii) a sentence of imprisonment (as so defined).
- (2) The times specified in a direction under subsection (1) (and any replacement monitoring times the court specifies) must

require monitoring of the young person's compliance with the conditions specified in the direction—

- (a) at a time not later than 3 months after the date on which the direction was given; and
  - (b) at least once every 3 months after that time.
- (3) The young person must be—
- (a) given or supplied the terms of the direction by a written statement under section 340; and
  - (b) given reasonable written notice of any replacement times the court specifies.

Section 308A: inserted, on 1 October 2010, by section 34 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

### **308B Effect of judicial monitoring direction**

- (1) A direction under section 308A requires the young person to whom it relates to appear before the court at the times specified in the direction (or at any replacement times the court specifies) so that the court may—
- (a) monitor the young person's compliance with the conditions that are the subject of the direction; and
  - (b) review the young person's progress in achieving the goals of the plan prepared under section 335 in respect of the order the conditions of which are the subject of the direction.
- (2) The court may, at any time during the duration of a direction under section 308A, direct, on the application of a social worker or constable, that the young person in respect of whom the direction under section 308A was given be issued with a summons, in a form prescribed by rules of court, to appear before the court.
- (3) If a young person does not appear in answer to a summons that has been served under this section, a Youth Court Judge or District Court Judge may direct that a warrant to arrest that young person and bring that young person before the court be issued.

Section 308B: inserted, on 1 October 2010, by section 34 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

**308C Progress reports**

- (1) If the court has given a direction under section 308A in respect of a young person and in respect of specified conditions of an order, a social worker must prepare and furnish to the court a written progress report on the young person's compliance with those conditions.
- (2) The written progress report must be furnished to the court before the young person's compliance with those conditions is monitored judicially for the first time.
- (3) The progress report—
  - (a) must contain information on the young person's compliance with those conditions and on his or her progress in achieving the goals of the plan prepared under section 335 in respect of the order the conditions of which are the subject of the direction; and
  - (b) may contain any other information that the social worker considers relevant to the judicial monitoring of the young person's compliance with those conditions.
- (4) The social worker must prepare and furnish to the court further progress reports at specified intervals of not less than 3 months if directed to do so by the court.

Compare: 2002 No 9 s 80ZJ

Section 308C: inserted, on 1 October 2010, by section 34 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

**309 Failure to observe conditions of supervision order or supervision with activity order**

*[Repealed]*

Section 309: repealed, on 1 October 2010, by section 35 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

**310 Suspension, cancellation, and variation of supervision order or supervision with activity order**

*[Repealed]*

Section 310: repealed, on 1 October 2010, by section 35 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

*Supervision with residence orders***311 Supervision with residence order**

- (1) If a charge against a young person is proved before a Youth Court, the court may make an order placing the young person in the custody of the chief executive for a period of not less than 3 months and not more than 6 months.
- (2) If a Youth Court makes an order under subsection (1) in respect of a young person, the order may (subject to section 290A) be made subject to the condition that the young person undertake any specified programme or activity.
- (2A) If a Youth Court makes an order under subsection (1) in respect of a young person, the court must—
  - (a) adjourn the proceedings to a date on which it will consider early release under section 314, and that is—
    - (i) the date on which two-thirds of the period of the order under subsection (1) will have elapsed; or
    - (ii) if it is not practicable to hold a hearing on that date, a date not more than 7 working days before that date; and
  - (b) make an order under section 283(k) placing that young person under the supervision of the chief executive for a period of not less than 6 months and not more than 12 months.
- (3) The order required by subsection (2A)(b) must be made either at the same time as the order made under subsection (1) or after that time but before the earlier of the following:
  - (a) the expiry of the order made under subsection (1);
  - (b) the date on which the young person is released from the custody of the chief executive under section 314.
- (4) The order required by subsection (2A)(b) must come into force on the earlier of the expiry specified in subsection (3)(a) and the date specified in subsection (3)(b), and may be made subject to all or any of the following conditions (which, if imposed by the court, apply in addition to the conditions required by section 305 and to any conditions the court imposes under section 306):
  - (a) that the young person attend and remain at, for any weekday, evening, and weekend hours each week and

for any number of months the court thinks fit, any specified centre approved by the department, and take part in any activity required by the person in charge of the centre:

- (b) that the young person undertake any specified programme or activity:
- (c) that the young person reside at an address specified by the court.

Section 311: replaced, on 1 October 2010, by section 36 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 311(2A)(a): replaced, on 5 December 2013, by section 5 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2013 (2013 No 110).

### **312 Effect of supervision with residence order**

- (1) Where the court makes an order under section 311 placing a young person in the custody of the chief executive,—
  - (a) the chief executive has the role of providing day-to-day care for the child or young person as if a parenting order had been made with respect to the child or young person under section 48(1) of the Care of Children Act 2004; and
  - (b) except to the extent that they are preserved by the court in any order made under section 313, all the rights, powers, and duties of every other person having custody of the young person shall be suspended and shall have no effect; and
  - (c) for the purposes of section 91 of the Care of Children Act 2004,—
    - (i) the order constitutes an order about the role of providing day-to-day care for the child or young person; and
    - (ii) the chief executive is a person who, under the order, has the role of providing day-to-day care for the child or young person.
- (2) Any order made under section 311(1) shall be sufficient authority for any constable or any social worker or any other person authorised in that behalf by the chief executive to take the young person to whom the order relates to such residence as is

specified in the plan prepared under section 335 in relation to that young person and approved by the court, and to use such force as is reasonably necessary for that purpose.

- (3) Where the court makes an order under section 311 placing a young person in the custody of the chief executive, the chief executive may, with the approval of the court, transfer the young person from any residence to any other residence, and may, for that purpose, use such force as is reasonably necessary.

Section 312(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 312(1)(a): replaced, on 1 July 2005, by section 151 of the Care of Children Act 2004 (2004 No 90).

Section 312(1)(c): replaced, on 1 July 2005, by section 151 of the Care of Children Act 2004 (2004 No 90).

Section 312(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 312(2): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 312(3): amended, on 1 October 2010, by section 37 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 312(3): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

### **313 Court may make orders for access and exercise of other rights by parents and other persons**

- (1) Where the court makes an order under section 311 placing a young person in the custody of the chief executive, it may on making the order, or at any time thereafter, on application made by any parent of that young person or by any other person, make an order—
- (a) granting access to that young person to that parent or other person:
  - (b) conferring on that parent or other person such other rights in relation to the young person as it thinks fit.
- (2) Any such order may be made on such terms and conditions as the court thinks fit.

Section 313(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).



**314 Court must in certain cases release young person from custody before expiry of supervision with residence order**

- (1) The court must on the date on which under section 311(2A)(a) it will consider early release under this section release a young person from the custody of the chief executive pursuant to an order under section 311 if satisfied that during the period that the young person has been in that custody—
  - (a) the young person has neither absconded nor committed any further offences; and
  - (b) either the young person's behaviour and compliance with any obligations placed on the young person by the plan prepared under section 335 in respect of the order have been satisfactory or any misbehaviour and non-compliance of the young person have been minor; and
  - (c) the young person has complied satisfactorily with any condition of the order that the young person undertake any specified programme or activity.
- (2) The chief executive must, as soon as practicable before the date on which under section 311(2A)(a) the court will consider early release under this section, prepare for, and furnish to, the court a report addressing the matters specified in subsection (1)(a) to (c).

Section 314: replaced, on 1 October 2010, by section 38 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 314(1): amended, on 5 December 2013, by section 6(1) of the Children, Young Persons, and Their Families Amendment Act (No 2) 2013 (2013 No 110).

Section 314(1): amended, on 5 December 2013, by section 6(2) of the Children, Young Persons, and Their Families Amendment Act (No 2) 2013 (2013 No 110).

Section 314(2): amended, on 5 December 2013, by section 6(3) of the Children, Young Persons, and Their Families Amendment Act (No 2) 2013 (2013 No 110).

**315 Supervision with residence order to cease to run if young person absconds**

Where a young person who is subject to an order made under section 311(1) absconds from the custody of the chief executive, any time during which that young person is unlawfully at large shall not count as part of the period during which that

young person is in the custody of the chief executive pursuant to that order.

Section 315: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**316 Court may cancel supervision with residence order if young person absconds**

- (1) A Youth Court may, on the application of the chief executive, cancel an order made under section 311 placing a young person in the custody of the chief executive if the court is satisfied that the young person has, at any time while that order is in force, absconded from the custody of the chief executive.
- (2) Where the court cancels a supervision with residence order under subsection (1),—
  - (a) the court shall at the same time cancel the order required to be made under section 311(2A) in conjunction with that order:
  - (b) the court may substitute, in relation to the young person in respect of whom the order was made, any other order that it could have made at the time when the order was made.
- (3) Every application under this section shall be served on the young person to whom the supervision with residence order relates, and on the barrister or solicitor or youth advocate representing that young person, and those persons shall be entitled to appear and be heard at the hearing of the application.
- (4) Subsection (2) is subject to section 289(3) (on the court imposing the least restrictive outcome that is adequate in the circumstances).

Section 316(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 316(2)(a): amended, on 1 October 2010, by section 39(1) of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 316(4): inserted, on 1 October 2010, by section 39(2) of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

**317 When supervision with residence order ceases to have effect**

- (1) Every order made under section 311(1) shall cease to have effect when the order's period elapses or the young person is sooner released from the custody of the chief executive pursuant to section 314.
- (1A) If the period of an order made under section 311(1) elapses on a day that is a non-release day, the expiry of the order must for all purposes be treated as occurring instead on the nearest preceding day that is not a non-release day.
- (1B) **Non-release day**, in subsection (1A), means a day that is—
  - (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, or Waitangi Day; or
  - (b) a day in the period commencing with 25 December in a year and ending with 15 January in the following year; or
  - (c) in respect of release from a particular place, the anniversary day of the region in which that place is situated.
- (2) Where an order made under section 311(1) expires or is cancelled pursuant to section 316, custody of the young person shall revert to the person having custody of the young person immediately before the order was made.

Compare: 1974 No 72 s 49(1)–(7), (9); 1983 No 129 s 13

Section 317(1): amended, on 5 December 2013, by section 7(1) of the Children, Young Persons, and Their Families Amendment Act (No 2) 2013 (2013 No 110).

Section 317(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 317(1A): inserted, on 5 December 2013, by section 7(2) of the Children, Young Persons, and Their Families Amendment Act (No 2) 2013 (2013 No 110).

Section 317(1B): inserted, on 5 December 2013, by section 7(2) of the Children, Young Persons, and Their Families Amendment Act (No 2) 2013 (2013 No 110).

**318 Search without warrant**

- (1) For the purpose of exercising the powers conferred by section 312 in respect of any young person, any constable or any social worker or any other person authorised in that behalf by the chief executive may, without a warrant, enter and search, by force if necessary, any dwelling house, building, aircraft, ship,

carriage, vehicle, premises, or place, and remove the young person.

- (2) Every constable or social worker or other person who exercises any powers under this section shall, on entering any dwelling house, building, aircraft, ship, carriage, vehicle, premises or place, and, if requested at any subsequent time,—
- (a) produce evidence of identity; and
  - (b) disclose that those powers are being exercised under this section.

Compare: 1974 No 72 s 49AB; 1983 No 129 s 13

Section 318(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 318(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 318(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

### **319 Medical treatment of young person in custody of chief executive**

No young person who has been placed in the custody of the chief executive pursuant to an order made under section 311 shall receive any medical treatment unless consent to the treatment is given—

- (a) in the case of a young person of or over the age of 16 years, by that young person; or
- (b) in any other case,—
  - (i) by a parent or guardian (not being the chief executive) of the young person; or
  - (ii) if there is no such parent or guardian in New Zealand or no such parent or guardian can be found with reasonable diligence or is capable of giving consent, by a person in New Zealand who has been acting in the place of a parent; or
  - (iii) if there is no person in New Zealand who has been so acting, or if no such person can be found with reasonable diligence or is capable of giving consent, by a District Court Judge or the chief executive.

Section 319 heading: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 319: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 319(b)(i): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 319(b)(iii): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

*Review of orders for periods of at least 8 months*

Heading: inserted, on 1 October 2010, by section 40 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

**319A Orders must be reviewed**

- (1) This section applies to an order only if the order is—
  - (a) a mentoring programme order under section 283(jb) requiring the young person to attend in a specified manner for a period of at least 8 months a specified mentoring programme; or
  - (b) an alcohol or drug rehabilitation programme order under section 283(jc) requiring the young person to attend in a specified manner for a period of at least 8 months a specified alcohol or drug rehabilitation programme; or
  - (c) a supervision order under section 311(2A) that accompanies a supervision with residence order and places the young person under the supervision of the chief executive for a period of at least 8 months.
- (2) After making an order to which this section applies, the court—
  - (a) must fix promptly a date (which must be not later than 6 months after the order comes into force, and before it expires) for review of the plan that was prepared in respect of the order in accordance with section 335 (the **plan**); and
  - (b) may direct who is to review the plan (and if it does not make a direction, the person who prepared the plan is deemed to have been directed to review it under this paragraph); and
  - (c) may, at any time, and either on its own initiative or on the application of a party to the proceedings or a

barrister or solicitor or youth advocate representing the young person, amend a direction made or deemed to be made under paragraph (b), or revoke it and substitute another direction.

- (3) On or before the date fixed under subsection (2)(a), the person who is directed to review the plan must review the plan and furnish to the court—
  - (a) a report setting out the results of the review; and
  - (b) a revised plan in respect of the young person.
- (4) The report furnished to the court under subsection (3) must—
  - (a) state which of the objectives set out in the plan have been achieved and which of those objectives are yet to be achieved;
  - (b) state, in respect of those objectives that are yet to be achieved, what action is required to achieve those objectives;
  - (c) recommend, in respect of any order made by the court under this Part in relation to the young person to whom the plan relates, whether that order should continue in force, or be varied, suspended, or discharged, and whether any condition of that order should be continued in force, or be varied, suspended, or discharged, and the reasons for those recommendations;
  - (d) state, in respect of those persons who were required to be given a copy of the plan pursuant to section 191 (as applied by section 339), whether each of those persons agrees with the recommendations contained in the report.
- (5) The court must consider a report furnished to it pursuant to subsection (3) and the accompanying revised plan, and, after giving such persons (if any) as it thinks fit an opportunity to be heard, the court may do either or both of the following things:
  - (a) exercise, in relation to the order (if it remains in force), any of the powers set out in section 296E as if an application had been made in relation to the order under that section;
  - (b) if the court considers the report furnished under subsection (3), or the revised plan, or both, to be inadequate, direct the person who prepared the report to furnish to

the court a further report, or a further revised plan, or both, ensuring that the direction to that person indicates any specific matter that it requires to be dealt with in that report or plan.

Section 319A: inserted, on 1 October 2010, by section 40 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

*Reports on effectiveness of orders*

**320 Report to be made to court on effectiveness of certain orders**

- (1) Where the court makes a community work order under section 298, the social worker or, as the case may be, the person or organisation supervising the order shall, on the expiry of the order, furnish to the court a report in writing.
- (1A) If the court makes a parenting education programme order under section 238(ja), a mentoring programme order under section 283(jb), or an alcohol or drug rehabilitation programme order under section 283(jc), the person or organisation providing the programme specified in the order must, on the expiry of the order, furnish to the court a report in writing.
- (2) Where, pursuant to an order made under section 283(k) or section 296G or section 307 (including any order made pursuant to section 307(2) or section 311(2A)), a young person is placed under the supervision of the chief executive or a person or organisation, the chief executive or, as the case may be, that person or organisation shall, on the expiry of the period specified in the order, furnish to the court a report in writing.
- (3) Where, pursuant to an order made under section 311(1), a young person is placed in the custody of the chief executive, the chief executive shall, on the expiry of the order, furnish a report to the court in writing.
- (4) Every report required by this section to be furnished to the court in relation to an order must contain—
  - (a) an assessment of the effectiveness of the order:
  - (b) an assessment of the response to the order of the young person or, if the order is a parenting education programme order made under section 283(ja), of—

- (i) the responses to the order of the person in respect of whom the order was made; and
    - (ii) if it is reasonably practicable to ascertain them, the responses to the order of every child or young person affected by the order (other than any young person in respect of whom the order was made):
  - (c) if the order is a parenting education programme order made under section 283(ja) and the person in respect of whom the order was made appears to have failed to comply with it, a recommendation whether the court under section 297A(4) should direct a care and protection co-ordinator to convene a family group conference under Part 2 for the purpose of considering matters relating to the care or protection of every child or young person affected by the order (other than any young person in respect of whom the order was made):
  - (d) any other information the person who is required to furnish the report considers relevant.
- (5) Where, pursuant to this section, any person or organisation furnishes a report to the court, that person or organisation shall send a copy of that report to—
- (a) the appropriate youth justice co-ordinator; and
  - (b) the young person to whom the report relates; and
  - (c) the barrister or solicitor or youth advocate representing that young person.

Section 320(1A): inserted, on 1 October 2010, by section 41(1) of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 320(2): amended, on 1 October 2010, by section 41(2) of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 320(2): amended, on 1 October 2010, by section 41(3) of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 320(2): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 320(3): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 320(4): replaced, on 1 October 2010, by section 41(4) of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).



## **Part 5**

### **Provisions relating to procedure in Youth Court**

#### *General*

#### **321 Application of Acts relating to bail, criminal disclosure, criminal procedure, and District Courts**

- (1) Subject to the provisions of this Act, the provisions set out in Schedule 1 shall apply, with such modifications as are indicated in that schedule or are necessary, to Youth Courts and to proceedings in such courts, as the case may require.
- (2) For the purposes of section 293 every Youth Court and its officers shall have all the powers and duties of a District Court and its officers respectively, and Part 3 of the Summary Proceedings Act 1957 shall apply accordingly with all necessary modifications and the following specific modification, namely, that where any child or young person is examined as to the means of that child or young person under that Part of that Act any parent or guardian or other person having the care of that child or young person may be present.
- (3) In any provisions so applied, **District Court Judge, Judge, and judicial officer**, for the purposes of this Act, mean a Youth Court Judge exercising jurisdiction in a Youth Court.
- (4) Any officer of a District Court may act as an officer of a Youth Court.
- (5) For the avoidance of doubt, it is hereby declared that, in any case where a child or young person first appears before a Youth Court following his or her arrest, the following powers may be exercised in relation to the child or young person by a Justice or Community Magistrate:
  - (a) the powers conferred by section 238(1):
  - (b) where the child or young person is legally represented in the proceedings, the powers conferred by section 246(b).

Compare: 1974 No 72 s 99

Section 321 heading: replaced, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 321(3): replaced, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 321(5): inserted, on 8 January 1995, by section 40 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 321(5): amended, on 30 June 1998, by section 7 of the District Courts Amendment Act 1998 (1998 No 76).

### **322 Time for instituting proceedings**

A Youth Court Judge may dismiss any charge charging a young person with the commission of an offence if the Judge is satisfied that the time that has elapsed between the date of the commission of the alleged offence and the hearing has been unnecessarily or unduly protracted.

Compare: 1974 No 72 s 100

Section 322: amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

#### *Youth advocates*

### **323 Appointment of youth advocate to represent child or young person**

- (1) Where a child or young person appears before a Youth Court charged with an offence, then unless—
  - (a) the child or young person is already represented by a barrister or solicitor in those proceedings; or
  - (b) the court is satisfied that legal representation has been arranged, or will be arranged, for that child or young person in those proceedings,—the court shall appoint a barrister or solicitor to represent that child or young person in those proceedings.
- (2) Where the court appoints a barrister or solicitor under subsection (1), it shall, so far as practicable, appoint a barrister or solicitor who is, by reason of personality, cultural background, training, and experience, suitably qualified to represent the child or young person.
- (3) Where,—
  - (a) pursuant to subsection (1), the court is required to appoint a barrister or solicitor to represent a child or young person in any proceedings; and
  - (b) a youth advocate has been appointed to represent the child or young person in any previous proceedings,—

the court shall, where possible, appoint that youth advocate to represent the child or young person in the later proceedings.

**324 Further provisions relating to youth advocate**

- (1) A youth advocate appointed to represent a child or young person in any proceedings shall have, in relation to the representation of that child or young person in those proceedings and on any other occasion on which that youth advocate represents that child or young person, the same rights, powers, duties, privileges, and immunities that the youth advocate would have had if he or she had not been appointed pursuant to section 323 but had been retained by that child or young person to provide legal representation.
- (2) Where—
  - (a) a youth advocate is appointed to represent a young person in any proceedings; and
  - (b) in those proceedings the court makes, in respect of that young person, any order under section 283,—  
that youth advocate shall, if the young person agrees, be entitled to represent the young person—
  - (c) on any appeal under section 351 or section 352 or section 353 or section 354 in respect of those proceedings, and in any subsequent proceedings under Part 4 in relation to that order:
  - (d) where the court makes an order under section 283(o) that the young person be brought before a District Court for sentence or decision,—
    - (i) in the proceedings before the District Court:
    - (ii) on any appeal against that sentence or decision:
    - (iii) in relation to any matter arising out of that sentence or decision while that young person is detained in custody pursuant to that sentence or decision.
- (3) A youth advocate appointed to represent a child or young person in any proceedings may, if requested to do so by the child or young person,—
  - (a) attend any family group conference held under Part 4 in respect of the child or young person, and may make

representations on behalf of the child or young person at any such conference:

- (b) act on behalf of the child or young person in respect of any matter relating to the detention of that child or young person in secure care, or the care of that child or young person in a residence.

### **325 Payment of youth advocate**

- (1) The fees and expenses of a youth advocate shall, in accordance with regulations made under this Act, be paid out of a Crown Bank Account from money appropriated by Parliament for the purpose.
- (2) The bill of costs rendered by a youth advocate shall be given to the Registrar of the court that appointed that youth advocate, and the Registrar may tax the bill of costs.
- (3) A youth advocate who is dissatisfied with the decision of the Registrar as to the amount of the bill may, within 14 days after the date of the decision, apply to a Youth Court Judge to review the decision; and the Judge may make such order varying or confirming the decision as the Judge considers fair and reasonable.
- (4) Notwithstanding subsection (1), the court may, if it thinks proper, order any party to the proceedings to refund to the Crown such amount as the court specifies in respect of any fees and expenses paid under that subsection, and the amount ordered to be refunded shall be a debt due to the Crown by that party and shall be recoverable accordingly in any court of competent jurisdiction.

Compare: 1980 No 94 s 162

Section 325(1): amended, on 25 January 2005, pursuant to section 83(7) of the Public Finance Act 1989 (1989 No 44).

### *Lay advocates*

### **326 Appointment of lay advocate**

- (1) Where a child or young person appears before a Youth Court charged with an offence, the court may, on application by any person entitled to make representations in those proceedings on behalf of any person, or of its own motion, appoint any

person, not being a barrister or solicitor, to appear in support of that child or young person in those proceedings.

- (2) Where the court appoints a lay advocate under subsection (1), it shall, so far as practicable, appoint a person who has, by reason of personality, cultural background, knowledge, and experience, sufficient standing in the culture of the child or young person in respect of whom the appointment is to be made to enable that person to carry out his or her duties under this Act.
- (3) The court may make an appointment under subsection (1) notwithstanding that the child or young person is represented in the proceedings by a barrister or solicitor.

**327 Functions of lay advocate**

The principal functions of a lay advocate appointed under section 326 are as follows:

- (a) to ensure that the court is made aware of all cultural matters that are relevant to the proceedings;
- (b) to represent the interests of the child's or young person's whanau, hapu, and iwi (or their equivalents (if any) in the culture of the child or young person) to the extent that those interests are not otherwise represented in the proceedings.

**328 Further provisions relating to lay advocate**

Subsections (2) and (3) of section 324 shall apply, with all necessary modifications, with respect to every lay advocate appointed under section 326(1) to appear in support of a child or young person in any proceedings as if that lay advocate were a youth advocate appointed to represent that child or young person in those proceedings.

**328A Payment of lay advocate**

- (1) The fees and expenses of any lay advocate appointed under section 326 shall, in accordance with regulations made under this Act, be paid out of public money appropriated by Parliament for the purpose.

- (2) Notwithstanding subsection (1), the court may, if it thinks proper, order any party to the proceedings to refund to the Crown such amount as the court specifies in respect of any fees and expenses paid under that subsection, and the amount ordered to be refunded shall be a debt due to the Crown by that party and shall be recoverable accordingly in any court of competent jurisdiction.

Section 328A: inserted, on 1 November 1989, by section 3 of the Children, Young Persons, and Their Families Amendment Act 1989 (1989 No 70).

*Attendance at hearings and right to make  
representations*

**329 Persons entitled to be present at hearing**

- (1) No person shall be present during the hearing of any proceedings in a Youth Court relating to a child or young person except—
- (a) officers of the court:
  - (b) the child or young person:
  - (c) the prosecutor and any person, including any barrister or solicitor, conducting the proceedings against the child or young person:
  - (d) the parents or guardians or other person having the care of the child or young person:
  - (e) where a family group conference has been held under Part 4 in relation to the child or young person, a representative appointed by that family group conference:
  - (f) any barrister or solicitor or youth advocate representing the child or young person:
  - (g) any barrister or solicitor representing any parent or guardian of the child or young person:
  - (h) any youth justice co-ordinator:
  - (i) any social worker:
  - (j) any lay advocate who appears in support of the child or young person or any parent or guardian or other person having the care of the child or young person:
  - (k) witnesses:
  - (l) accredited news media reporters:
  - (m) any other person whom the Judge permits to be present.

- (2) Any witness shall leave the courtroom if asked to do so by the Judge.
- (3) Nothing in this section limits any other power of the court to hear proceedings in private or to exclude any person from the court.

Compare: 1974 No 72 s 23; 1980 No 94 s 159(2), (3), (5)

Section 329(1)(c): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

### **330 Right to make representations in Youth Court**

- (1) Where a child or young person appears before a Youth Court charged with an offence, representations may be made to the court on behalf of the child or young person by—
  - (a) the child or young person:
  - (b) any barrister or solicitor or youth advocate who represents the child or young person:
  - (c) any parent or guardian or other person having the care of the child or young person:
  - (d) any lay advocate who appears in support of the child or young person or any parent or guardian or other person having the care of the child or young person:
  - (e) with the leave of the court, any other person.
- (2) Where a child or young person appears before a Youth Court charged with an offence, representations may be made to the court on behalf of any parent or guardian or other person having the care of that child or young person by—
  - (a) that parent or guardian or other person:
  - (b) any barrister or solicitor who represents that parent or guardian or other person:
  - (c) any lay advocate who appears in support of that parent or guardian or other person:
  - (d) with the leave of the court, any other person.
- (3) Where, in respect of any child or young person who appears before a Youth Court charged with an offence, a family group conference has been held pursuant to Part 4, a representative of that family group conference shall be entitled to address the court.

Compare: 1974 No 72 s 40(b), (c); 1983 No 129 s 9

*Arrangements for hearings in Youth Courts***331 Matters before court to be dealt with separately**

So far as practicable the sittings of a Youth Court shall be so arranged that—

- (a) persons attending are not brought into contact with persons in attendance at any other court; and
- (b) both the extent to which children and young persons are able to associate within the court premises while awaiting hearing, and the extent to which parents are obliged to congregate in common waiting facilities pending the hearing of proceedings in which they are involved, are reduced to a minimum.

Compare: 1974 No 72 s 22

**332 Arrangements for hearing of proceedings in Youth Court**

- (1) So far as practicable the hearing of proceedings in a Youth Court shall be arranged in a manner that keeps to a minimum the time that the persons involved have to wait for the proceedings to be heard.
- (2) The time stated in every summons requiring a person to appear before a Youth Court shall be a time that accords with the reasonable expectation of the Registrar of the court of the time when the proceedings in respect of which the summons is issued will be heard.

*Reports***333 Medical, psychiatric, and psychological reports**

- (1) If, at any stage of any proceedings under Part 4, it appears to the court that a medical, psychiatric, or psychological report should be available to the court, the court may make any order that a Family Court is empowered to make under any of the provisions of sections 178 and 181, and the provisions of those sections and of sections 179, 180, 182, 183, 184, and 185 shall apply with such modifications as may be necessary.
- (2) Without limiting the provisions of subsection (1), the court may obtain a psychiatric or psychological report under this section in respect of a young person for the purpose of assisting the court in determining—



- (a) whether the young person is unfit to stand trial within the meaning of section 4 of the Criminal Procedure (Mentally Impaired Persons) Act 2003; or
  - (b) if the young person is insane within the meaning of section 23 of the Crimes Act 1961; or
  - (c) the type and duration of any order that it is empowered to make under Part 4; or
  - (d) the nature of any requirement that it might impose as part of, or as a condition of, any order that it is empowered to make under Part 4.
- (3) Without limiting the provisions of subsection (1), the court may make it a condition of any grant of bail that a young person shall attend, in accordance with the court's directions, for the purposes of a psychiatric examination or a psychological assessment under this section.

Section 333(2): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 333(2)(a): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 333(3): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

### **334 Report by social worker**

- (1) Where the court makes a finding that a charge against a young person is proved, the court may, before making any order under section 283, obtain a report from a social worker.
- (2) The court shall not make an order under paragraph (ja) or paragraph (jb) or paragraph (jc) or paragraph (k) or paragraph (l) or paragraph (m) or paragraph (n) or paragraph (o) of section 283, or under section 296G, unless a report from a social worker is first obtained by the court.
- (3) The court shall consider every report furnished to it pursuant to this section.
- (4) Every report furnished to the court pursuant to this section shall include—
  - (a) such information relating to the disposition of the case as will assist the court in its consideration of the matter:
  - (b) such information as the court may direct.

- (5) Every report required pursuant to this section shall be prepared, where appropriate, in consultation with a Maatua Whangai worker.

Compare: 1974 No 72 s 41(3), (5); 1982 No 135 s 9(1)

Section 334(2): amended, on 1 October 2010, by section 42(a) of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 334(2): amended, on 1 October 2010, by section 42(b) of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

### **335 Report to be accompanied by plan**

- (1) Every report required under section 334 in relation to any order proposed to be made under paragraph (ja) or paragraph (jb) or paragraph (jc) or paragraph (k) or paragraph (l) or paragraph (m) or paragraph (n) of section 283, or under section 296G, shall be accompanied by a plan containing details of how that order is to be implemented, including details of—

- (a) the arrangements that would be made for the care and control of the young person during the period in which the young person would be in the custody, or under the supervision, of the chief executive or any other person or organisation; and
- (b) the nature of any programme that would be provided to the young person during that period.

- (2) Every plan required by subsection (1) shall be prepared—

- (a) where it is proposed to place the young person under the supervision of any person (other than the chief executive), or any organisation, by that person or organisation;
- (b) by a social worker in any other case.

Section 335(1): amended, on 1 October 2010, by section 43(a) of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 335(1): amended, on 1 October 2010, by section 43(b) of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 335(1)(a): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 335(2)(a): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**336 Court may obtain cultural or community report**

Before making any order under section 283 the court may make any order that a Family Court is empowered to make under section 187, and the provisions of that section shall apply with such modifications as may be necessary.

**337 Reports may be made orally**

The court may, unless any person entitled to make representations in the proceedings objects, direct that any report required pursuant to section 334 (other than a report to which subsection (2) of that section applies) or section 336 be made orally to the court.

**338 Privilege for reports**

The provisions of section 188 shall apply with such modifications as may be necessary with respect to every report furnished to the court pursuant to section 296M or section 308C or section 314 or section 319A or section 320 or section 333 or section 334 or section 336.

Section 338: amended, on 12 December 2012, by section 8 of the Children, Young Persons, and Their Families Amendment Act 2012 (2012 No 99).

Section 338: amended, on 1 October 2010, by section 44 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

**339 Access to reports and plans under this Part**

The provisions of sections 191 to 194 shall apply with such modifications as may be necessary with respect to—

- (a) every report furnished to the court pursuant to section 296M or section 308C or section 314 or section 319A or section 320 or section 333 or section 334 or section 336; and
- (b) every plan furnished to the court pursuant to section 296M or section 319A or section 335.

Section 339(a): amended, on 12 December 2012, by section 9(1) of the Children, Young Persons, and Their Families Amendment Act 2012 (2012 No 99).

Section 339(a): amended, on 1 October 2010, by section 45(1) of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 339(b): amended, on 12 December 2012, by section 9(2) of the Children, Young Persons, and Their Families Amendment Act 2012 (2012 No 99).

Section 339(b): amended, on 1 October 2010, by section 45(2) of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

*Written statement of terms of orders*

**340 Written statement of terms of certain orders to be given to young person**

- (1) After making an order under paragraph (ja), (jb), (jc), (k), (l), (m), (n), or (o) of section 283 or under section 296G, the court must, before the young person leaves the court, cause a written statement to be supplied to the young person to whom the order relates, and to the barrister or solicitor or youth advocate representing the young person, specifying—
  - (a) the terms and conditions of the order (for example, in the case of an intensive supervision order under section 296G, any additional curfew and electronic monitoring conditions under section 296J);
  - (b) if the young person's compliance with any of the conditions of the order is to be monitored judicially in accordance with a direction under section 308A, the terms of that direction;
  - (c) in the case of an order under section 283(n) or (o), the reasons for the making of that order;
  - (d) in the case of an intensive supervision order under section 296G that is subject to additional curfew and electronic monitoring conditions under section 296J, the reasons for the imposition of that additional electronic monitoring condition;
  - (e) possible consequences of a failure to comply with the order;
  - (f) provisions for variation of the order;
  - (g) rights of appeal against the order or the finding on which the order was based.
- (2) However, subsection (1) applies to an order made under section 283(ja) only if that order is made in respect of, and requires attendance at a parenting education programme by, a

young person who is, or is soon to be, a parent or guardian or other person having the care of a child.

- (3) The court may for the purposes of subsection (1) direct that the young person must remain at the court for a period, not exceeding 1 hour, that may be necessary to enable the statement to be supplied to the young person.
- (4) If it is not practicable to supply a written statement to the young person before the young person leaves the court, the statement must be supplied to the young person, and to the barrister or solicitor or youth advocate representing that young person, as soon as practicable.

Compare: 1985 No 120 s 58

Section 340: replaced, on 1 October 2010, by section 46 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

## **Part 6 Appeals**

### *Appeals from decisions of Family Courts*

#### **341 Rights of appeal against decisions of Family Courts**

- (1) This subsection applies to a decision of a Family Court, in proceedings under this Act, to—
  - (a) make or refuse to make an order (other than an interlocutory or interim order); or
  - (b) dismiss the proceedings; or
  - (c) otherwise finally determine the proceedings.
- (2) A party to proceedings in which there is made a decision to which subsection (1) applies, a child or young person to whom the proceedings relate, or any other person prejudicially affected by the decision, may appeal to the High Court against the decision.
- (3) A party to proceedings under this Act in a Family Court in which an interlocutory or interim order is made, a child or young person to whom the proceedings relate, or any other person prejudicially affected by the order, may, with the leave of the Family Court, appeal to the High Court against the order.
- (4) An appeal under this section may be from the whole or part of the decision or order concerned.

Section 341: replaced, on 24 November 2003, by section 4 of the District Courts Amendment Act 2002 (2002 No 63).

### **342 Procedure for bringing appeal**

*[Repealed]*

Section 342: repealed, on 24 November 2003, by section 4 of the District Courts Amendment Act 2002 (2002 No 63).

### **343 Notice of appeal to be given to local principal manager**

Except where the appellant is the chief executive, notice of the fact that an appeal has been lodged under section 341(2) shall be given forthwith by the Registrar of the High Court to the principal manager of the department for the area in which the court appealed from is situated.

Section 343 heading: amended, on 1 April 1992, pursuant to section 4(f) of the Social Security Amendment Act 1992 (1992 No 15).

Section 343: amended, on 24 November 2003, by section 4 of the District Courts Amendment Act 2002 (2002 No 63).

Section 343: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

### **344 Notice of appeal not to affect orders unless court otherwise directs**

Except where the court making the order appealed from otherwise directs, the operation of an order made under this Act shall not be suspended by an appeal under section 341, and every order made under this Act may be enforced in the same manner in all respects as if no appeal under that section were pending.

Compare: 1980 No 94 s 174(9)

### **345 Interim custody order pending appeal**

- (1) Any party to an appeal under section 341(2) may apply to the court appealed from or to the High Court for an order relating to the custody of the child or young person to whom the appeal relates pending the determination of the appeal, and the court may make the order on such terms and conditions as it thinks fit.
- (2) Every order made under subsection (1) shall come into force on the day on which it is made and, unless sooner revoked,

shall remain in force until the appeal is finally determined by the High Court.

- (3) An order made under subsection (1) shall have effect as if it were an order made under section 78, and the provisions of sections 79 to 82 shall apply with respect to the order with such modifications as may be necessary.
- (4) The High Court may at any time on the application of any party to the appeal or of its own motion vary, modify, or revoke any order made under subsection (1) or vary, modify, or revoke any term or condition of the order.

Section 345(1): amended, on 24 November 2003, by section 4 of the District Courts Amendment Act 2002 (2002 No 63).

#### **346 Procedure on appeal**

- (1) The High Court Rules and sections 74 to 77 of the District Courts Act 1947, with all necessary modifications, apply to an appeal under section 341 as if it were an appeal under section 72 of that Act.
- (2) On the *ex parte* application of the appellant, the Family Court may order that the appellant must not be required under section 74(1) of the District Courts Act 1947 to give the Registrar of the High Court security for costs.
- (3) Sections 156, 157, and 166 to 169, with all necessary modifications, apply to the hearing in the High Court of an appeal under section 341.
- (4) Subsections (2) and (3) and sections 207O and 207U override subsection (1).

Section 346: replaced, on 24 November 2003, by section 4 of the District Courts Amendment Act 2002 (2002 No 63).

#### **347 Appeal to Court of Appeal**

- (1) A party to an appeal under section 341 may, with the leave of the Court of Appeal, appeal to the Court of Appeal against all or part of any determination of the High Court made in the appeal.
- (2) On the appeal, the Court of Appeal has the same power to adjudicate the High Court had.

Section 347: replaced, on 1 January 2004, by section 47 of the Supreme Court Act 2003 (2003 No 53).

**348 Determination of appeals**

(1) *[Repealed]*

(2) Every decision of the High Court shall have effect as if it were a decision or order made by a Family Court and all the provisions of this Act (except sections 341 to 347) shall apply in respect of every such decision of the High Court accordingly.

(3) *[Repealed]*

Section 348(1): repealed, on 24 November 2003, by section 4 of the District Courts Amendment Act 2002 (2002 No 63).

Section 348(3): repealed, on 1 January 2004, by section 48(2) of the Supreme Court Act 2003 (2003 No 53).

**349 Court may refer appeals back for reconsideration**

*[Repealed]*

Section 349: repealed, on 24 November 2003, by section 4 of the District Courts Amendment Act 2002 (2002 No 63).

**350 Decision of High Court and Family Court to be sent to chief executive**

(1) A copy of every decision given by the High Court under section 348, and a copy of every order or decision given by a Family Court in accordance with a direction given under section 349, shall be sent by the Registrar of the High Court or the Family Court, as the case may be, to the principal manager of the department for the area in which the Family Court whose decision or order is appealed against is situated.

(2) Notice of the fact that an appeal has not been proceeded with shall be given by the Registrar of the High Court to the principal manager of the department for the area in which the High Court is situated.

Section 350 heading: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 350(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 350(2): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).



*Appeals from decisions of Youth Court*

**351 Appeals from decisions of Youth Court by young person**

- (1) Every young person who has been found by a Youth Court to have committed an offence may appeal to the High Court against—
- (a) the finding of the court:
  - (b) any order made by the court based on that finding:
  - (c) both the finding of the court and any order made based on that finding.
- (1A) For the purposes of subsection (1), an order made by the court based on that finding includes, without limitation, an order varying, or made in substitution for, an earlier order made by the court based on that finding.
- (2) A young person may not appeal against a finding of the court until the young person has been dealt with by the court under section 283.
- (3) Nothing in subsection (2) shall prevent a young person who has not been dealt with by the court under section 283 within 1 month after the date of the finding of the court from appealing against the finding of the court.
- (4) In any case where a young person has not been dealt with by the court under section 283 within 1 month after the date of the finding of the court and has not appealed to the High Court under subsection (3), the young person may appeal to the High Court in accordance with subsection (1) after the court has made any order or imposed any sentence on the young person.

Compare: 1974 No 72 s 53(1), (2); 1980 No 87 s 2

Section 351(1A): inserted, on 1 October 2010, by section 47 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

**352 Appeal by parents or guardians or other persons having care of young person**

Any parent or guardian or other person having the care of a young person may appeal to the High Court against—

- (a) any order made by a Youth Court under section 283(k) or (m) or (n) in respect of that young person:
- (ab) an order made under section 297B(5) placing that young person in the custody of the chief executive, an iwi so-

cial service, a cultural social service, or the director of a child and family support service to enable the provision to that young person of a programme that that young person is required by an order under section 283(jc) to attend:

- (ac) an order made under section 307(4) placing that young person in the custody of the chief executive, an iwi social service, a cultural social service, or the director of a child and family support service to enable the provision to that young person of a programme or activity that that young person is required by a condition of an order under section 307(1) to take part in or undertake:
- (ad) an intensive supervision order made under section 296G in respect of that young person:
- (b) any order made under section 283(e) requiring that parent or guardian to pay a sum towards the cost of the prosecution:
- (c) any order made under section 283(f) requiring that parent or guardian to make reparation to any person:
- (d) any order made under section 283(g) requiring that parent or guardian to make restitution:
- (e) an order made under section 283(ja) requiring that parent or guardian or other person having the care of that young person to attend a parenting education programme.

Compare: 1974 No 72 s 54; 1982 No 135 s 12

Section 352(ab): inserted, on 1 October 2010, by section 48(1) of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 352(ac): inserted, on 1 October 2010, by section 48(1) of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 352(ad): inserted, on 1 October 2010, by section 48(1) of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 352(e): inserted, on 1 October 2010, by section 48(2) of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

**353 Appeal by persons other than young person dealt with in Youth Court**

- (1) Any person, other than a young person, who is convicted in a Youth Court of any offence may appeal to the High Court against—
  - (a) the conviction:
  - (b) any sentence of the court based on the conviction:
  - (c) both the conviction and any sentence of the court based on the conviction.
- (2) No appeal against a conviction may be brought under subsection (1) until the person convicted has been sentenced or otherwise dealt with.

Compare: 1974 No 72 s 55

**354 Appeal on a point of law only**

- (1) Any person entitled to appeal under section 351 or section 352 or section 353 against any finding, sentence, or order of a Youth Court, may appeal against the finding, sentence, or order as being erroneous in point of law to the High Court on a question of law only.
- (2) The prosecutor in any proceedings before a Youth Court may appeal against any finding, sentence, or order made in those proceedings as being erroneous in point of law to the High Court on a question of law only.

Compare: 1974 No 72 s 56

Section 354(1): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 354(2): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

**355 Application of Part 6 of Criminal Procedure Act 2011**

- (1) The provisions of Part 6 of the Criminal Procedure Act 2011,—
  - (a) so far as they relate to appeals against conviction and sentence, apply as far as applicable with the necessary modifications to every appeal under section 351, 352, or 353 of this Act:

- (b) so far as they relate to appeals on questions of law only, apply as far as applicable with the necessary modifications to every appeal under section 354 of this Act.
- (2) Subsection (1) is subject to this Part.
- (3) In the application of the provisions of Part 6 of that Act, those provisions must be read as if—
  - (a) references to a District Court were references to a Youth Court; and
  - (b) the Registrar of the District Court of which the Youth Court in which the case was heard and determined is a division were the Registrar of that Youth Court; and
  - (c) references to a District Court Judge or Justice or Justices or Community Magistrate or Community Magistrates were references to a Youth Court Judge exercising jurisdiction in a Youth Court.

Section 355: replaced, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

### **356 Effect of notice of appeal on certain orders**

- (1) The operation of any order made by a Youth Court under paragraph (k) or paragraph (l) or paragraph (m) or paragraph (n) of section 283 shall not be affected by the filing of a notice of appeal relating to the order, unless the Youth Court Judge who presided over the court making the order or, if that Youth Court Judge is not available, some other Youth Court Judge exercising jurisdiction in a Youth Court, on application by the appellant, directs that the operation of the order shall be suspended pending the determination of the appeal.
- (2) Notice of any application or direction under subsection (1) shall be given by the Registrar to the principal manager of the department for the area in which the court is situated.
- (3) Where a direction is given under subsection (1) in respect of any order, the period of the order shall cease to run from the date of the direction.

Section 356(2): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 356(3): amended, on 5 December 2013, by section 8 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2013 (2013 No 110).

**357 Application of section 329 to hearing of appeal**

The provisions of section 329, with all necessary modifications, shall apply to the hearing in the High Court of any appeal against a decision of a Youth Court.

Compare: 1974 No 72 s 59

**358 Presence of young person at hearing of appeal**

- (1) On the hearing of any appeal relating to an order under paragraph (k) or paragraph (l) or paragraph (m) or paragraph (n) of section 283 (not being an appeal on a point of law only), the young person, if the young person is then, pursuant to that order, under the supervision of the chief executive or any other person or organisation, or, as the case may be, is in the custody of the chief executive, shall be entitled to be present unless the High Court or a Judge of that court otherwise directs.
- (2) On the hearing of any appeal relating to an order made under section 283(n) (being an appeal on a point of law only), the young person, if the young person is then in the custody of the chief executive, shall not be entitled to be present except with the leave of the High Court or a Judge of that court.
- (3) Where under this section a young person is entitled to be present in the High Court on the hearing of any appeal, the person having custody of that young person may, without further authority than this subsection, cause that young person to be taken to the High Court for the hearing.
- (4) Where any appeal relating to a young person is made under this Part, the High Court or a Judge of that court may order that the young person shall be present at the hearing.

Compare: 1974 No 72 s 60

Section 358(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 358(2): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**359 Presence of parents at hearing of appeal from decisions of Youth Court**

- (1) Where any appeal relating to a young person is made under this Part from a decision of a Youth Court, the High Court or a Judge of that court may order that any parent or guardian of

the young person, or any person having the care of the young person, shall be present at the hearing, and may further order that that parent, guardian, or other person shall bring the young person with that person.

- (2) Where, pursuant to subsection (1), the High Court or a Judge of that court orders any person to be present at any hearing, the Registrar of that court shall cause every person so ordered to be present to be served with written notice of the time and place at which that person is required to attend.
- (3) If any person fails to attend at the High Court in accordance with an order made under subsection (1), the court may direct the issue of a warrant to arrest that person and bring that person before the court.
- (4) At the hearing of any such appeal, any parent or guardian of the young person, or any person having the care of the young person, may be examined in respect of any matter relating to the proceedings.

Compare: 1974 No 72 s 61

### **360 Notification of appeal and result of appeal to local principal manager**

- (1) Where any appeal under this Part relates to an order made under paragraph (k) or paragraph (m) or paragraph (n) of section 283, an additional copy of the notice of appeal shall be filed, and the Registrar of the Youth Court shall forthwith deliver or post that copy to the principal manager of the department for the area in which the court is situated.
- (2) Where the decision of the High Court on any such appeal has been given, the Registrar of the High Court shall send to that principal manager a certificate setting out the result of the appeal.
- (3) If an appeal is abandoned under the Criminal Procedure Act 2011, the Registrar of the relevant appeal court must send a notice to that effect to the principal manager.
- (4) *[Repealed]*

Compare: 1974 No 72 s 62

Section 360 heading: amended, on 1 April 1992, pursuant to section 4(f) of the Social Security Amendment Act 1992 (1992 No 15).

Section 360(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 360(2): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 360(3): replaced, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 360(4): repealed, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

## **Part 7**

### **Children and young persons in care of chief executive or other persons or bodies**

Part 7 heading: amended, on 1 October 1999, pursuant to section 11(3) of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

#### **361 Application of sections 362, 364, 365, 387, 390 to 392, 394, and 395**

Sections 362, 364, 365, 387, 390 to 392, 394, and 395 apply to—

- (a) any child or young person who is placed in the care of the chief executive or an iwi social service or a cultural social service or the director of a child and family support service pursuant to an agreement made under section 139 or section 140 or section 141:
- (b) any child or young person who is placed in the custody of the chief executive pursuant to section 39 or section 40 or section 42:
- (c) any child or young person who is placed in the custody of the chief executive or an iwi social service or a cultural social service or the director of a child and family support service pursuant to an order made under section 78 or section 101:
- (d) any child or young person who is placed under the sole guardianship of the chief executive or an iwi social service or a cultural social service pursuant to an order made under section 110:
- (e) any child or young person who is placed in the custody of an iwi social service or a cultural social service pursuant to section 234(c)(ii):

- (f) any child or young person who is placed in the custody of the chief executive pursuant to section 235:
- (g) any child or young person who is ordered to be detained in the custody of the chief executive or an iwi social service or a cultural social service pursuant to section 238(1)(d):
- (h) any young person who is placed in the custody of the chief executive pursuant to a supervision with residence order made under section 283(n):
- (ha) any child or young person who is placed in the custody of the chief executive or an iwi social service or a cultural social service or the director of a child and family support service pursuant to an order made under section 297B(5) or 307(4) (except that, under section 297B(7)(b) or 307(6)(b), section 365 does not apply to the child or young person):
- (i) any child or young person who is placed in the custody of the chief executive or an iwi social service or a cultural social service or the director of a child and family support service pursuant to an order made under section 345.

Section 361(a): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 361(a): amended, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 361(b): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 361(c): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 361(c): amended, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 361(d): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 361(d): amended, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 361(e): amended, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 361(f): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 361(g): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).



Section 361(g): amended, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 361(h): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 361(ha): inserted, on 12 December 2012, by section 10 of the Children, Young Persons, and Their Families Amendment Act 2012 (2012 No 99).

Section 361(i): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 361(i): amended, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

*Placement of children and young persons*

**362 Children and young persons may be placed in care of approved persons**

Subject to sections 43, 81, 104, and 114(2)(c), the chief executive or, as the case requires, an iwi social service or a cultural social service or the director of a child and family support service may place any child or young person (being a child or young person to whom this section applies) who is in the care or custody or under the guardianship of the chief executive or, as the case requires, that social service or that director in the charge of any person whom or organisation which the chief executive or, as the case requires, that social service or that director considers suitable to provide for that child's or young person's care, control, and upbringing.

Compare: 1974 No 72 s 67

Section 362: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 362: amended, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

**363 Payment to person or organisation providing care**

- (1) The chief executive shall from time to time determine the rates of payment to persons and organisations in whose charge a child or young person is placed pursuant to section 362.
- (2) Where, pursuant to section 362, any person (being the chief executive or an iwi social service or a cultural social service or the director of a child and family support service) places a child or young person in the charge of a person or organisation, it is the duty of the first-mentioned person to ensure that the

- payments specified in subsection (1) are made and that any additional payments necessary to meet the reasonable needs of the child or young person are made.
- (3) Subject to any limits that are determined from time to time by the chief executive, the chief executive or, as the case requires, an iwi social service or a cultural social service or the director of a child and family support service may make payments under this section at a higher rate in cases where there is special need.
- (4) Subsections (1) to (3) do not apply, and must be treated as never having applied, in respect of a child's or young person's placement with his or her parent (before or after the commencement of this subsection) if—
- (a) the child or young person is or was a child or young person to whom section 361 applies or applied; and
  - (b) under section 362, the child or young person is or was placed in the charge of the parent.
- (5) The minimum rates of payment determined under subsection (1) in respect of the board and lodgings of children and young persons must be adjusted, by Order in Council, as at 1 April each year so that in each case the new rate is the rate as at that date adjusted by any percentage movement upwards in the CPI between the CPI for the quarter ended with 31 December 1 year before the immediately preceding 31 December and the CPI for the quarter ended with the immediately preceding 31 December.
- (6) The adjustments (by any percentage movement upwards in the CPI) required under subsection (5) as at 1 April in any year from 2011 to 2017 (inclusive) must, despite subsections (5) and (9), be calculated,—
- (a) if, and insofar as, they relate to movements during quarters that end before 29 April 2010, using index numbers for those quarters of the consumers price index-all groups published by Statistics New Zealand; and
  - (b) if, and insofar as, they relate to movements during quarters that end after 28 April 2010, using index numbers for those quarters of the consumers price index-all groups excluding cigarettes and other tobacco products published by Statistics New Zealand.

- (7) An adjustment under subsection (5) must not reduce the weekly amounts payable under subsection (1) in respect of the board and lodgings of children and young persons.
- (8) Every Order in Council made under subsection (5) comes into force or is considered to have come into force on 1 April of the calendar year in which it is made, and applies to the rates payable in respect of the board and lodgings of children and young persons on and after that date.
- (9) In this section, **CPI** means the consumers price index-all groups published by Statistics New Zealand.

Compare: 1974 No 72 s 68

Section 363(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 363(2): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 363(2): amended, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 363(3): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 363(3): amended, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 363(4): inserted, on 24 August 2010, by section 4(1) of the Children, Young Persons, and Their Families Amendment Act 2010 (2010 No 102).

Section 363(5): inserted, on 27 September 2010, by section 4(2) of the Children, Young Persons, and Their Families Amendment Act 2010 (2010 No 102).

Section 363(6): inserted, on 27 September 2010, by section 4(2) of the Children, Young Persons, and Their Families Amendment Act 2010 (2010 No 102).

Section 363(6): amended, on 24 October 2012, by section 3 of the Children, Young Persons, and Their Families (Indexation—Budget Measures) Amendment Act 2012 (2012 No 78).

Section 363(7): inserted, on 27 September 2010, by section 4(2) of the Children, Young Persons, and Their Families Amendment Act 2010 (2010 No 102).

Section 363(8): inserted, on 27 September 2010, by section 4(2) of the Children, Young Persons, and Their Families Amendment Act 2010 (2010 No 102).

Section 363(9): inserted, on 27 September 2010, by section 4(2) of the Children, Young Persons, and Their Families Amendment Act 2010 (2010 No 102).

### *Residences*

#### **364 Authority to establish residences**

- (1) The chief executive, with the approval of the Minister, may from time to time establish and maintain under this Act resi-

dences of such number and type as in the opinion of the chief executive may be required for the purpose of providing for the care and control of children and young persons to whom this section applies, and, in particular, shall endeavour to establish a sufficient range of residences to cater effectively for the variety of special needs of such children and young persons.

- (2) In particular, and without limiting the generality of subsection (1), the chief executive may, with the approval of the Minister, establish and maintain residences for any of the following purposes:
- (a) remand, observation, assessment, classification, and short-term training purposes:
  - (b) the provision of a variety of programmes of special training and rehabilitation:
  - (c) the provision of periodic training, of recreational, educational, or vocational activities, or of work either in a residence or in the community under supervision:
  - (d) the provision of secure care.
- (3) It is hereby declared that every residence that the chief executive is authorised to establish under this Act is a public work within the meaning of the Public Works Act 1981.

Compare: 1974 No 72 s 69

Section 364(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 364(2): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 364(3): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

### **364A Residence management committees**

*[Repealed]*

Section 364A: repealed, on 1 April 1991, by section 4(1) of the Social Welfare (Transitional Provisions) Amendment Act 1991 (1991 No 4).

### **364B Functions of residence management committees**

*[Repealed]*

Section 364B: repealed, on 1 April 1991, by section 4(1) of the Social Welfare (Transitional Provisions) Amendment Act 1991 (1991 No 4).

**365 Chief executive may place children and young persons in residences**

- (1) The chief executive may place any child or young person to whom this section applies (being a child or young person who is in the care or custody or under the guardianship of the chief executive) in a residence established under section 364.
- (2) In exercising the power conferred by subsection (1), the chief executive shall have regard to the objects and principles of this Act (as set out in sections 4, 5, and 6) and to the principles set out in section 13 or, as the case may require, section 208.
- (3) The chief executive must consider all reasonably practicable less restrictive alternative placements that may be available and appropriate for the child before exercising the power conferred by subsection (1) to place in a youth justice residence (as defined in subsection (4)) a child—
  - (a) aged 12 or 13 years; and
  - (b) charged with an offence of the kind specified in section 272(1)(b) or (c); and
  - (c) in respect of whom there is in force an order under section 238(1)(d) or 283(n).
- (4) **Youth justice residence** in subsection (3) means a residence established and maintained under section 364 for purposes that are or include remand, the provision of custody under supervision with residence orders made under section 283(n), or both.
- (5) This section is subject to sections 297B(7)(b) and 307(6)(b) (which ensure this section does not apply to children and young persons subject to custody orders under sections 297B(5) and 307(4)) and to section 312 (which requires the court's approval for the placement in a residence, and for the transfer between residences, of a young person placed in the chief executive's custody by an order under section 311).

Section 365 heading: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 365(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 365(2): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 365(3): inserted, on 1 October 2010, by section 49 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 365(4): inserted, on 1 October 2010, by section 49 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 365(5): inserted, on 1 October 2010, by section 49 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 365(5): amended, on 12 December 2012, by section 11 of the Children, Young Persons, and Their Families Amendment Act 2012 (2012 No 99).

### **366 Closing of residences and transfer of residents**

- (1) The chief executive may at any time, with the Minister's approval, direct the closing of any residence established under section 364, and may transfer the children and young persons in any such residence to any other residence under this Act, or place any such children and young persons in the care of any person or organisation pursuant to section 362.
- (2) This section is subject to section 312 (which requires the court's approval for the placement in a residence, and for the transfer between residences, of a young person placed in the chief executive's custody by an order under section 311).

Compare: 1974 No 72 s 71

Section 366(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 366(2): inserted, on 1 October 2010, by section 50 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

### *Secure care*

### **367 Secure care**

Subject to sections 368 and 370 and to any regulations made under section 447, the chief executive may, in relation to any child or young person (not being a child or young person to whom section 361(a) applies) who is placed in a residence established under section 364, place the child or young person in secure care in that residence.

Compare: 1974 No 72 s 49AA(a); 1983 No 129 s 13

Section 367: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**368 Grounds for placement in secure care**

- (1) A child or young person may be placed in secure care in a residence if, and only if, such placement is necessary—
  - (a) to prevent the child or young person absconding from the residence where any 2 of the conditions specified in subsection (2) apply; or
  - (b) to prevent the child or young person from behaving in a manner likely to cause physical harm to that child or young person or to any other person.
- (2) The conditions referred to in subsection (1)(a) are—
  - (a) the child or young person has, on 1 or more occasions within the preceding 6 months, absconded from a residence or from Police custody;
  - (b) there is a real likelihood that the child or young person will abscond from the residence;
  - (c) the physical, mental, or emotional well-being of the child or young person is likely to be harmed if the child or young person absconds from the residence.

Section 368: replaced, on 8 January 1995, by section 41 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

**369 Notice to be given where child or young person placed in secure care**

- (1) Where any child or young person is placed in secure care, the chief executive shall give notice that the child or young person has been placed in secure care to—
  - (a) at least 1 of the following persons:
    - (i) a parent of the child or young person;
    - (ii) a guardian (other than the chief executive) of the child or young person;
    - (iii) any other person previously having the care of the child or young person;
  - (b) any person nominated by the child or young person, in accordance with regulations made under section 447, to receive any such notice;
  - (c) either—
    - (i) any barrister or solicitor who represents the child or young person; or

- (ii) any youth advocate appointed under section 323 to represent the child or young person.
- (2) Every notice under subsection (1) shall be given—
  - (a) where practicable, by telephone forthwith on the placing of the child or young person in secure care; and
  - (b) by letter in accordance with subsection (3).
- (3) Every notice under subsection (1) that is given by letter shall—
  - (a) be sent not later than 24 hours after the child or young person is placed in secure care; and
  - (b) specify the ground for placing the child or young person in secure care; and
  - (c) contain a clear statement of—
    - (i) the right to apply under section 380 for a review of the placement of a child or young person in secure care; and
    - (ii) the procedure for applying for such a review.
- (4) Any notice required by this section to be given to any person by letter shall be deemed to have been received by that person when the letter would have been delivered in the ordinary course of post, and in proving that the notice was given it shall be sufficient to prove that the letter was properly addressed and posted.

Section 369(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 369(1)(a)(ii): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

### **370 Time limits on detention in secure care**

- (1) Subject to subsection (2), no child or young person shall be kept in secure care for a continuous period of more than 72 hours, or on more than 3 consecutive days (whether continuously or not), unless an approval has been granted under section 376.
- (2) Notwithstanding anything in subsection (1), no child or young person (being a child or young person who is placed in the custody of the chief executive pursuant to section 42 or section 235) shall be kept in secure care for a continuous period of more than 24 hours unless an approval has been granted under section 376.



- (3) In calculating, for the purposes of subsection (2), the period for which a child or young person has been kept in secure care, any period spent in secure care on any of the following days shall not be included:
- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, Waitangi Day, Christmas Day, Boxing Day, New Year's Day, or the second day of January:
  - (ab) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday:
  - (b) the day observed as the anniversary of the province in which the residence in which the child or young person is detained is situated:
  - (c) any day that is a public holiday in the place in which that residence is situated.

Section 370(2): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 370(3)(ab): inserted, on 1 January 2014, by section 8 of the Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19).

### **371 Application for approval for continued detention in secure care**

- (1) Where a child or young person is placed in secure care pursuant to section 367, the chief executive may apply to a Family Court or a Youth Court or, where it is not practicable to apply to a Family Court or a Youth Court, to a District Court for approval for the continued detention of that child or young person in secure care.
- (2) Where any application is made under subsection (1), the chief executive shall give written notice of the application to the following persons:
- (a) the child or young person in respect of whom the application is made:
  - (b) each parent or guardian of the child or young person:
  - (c) any person who had the care of the child or young person immediately before the child or young person was placed in the residence:
  - (d) any other person specified by the court.

- (3) Where notice of an application cannot be given to any person to whom paragraph (b) or paragraph (c) of subsection (2) applies, the court may, on such terms and conditions as it thinks fit, dispense with the giving of notice to that person.

Section 371(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 371(2): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**372 Registrar may authorise continued detention in secure care until application is determined**

- (1) Where an application is made under section 371(1) in respect of a child or young person, the Registrar of the court in which that application is filed may, on the *ex parte* application of the chief executive, make an order authorising the continued detention of that child or young person in secure care.
- (2) An order made under subsection (1) in respect of a child or young person shall, notwithstanding anything in section 370, be sufficient authority to detain that child or young person in secure care until—
- (a) the application made under section 371(1) in respect of that child or young person is finally determined; or
  - (b) the expiry of the period of 3 days commencing on the date on which that application is made—
- whichever first occurs.
- (3) A Registrar shall not make an order under subsection (1) in respect of a child or young person unless that Registrar is satisfied that it is necessary, on either or both of the grounds specified in section 368, to detain that child or young person in secure care pending the determination of an application under section 371(1).
- (4) Where an order is made under subsection (1), any person affected by that order may apply at any time for the discharge of that order.
- (5) The provisions of section 378 shall apply, with all necessary modifications, with respect to every order made under subsection (1) as if such an order were the decision of a court on an application made under section 371.

- (6) The provisions of section 379 shall apply, with all necessary modifications, with respect to every order made under subsection (1) as if such an order were an approval granted by a court under section 376.

Section 372(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

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

- (1) No person shall be present during the hearing of an application under section 371 in respect of a child or young person except—
- (a) officers of the court:
  - (b) the child or young person:
  - (c) any parent or guardian of the child or young person:
  - (d) any near relative of the child or young person:
  - (e) any member of the child's or young person's whanau or family group:
  - (f) any person who had the care of the child or young person immediately before the child or young person was placed in the residence:
  - (g) any barrister or solicitor representing the child or young person or any parent or guardian of the child or young person:
  - (h) any lay advocate who appears in support of—
    - (i) the child or young person; or
    - (ii) any parent or guardian of the child or young person:
  - (i) the manager of the residence in which the child or young person is detained, or a representative of that manager:
  - (j) any social worker:
  - (k) witnesses:
  - (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:
  - (l) any person whom the court permits to be present.
- (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.

- (2) Any witness and any support person whom the Judge permitted to be present under subsection (1)(ka) must, if asked to do so by the Judge, leave the courtroom or other room where the hearing is held.
- (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.

Section 373(1)(i): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 373(1)(ka): inserted, on 18 May 2009, by section 7(1) of the Children, Young Persons, and Their Families Amendment Act 2008 (2008 No 76).

Section 373(1A): inserted, on 18 May 2009, by section 7(2) of the Children, Young Persons, and Their Families Amendment Act 2008 (2008 No 76).

Section 373(2): amended, on 18 May 2009, by section 7(3) of the Children, Young Persons, and Their Families Amendment Act 2008 (2008 No 76).

Section 373(3): replaced, on 18 May 2009, by section 7(4) of the Children, Young Persons, and Their Families Amendment Act 2008 (2008 No 76).

### **374 Right to make representations**

- (1) On the hearing of an application under section 371 in respect of a child or young person, representations may be made to the court by—
  - (a) the applicant, or any barrister or solicitor representing the applicant;
  - (b) the child or young person;
  - (c) any parent or guardian of the child or young person;
  - (d) any barrister or solicitor who represents the child or young person or any parent or guardian of the child or young person;
  - (e) any lay advocate who appears in support of—
    - (i) the child or young person; or
    - (ii) any parent or guardian of the child or young person;
  - (f) with the leave of the court, any other person.
- (2) Where a child or young person who is the subject of an application under section 371 is not represented by a barrister or solicitor, the court shall—
  - (a) in the case of a young person to whom section 361(h) applies, appoint a youth advocate under section 323 to

represent that young person, and the provisions of that section and of sections 324 and 325 shall apply with all necessary modifications with respect to that appointment:

- (b) in any other case, appoint a barrister or solicitor under section 159 to represent that child or young person, and the provisions of that section and of sections 161 and 162 shall apply with all necessary modifications with respect to that appointment.

**375 Hearing to be held in residence wherever practicable**

The hearing of an application under section 371 shall, where practicable, be held in the residence in which the child or young person to whom the application relates is detained.

**376 Court may authorise continued detention in secure care**

- (1) If, on an application under section 371 in respect of a child or young person, the court is satisfied that it is necessary, on either or both of the grounds specified in section 368, to detain the child or young person in secure care, the court may grant an approval authorising the continued detention of the child or young person in secure care.
- (2) In considering an application under section 371, the court may take into account any oral or documentary material that the court considers relevant, whether or not it would be admissible in a court of law.
- (3) On granting an approval under subsection (1), the court—
  - (a) shall record in writing the reasons for granting the approval; and
  - (b) may impose such conditions relating to the continued detention of the child or young person in secure care as the court thinks fit.
- (4) Subject to subsection (5), an approval granted under subsection (1) shall be valid for a period of 14 days commencing on the day on which it is granted, or such shorter period as the court may specify.
- (5) Notwithstanding subsection (4), where an application under section 371 relates to a child or young person who is remanded,

by the High Court or a District Court, in the custody of the chief executive pursuant to section 173(2), 174(1), or 175(2) of the Criminal Procedure Act 2011, the court may grant an approval under subsection (1) for such period (being more than 14 days but not more than 28 days) as the court shall specify, in any case where the court is satisfied that, because of the length of time for which the child or young person is likely to be detained in the chief executive's custody, the public interest so requires. Any approval so granted shall be valid for the specified period commencing on the day on which it is granted.

Section 376(4): amended, on 8 January 1995, by section 42(1) of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 376(5): inserted, on 8 January 1995, by section 42(2) of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 376(5): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 376(5): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

### **377 Renewal of approval for continued detention in secure care**

- (1) The court may from time to time grant a renewal of an approval granted under section 376(1) upon application made by the chief executive at any time before the approval (or any current renewal of that approval) has expired.
- (2) A renewal of an approval granted under section 376(1) may be granted under this section if the court is satisfied that the ground on which the approval was granted still obtains.
- (3) The provisions of section 371 and sections 373 to 376 shall apply with all necessary modifications with respect to an application for the renewal of an approval granted under section 376 as if it were an application under section 371.
- (4) Where an application for the renewal of an approval is duly made before the expiration of the approval (or of any current renewal of the approval), the approval shall, notwithstanding the expiration of the period for which the approval was granted or last renewed, continue in force until—
  - (a) the application is determined; or

- (b) the expiration of the period of 3 days commencing on the date on which the approval would otherwise have expired pursuant to section 376,—  
whichever first occurs.
- (5) Subsections (4) and (5) of section 376 shall apply with all necessary modifications with respect to the duration of the validity of a renewal granted under subsection (1) as if that renewal were an approval granted under subsection (1) of that section.

Section 377(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 377(5): replaced, on 8 January 1995, by section 43 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

### **378 Notification of decision of court**

- (1) Where the decision of the court has been given on any application under section 371 or section 377, the Registrar of the court shall forthwith give notice in writing of the court's decision to the following persons:
  - (a) the child or young person to whom the application relates:
  - (b) each parent or guardian of the child or young person:
  - (c) any person who had the care of the child or young person immediately before the child or young person was placed in the residence:
  - (d) the chief executive:
  - (e) the manager of the residence in which the child or young person is detained:
  - (f) any other person specified by the court.
- (2) Every such notice shall contain, where applicable,—
  - (a) the reasons recorded by the court for granting the approval or the renewal of the approval:
  - (b) any conditions imposed by the court on the continued detention of the child or young person.

Section 378(1)(d): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 378(1)(e): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**379 Review of decision to grant or renew approval**

- (1) Where a court grants an approval under section 376, or grants a renewal of an approval under section 377, or imposes any condition under either of those sections relating to the continued detention of a child or young person in secure care, that court or the High Court may from time to time, on the application of the child or young person to whom the approval or condition relates, or any barrister or solicitor or youth advocate representing that child or young person, review that decision.
- (2) The fact that an application for a review is lodged or is pending under this section shall not affect any approval to detain the child or young person in secure care, which approval shall, unless it sooner expires, continue pending the review.
- (3) On any review under this section the court may make such order as may be just.

**380 Application for review of detention in secure care**

- (1) Where a child or young person is placed in secure care pursuant to section 367, any of the persons specified in subsection (2) may, at any time before an application is made under section 371 in respect of that child or young person, apply to a Family Court Judge or a Youth Court Judge or, if neither a Family Court Judge nor a Youth Court Judge is available, a District Court Judge for a review of the decision to place that child or young person in secure care.
- (2) The following persons may make an application under subsection (1):
  - (a) the child or young person who is placed in secure care:
  - (b) any parent or guardian of the child or young person:
  - (c) any person who had the care of the child or young person immediately before the child or young person was placed in a residence:
  - (d) any barrister or solicitor or youth advocate representing the child or young person.
- (3) The fact that an application has been made under this section shall not affect any authority to detain the child or young person in secure care.



**381 Notice of application for review of detention in secure care**

- (1) Subject to subsection (3), where any application is made under section 380, the person making the application shall give written notice of the application to the manager of the residence in which the child or young person is detained in secure care and to such other persons (if any) as the court directs.
- (2) Every person who is given notice of an application under section 380 shall be entitled to appear and be heard on the hearing of the application.
- (3) Notwithstanding anything in subsection (1), a review of a decision to place a child or young person in secure care may be made upon an *ex parte* application if the court is satisfied that the delay that would be caused by proceeding on notice would or might entail undue hardship.

Section 381(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**382 Disposal of application for review of detention in secure care**

- (1) On an application under section 380 in respect of the detention of a child or young person in secure care, the court may—
  - (a) order that the child or young person be released from secure care; or
  - (b) refuse the application; or
  - (c) refuse the application and impose such conditions relating to the detention of the child or young person in secure care as the court thinks fit.
- (2) In considering an application under section 380, the court may take into account any oral or documentary material that the court considers relevant, whether or not it would be admissible in a court of law.

**383 Review of refusal of application**

- (1) Where a court refuses an application under section 380, or refuses an application under that section and imposes any condition pursuant to section 382(1)(c), the applicant or any other person who would have been entitled, pursuant to section 380(2), to make that application may apply to the High Court to review that decision.

- (2) On any review under this section the High Court may make such order as may be just.

**383A Lapse of authority for detention in secure care**

Any authority conferred by or under any of sections 367 to 383 for the detention of a child or young person in secure care in a residence shall, unless it sooner expires, continue only for so long as the authority to detain that child or young person in that residence continues.

Section 383A: inserted, on 8 January 1995, by section 44 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

*Discipline*

**384 Discipline of children and young persons in residences**

The chief executive may, in relation to any child or young person placed in a residence established under section 364, use such means to discipline the child or young person as are both—

- (a) reasonable; and
- (b) within the limits permitted by regulations made under this Act.

Compare: 1974 No 72 s 49AA(b); 1983 No 129 s 13

Section 384: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

*Searches*

Heading: inserted, on 25 June 2001, by section 4 of the Children, Young Persons, and Their Families Amendment Act 2001 (2001 No 3).

**384A Interpretation**

For the purposes of sections 384B to 384K,—

**harmful item** means any article, drug, or substance that a member of staff has reasonable cause to believe is likely, while a child or young person is in a residence, to harm or to be used to harm that child or young person or any other person

**mail** includes—

- (a) a facsimile communication:
- (b) electronic mail:
- (c) an envelope or package

**manager** means the person for the time being in charge of a residence

**member of staff** means every person employed as a member of staff of a residence; and includes the manager of the residence

**pat down search** means a search of a clothed child or young person in a residence in which the person conducting the search may do the following:

- (a) run or pat his or her hand over the body of the person being searched, whether inside or outside the clothing (other than any underclothing) of that person:
- (b) insert his or her hand inside any pocket or pouch in the clothing (other than the underclothing) of the person being searched:
- (c) for the purpose of permitting a visual inspection, require the person being searched to do all or any of the following:
  - (i) open his or her mouth:
  - (ii) display the palms of his or her hands:
  - (iii) display the soles of his or her feet:
  - (iv) lift or rub his or her hair:
  - (v) remove, raise, lower, or open any outer clothing (including, without limitation, any coat, jacket, jumper, or cardigan) worn by the person being searched, except where the person has no other clothing, or only underclothing, under that outer clothing:
  - (vi) turn out any pocket or pouch, and display any hem, cuff, lining, or fold, in any outer clothing worn by that person:
  - (vii) remove any head covering, gloves, or footwear (including socks or stockings) being worn by that person:
- (d) conduct a visual examination (whether assisted by any instrument or device designed to illuminate or magnify) of the person's mouth, nose, and ears (not including the insertion of any instrument, device, or thing into such orifice)

**regulations** means regulations made under section 447 relating to search and seizure

**residence** means a residence established under section 364

**scanner search** means a search of a child or young person by means of an electronic device passed over the clothed body of the person being searched and that does not include any touching (except any accidental touching) of the person being searched

**strip search** means a search where the person conducting the search may require the child or young person being searched—

- (a) to undress, or to remove any specified items of clothing and underclothing, and be visually examined; and
- (b) to have his or her clothing searched

**unauthorised item** means any article, drug, or substance—

- (a) that is a harmful item; or
- (b) that may not be lawfully possessed by any child or young person in the residence.

Section 384A: inserted, on 25 June 2001, by section 4 of the Children, Young Persons, and Their Families Amendment Act 2001 (2001 No 3).

### **384B Inspection of mail**

The manager may cause to be inspected, in accordance with the regulations, any mail intended to be sent or received by a child or young person in the residence if the manager believes, on reasonable grounds, that the mail contains—

- (a) any unauthorised item; or
- (b) any harmful item or any article, drug, or substance that may not lawfully be possessed by the person for whom the mail was intended; or
- (c) any material that would or might facilitate or encourage the commission of an offence by the person for whom the mail was intended; or
- (d) any material that would be likely to be offensive or harmful to the person for whom the mail was intended.

Section 384B: inserted, on 25 June 2001, by section 4 of the Children, Young Persons, and Their Families Amendment Act 2001 (2001 No 3).

**384C Child or young person may be searched to detect unauthorised items**

- (1) A member of staff, who believes on reasonable grounds that a child or young person in the residence has in his or her possession any unauthorised item, may carry out any of the following types of searches for the purpose of detecting that item:
  - (a) a scanner search of the child or young person;
  - (b) a pat down search of the child or young person;
  - (c) a search of any room or sleeping area assigned to the child or young person.
- (2) Nothing in subsection (1)(c) limits or affects any power or authority to search or inspect any room or sleeping area in the residence for security purposes.
- (3) A member of staff may not carry out a search unless—
  - (a) that member of staff requests that the child or young person hand over the unauthorised item that he or she believes on reasonable grounds to be in the child's or young person's possession; and
  - (b) the child or young person refuses or fails to hand the item over.
- (4) Nothing in subsection (3) requires that a member of staff make a request if the same request has been made to the child or young person within the previous hour.

Section 384C: inserted, on 25 June 2001, by section 4 of the Children, Young Persons, and Their Families Amendment Act 2001 (2001 No 3).

**384D Use of dogs for searching**

- (1) In exercising a power of search conferred by sections 384B and 384C, a member of staff may have with him or her, and use for the purposes of searching, any dog trained for that purpose.
- (2) A dog must not be used unless it is under the control of another person (being a Police employee, or a Customs officer, or a member of the Armed Forces, or an employee of the Department of Corrections), who may accompany the member of staff for the purposes of the search.
- (3) A member of staff who uses a dog for the purposes of searching any child or young person must conduct the search with decency and sensitivity and in a manner that—

- (a) affords to the child or young person being searched the greatest degree of dignity consistent with the purpose of the search; and
- (b) prevents the dog coming into physical contact with the child or young person during the search.

Section 384D: inserted, on 25 June 2001, by section 4 of the Children, Young Persons, and Their Families Amendment Act 2001 (2001 No 3).

Section 384D(2): amended, on 1 October 2008, by section 130(1) of the Policing Act 2008 (2008 No 72).

### **384E Child or young person may be strip searched**

- (1) A member of staff may, if that member of staff believes on reasonable grounds that a child or young person has in his or her possession a harmful item, conduct a strip search of that child or young person for the purposes of detecting the harmful item—
  - (a) if that member believes on reasonable grounds that a strip search is necessary in order to detect the item; and
  - (b) if a scanner search or a pat down search of the child or young person has already been carried out for that purpose.
- (2) A child or young person required to undress or remove any clothing and underclothing under subsection (1) may be required to remain undressed or partly undressed only as long as is reasonably necessary for the purposes of the search.

Section 384E: inserted, on 25 June 2001, by section 4 of the Children, Young Persons, and Their Families Amendment Act 2001 (2001 No 3).

### **384F Explanation of purpose and consequences of inspections and searches**

- (1) Before any mail is inspected under section 384B or a search is carried out under section 384C or section 384E, the member of staff who is to conduct the inspection or search must explain to the child or young person—
  - (a) that the purpose of the inspection or search is,—
    - (i) in the case of an inspection, to detect any item of the kinds referred to in section 384B; or
    - (ii) in the case of a search carried out under section 384C, to ensure the safety of the child or young person by detecting any harmful item, or to detect

- any article, drug, or substance that may not be lawfully possessed by the child or young person in the residence; or
  - (iii) in the case of a search carried out under section 384E, to ensure the safety of the child or young person and the safety of others by detecting any harmful item; and
  - (b) that any item seized during the inspection or search will, after consultation with the child or young person, be dealt with in the ways provided for by the regulations; and
  - (c) that any item seized during the inspection or search and subsequently handed to a constable in accordance with the regulations may be used as evidence in criminal proceedings against the child or young person.
- (2) The explanation required by subsection (1) need not be given if the member of staff has reasonable grounds for believing that the situation involves a serious and immediate risk to the safety of the child or young person or of any other person.
- Section 384F: inserted, on 25 June 2001, by section 4 of the Children, Young Persons, and Their Families Amendment Act 2001 (2001 No 3).
- Section 384F(1)(c): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

### **384G Restrictions on searches**

- (1) A member of staff must consult with the manager or a senior member of staff before carrying out a search under section 384C or section 384E unless consultation would, in the circumstances, be impracticable.
- (2) A pat down search or a strip search of a child or young person must be carried out by a member of staff who is of the same sex as the child or young person being searched.
- (3) A pat down search or a strip search must not be carried out in view of—
  - (a) a person who is not of the same sex as the child or young person, unless the person is a parent or guardian (other than the chief executive) of the child or young person or a person who would otherwise have the care of the child or young person:

- (b) another child or young person in the residence.
- (4) A pat down search or a strip search must not be conducted unless one of the following persons is also present:
  - (a) another member of staff;
  - (b) a constable;
  - (c) a parent or guardian (other than the chief executive) of the child or young person or a person who would otherwise have the care of the child or young person.
- (5) A person who conducts a pat down search or a strip search must conduct the search with decency and sensitivity and in a manner that affords the child or young person being searched the greatest degree of privacy and dignity consistent with the purpose of the search.

Section 384G: inserted, on 25 June 2001, by section 4 of the Children, Young Persons, and Their Families Amendment Act 2001 (2001 No 3).

Section 384G(4)(b): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

### **384H Use of force in carrying out search**

- (1) A member of staff may not use physical force in carrying out a search authorised by section 384C or section 384E unless that member of staff has reasonable grounds for believing that the use of force is reasonably necessary to avoid or mitigate a serious and immediate risk to the safety of the child or young person or of any other person.
- (2) A member of staff who uses force for the purpose referred to in subsection (1) must use no more than the minimum amount of force that is reasonably necessary in the circumstances.

Section 384H: inserted, on 25 June 2001, by section 4 of the Children, Young Persons, and Their Families Amendment Act 2001 (2001 No 3).

### **384I Recording of inspections and searches**

The manager must ensure that a record is made in the daily log kept in accordance with the regulations of—

- (a) the details of any inspection or search carried out under any of sections 384B, 384C, and 384E, including the grounds on which the inspection or search was carried out; and



- (b) in the case of a search carried out under section 384C or section 384E, the details of any physical force used for the purpose of carrying out the search, and of the circumstances giving rise to the use of force.

Section 384I: inserted, on 25 June 2001, by section 4 of the Children, Young Persons, and Their Families Amendment Act 2001 (2001 No 3).

**384J Child or young person may make complaint**

A child or young person who has had his or her mail inspected under section 384B or has been searched under section 384C or section 384E may make a complaint about that inspection or search in accordance with the regulations.

Section 384J: inserted, on 25 June 2001, by section 4 of the Children, Young Persons, and Their Families Amendment Act 2001 (2001 No 3).

**384K Power to seize articles, etc, found on inspection or search**

- (1) Any unauthorised item found during any inspection or search may be seized in accordance with the regulations by the member of staff referred to in subsection (2).
- (2) The member of staff of the residence referred to in subsection (1) is,—
  - (a) in the case of an inspection carried out under section 384B, the member of staff conducting the inspection; or
  - (b) in the case of a search carried out under section 384C, the member of staff who is conducting the search; or
  - (c) in the case of a search carried out under section 384E, the member of staff who is conducting the search.
- (3) Any unauthorised item seized must be dealt with in accordance with the regulations.
- (4) The manager must ensure that a record is made in the daily log kept in accordance with the regulations of the details of the seizure of any unauthorised item and of the action taken in respect of it.

Section 384K: inserted, on 25 June 2001, by section 4 of the Children, Young Persons, and Their Families Amendment Act 2001 (2001 No 3).

*Absconding by children and young persons***385 Children and young persons who abscond**

- (1) This section applies to any child or young person who—
- (a) leaves or is taken without authority from a residence:
  - (b) refuses or neglects to return to a residence:
  - (c) leaves or is taken without authority from the care of any person or organisation in whose charge that child or young person was placed pursuant to section 362:
  - (d) refuses or neglects to return to the care of any such person or organisation.
- (2) Any child or young person to whom this section applies may be detained without warrant by any constable or a social worker and returned to any residence or to the care of any person or organisation, as the case may be, or otherwise dealt with in accordance with this Act.
- (3) A child or young person to whom this section applies, unless that child or young person was being detained pursuant to section 238(1)(d) or (e) or section 34A of the Corrections Act 2004, does not, by reason only of an act or omission referred to in subsection (1), commit an offence against section 120 of the Crimes Act 1961.
- (4) For the purpose of detaining without warrant any child or young person who leaves or is taken without authority from a residence under this Act, every member of the staff of any such residence shall, if it is administered by the Crown, have the powers conferred on a social worker by subsection (2).

Compare: 1974 No 72 s 104; 1977 No 126 s 18(2)

Section 385(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 385(3): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

**386 Search warrants**

- (1) An issuing officer (within the meaning of section 3 of the Search and Surveillance Act 2012) who, on application in writing verified in accordance with section 99 of that Act by any constable or a social worker, is satisfied that there are reasonable grounds for suspecting that a child or young person to whom section 385 applies is for the time being at any known

premises or place, may issue a warrant authorising any constable or social worker to—

- (a) enter and search, by force if necessary, any such premises or place specified in the warrant; and
- (b) remove the child or young person, using such force as may reasonably be necessary; and
- (c) either—
  - (i) in the case of a child or young person who has absconded or is absent from a residence, return that child or young person to the residence from which that child or young person absconded or from which that child or young person is absent or place that child or young person in any other residence under this Act; or
  - (ii) in the case of a child or young person who has absconded or is absent from the care of any person or organisation in whose charge that child or young person was placed pursuant to section 362, return that child or young person to the care of that person or organisation.

(2) *[Repealed]*

Compare: 1974 No 72 s 104A; 1982 No 135 s 17

Section 386(1): amended, on 1 October 2012, by section 207(3) of the Search and Surveillance Act 2012 (2012 No 24).

Section 386(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 386(2): repealed, on 2 September 1996, by section 2(2) of the Children, Young Persons, and Their Families Amendment Act 1996 (1996 No 112).

*Financial matters*

**387 Chief executive empowered to make payments for benefit of children and young persons**

The chief executive may, from time to time, make such payments as may be necessary to meet the reasonable needs of any child or young person to whom this section applies.

Section 387 heading: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 387: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**388 Financial and other assistance in respect of children and young persons subject to orders made under this Act**

- (1) The chief executive may, from time to time, make grants or provide financial or other assistance—
- (a) to any organisation or person referred to in any order made under section 86 or section 91 or section 283(k) or section 298 or section 307 for the purpose of assisting that organisation or person to carry out the terms of the order:
  - (b) to any parent or guardian or other person having the care of the child or young person to whom the order relates for the purpose of assisting that parent or guardian or other person to care for the child or young person:
  - (c) to any young person to whom the order relates.
- (2) The chief executive may, from time to time, make grants or provide financial or other assistance to any person or organisation having the care of a child or young person pursuant to any order under this Act relating to the custody or guardianship of the child or young person.

Section 388(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 388(1)(a): amended, on 1 November 1989, by section 4 of the Children, Young Persons, and Their Families Amendment Act 1989 (1989 No 70).

Section 388(2): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**389 Financial and other assistance in other cases**

The chief executive may, from time to time, make grants or provide financial assistance to any person for the purpose of assisting that person to care for any child or young person—

- (a) who has ceased to be subject to—
  - (i) an agreement made under section 139 or section 140 or section 141 or section 142; or
  - (ii) an order made under section 78 or section 86 or section 91 or section 101 or section 110 or section 283(n); and
- (b) who, in the circumstances of the particular case, is in need of special assistance.

Section 389: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**390 Power to control finances of young persons under guardianship or in custody**

- (1) Every person (being the chief executive or an iwi social service or a cultural social service or the director of a child and family support service) shall have such authority and powers as may be necessary to exercise control over the earnings and other income of any young person (being a young person to whom this section applies) who is in the care or custody, or under the guardianship, of that person, and may for that purpose—
  - (a) open an account in the name of that young person in any bank, or opt into a KiwiSaver scheme in the name of the young person (but only if the young person is under the person's guardianship, and only in accordance with section 35(3) or (5) of the KiwiSaver Act 2006):
  - (b) pay or arrange for the payment or crediting of the whole or any part of the earnings or other income of that young person into that account or into any KiwiSaver scheme (whenever it was opted into) of which the young person is a member.
- (2) Any account opened under subsection (1) shall be operated either—
  - (a) by the young person; or
  - (b) if the chief executive or, as the case requires, the iwi social service or the cultural social service or the director of the child and family support service so directs, by the young person jointly with a person nominated by the chief executive or, as the case requires, that social service or that director.
- (3) All money standing to the credit of a young person in any such account shall be paid to the young person when the young person is discharged from the care, custody, or guardianship of the chief executive or, as the case requires, of the iwi social service or the cultural social service or the director of a child and family support service, and may be paid at any time before the young person is so discharged if the chief executive or, as the case requires, that social service or that director thinks fit.
- (4) Subsections (2) and (3) do not apply to, or to money standing to the young person's credit in, a KiwiSaver scheme of which the young person is a member, and do not limit or affect section

35(6) of the KiwiSaver Act 2006 (which authorises specified guardians under this Act to make decisions or take steps in respect of a KiwiSaver scheme membership of a person younger than 16 years).

Compare: 1974 No 72 s 50

Section 390(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 390(1): amended, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 390(1)(a): amended, on 1 July 2014, by section 6(3) of the KiwiSaver (Vulnerable Children) Amendment Act 2014 (2014 No 42).

Section 390(1)(b): amended, on 1 July 2014, by section 6(4) of the KiwiSaver (Vulnerable Children) Amendment Act 2014 (2014 No 42).

Section 390(2)(b): replaced, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 390(2)(b): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 390(3): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 390(3): amended, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 390(4): inserted, on 1 July 2014, by section 6(5) of the KiwiSaver (Vulnerable Children) Amendment Act 2014 (2014 No 42).

### **391 Imposition of charge to meet expenses of providing care for children and young persons**

- (1) Where any child or young person to whom this section applies receives earnings or income, the chief executive or, as the case requires, an iwi social service or a cultural social service or the director of a child and family support service may impose a charge to meet the expenses of providing for the care of that child or young person.
- (2) No charge imposed under subsection (1) shall exceed 25% of the net earnings and other income of the child or young person.

Section 391(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 391(1): amended, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

**392 Manager may be appointed under Protection of Personal and Property Rights Act 1988 to manage property of children and young persons subject to guardianship or custody order**

- (1) A Family Court shall have jurisdiction under Part 3 of the Protection of Personal and Property Rights Act 1988 to appoint a manager in respect of the property, or any specified part of the property, of any child or young person to whom this section applies, and the provisions of that Act shall apply accordingly.
- (2) For the purposes of section 25 of the Protection of Personal and Property Rights Act 1988, a child or young person to whom this section applies shall be deemed to lack the competence to manage his or her own affairs in relation to his or her property.

Compare: 1974 No 72 s 52

*Maintenance*  
*[Repealed]*

Heading: repealed, on 1 July 1992, pursuant to section 244 of the Child Support Act 1991 (1991 No 142).

**393 Recovery of cost of maintenance of children and young persons in care**  
*[Repealed]*

Section 393: repealed, on 1 July 1992, by section 244 of the Child Support Act 1991 (1991 No 142).

*Limitation on tortious liability*

**394 Limitation on tortious liability of chief executive and other persons having care of child or young person**

- (1) Subject to subsections (2) and (3), no liability in tort shall attach to—
  - (a) the chief executive, or any employee of the department; or
  - (b) any iwi social service or cultural social service or child and family support service, or any member or employee of any such social service or support service; or
  - (c) any person or organisation in whose charge a child or young person is placed pursuant to section 362, or any

- member or employee of any such person or organisation,—  
in respect of an act or omission on the part of a child or young person to whom this section applies.
- (2) Nothing in subsection (1) applies if the act or omission—
- (a) occurs while the child or young person is acting as the employee or agent of any person, organisation, social service, or support service referred to in any of paragraphs (a) to (c) of subsection (1), or of any member or employee of any such person, organisation, social service, or support service; and
  - (b) is within the scope of the child's or young person's employment or authority as such.
- (3) Nothing in subsection (1) exempts any person or organisation referred to in paragraph (c) of that subsection from any liability in tort for any loss resulting from the use, care, or control of a motor vehicle, if that motor vehicle is in the possession or under the control of a child or young person with the authority of that person or organisation.
- (4) In subsection (3), the term **motor vehicle** has the same meaning as in the Land Transport Act 1998.

Section 394: replaced, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 394 heading: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 394(1)(a): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 394(4): amended, on 1 March 1999, by section 215(1) of the Land Transport Act 1998 (1998 No 110).

### *Reporting of deaths*

#### **395 Police to be notified of deaths**

Where a child or young person to whom this section applies dies, the following provisions shall apply:

- (a) where the child or young person was, at the time of his or her death, in the care or custody or under the guardianship of an iwi social service or a cultural social service or the director of a child and family support



service, that social service or, as the case requires, that director shall give notice of the death—

- (i) forthwith on learning of it, to a constable:
  - (ii) within 24 hours of learning of it, to the principal manager of the department for the area in which the child or young person was residing at the time of his or her death:
- (b) where the child or young person was, at the time of his or her death, in the charge of any person or organisation pursuant to section 362, that person or organisation shall give notice of the death—
- (i) forthwith on learning of it, to a constable:
  - (ii) within 24 hours of learning of it, to the principal manager of the department for the area in which the child or young person was residing at the time of his or her death:
- (c) where the child or young person was, at the time of his or her death, residing in a residence established under section 364, the person in charge of that residence shall, on learning of that death, forthwith notify a constable.

Compare: 1974 No 72 ss 69A, 82; 1988 No 111 s 46

Section 395(a): amended, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 395(a)(i): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 395(a)(ii): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 395(b)(i): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 395(b)(ii): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 395(c): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

## **Part 8**

### **Provisions relating to iwi social services, cultural social services, child and family support services, and community services**

Part 8 heading: replaced, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

*Iwi social services, cultural social services, and  
child and family support services*

Heading: replaced, on 8 January 1995, by section 45(1) of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

**396 Approval of iwi social services, cultural social services,  
and child and family support services**

- (1) The chief executive may, from time to time, on application made to the chief executive, approve any incorporated body (being a body established by an iwi) as an iwi social service for the purposes of this Act.
- (2) The chief executive may, from time to time, on application made to the chief executive, approve any incorporated body (being a body established by 1 or more cultural groups (not being iwi) within New Zealand) as a cultural social service for the purposes of this Act.
- (3) The chief executive may, from time to time, on application made to the chief executive, approve any organisation or body (including a children's home), whether incorporated or unincorporated, as a child and family support service for the purposes of this Act.
- (4) The chief executive may grant an approval under this section subject to such conditions as the chief executive thinks fit.

Section 396: replaced, on 8 January 1995, by section 45(1) of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 396(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 396(2): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 396(3): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 396(4): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**397 Restrictions on granting of approval**

The chief executive shall not approve any body or organisation as an iwi social service or a cultural social service or a child and family support service unless the chief executive, after making such enquiries as may be appropriate, is satisfied that the body or organisation is—

- (a) suitable to act as the custodian or guardian of children and young persons; and
- (b) capable of exercising or performing the powers, duties, and functions conferred or imposed by or under this Act on an iwi social service or, as the case requires, a cultural social service or a child and family support service.

Section 397: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 397: amended, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 397(b): amended, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

**398 Chief executive not to decline application without giving applicant opportunity to make submissions**

The chief executive shall not decline an application for an approval under section 396 without giving the applicant—

- (a) a copy of any information on which the chief executive relies in proposing to decline the application; and
- (b) a reasonable opportunity to make written submissions to the chief executive in relation to that information.

Section 398 heading: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 398: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 398(a): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 398(b): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**399 Revocation of approval**

- (1) Subject to this section, where the chief executive is satisfied, in relation to any iwi social service or cultural social service or child and family support service, that proper standards of care are not being provided for the children and young persons who are in the custody or under the guardianship of that social service or support service, the chief executive may exercise either or both of the following powers:
  - (a) if the chief executive considers that suspension of the approval of the iwi social service or cultural social ser-

- vice or child and family support service is desirable in the public interest, the chief executive may suspend the approval of that social service or support service:
- (b) after giving the social service or support service not less than 60 days' notice of the date on which the chief executive will consider the matter, the chief executive may revoke the approval of that social service or support service.
- (2) Where, under subsection (1), the chief executive revokes or suspends the approval of an iwi social service or a cultural social service or a child and family support service, the chief executive shall—
- (a) give notice of the suspension or revocation to the iwi social service or cultural social service or child and family support service and the reasons for it; and
  - (b) give notice of the suspension or revocation in the *Gazette*.
- (3) Every iwi social service or cultural social service or child and family support service to whom a notice is given under subsection (1)(b) is entitled to make submissions to the chief executive, and the chief executive shall have regard to those submissions before deciding whether or not to revoke the approval of that social service or support service.

Section 399: replaced, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 399(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 399(1)(a): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 399(1)(b): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 399(2): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 399(3): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

#### **400 Assessment of iwi social services, etc**

- (1) Any social worker or other officer of the department authorised by the chief executive may, from time to time, carry out an assessment of an iwi social service or a cultural social ser-

vice or a child and family support service for the purpose of assessing—

- (a) the operation of that social service or support service:
- (b) the standards of care being provided for the children and young persons who are in the care or custody or under the guardianship of that social service or support service:
- (c) the practices and procedures applying in respect of the social service or support service.

- (2) Every social worker or officer of the department who carries out an assessment of an iwi social service or a cultural social service or a child and family support service under subsection (1) shall prepare a report on that assessment for the chief executive, and a copy of that report shall be supplied by the chief executive to that social service or support service.

Section 400: replaced, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 400(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 400(2): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

#### **401 Powers of persons carrying out assessment of iwi social service, etc**

- (1) For the purpose of carrying out an assessment of an iwi social service or a cultural social service or a child and family support service under section 400, a social worker or other officer of the department authorised by the chief executive may—
  - (a) at any reasonable time enter any premises that are occupied by the social service or support service and that provide residential accommodation for children or young persons who are in the care or custody or under the guardianship of the social service or support service and inspect any part of those premises:
  - (b) interview—
    - (i) the convener of the social service or, as the case requires, the director of the support service:
    - (ii) any officer or employee of the social service or support service:

- (c) communicate with any person having the care of any child or young person who is in the care or custody or under the guardianship of that social service or support service and with that child or young person:
  - (d) examine any documents or records that are held by that social service or support service and that relate to any child or young person who is in the care or custody or under the guardianship of the social service or support service.
- (2) Every social worker or officer shall give reasonable notice of that person's intention to enter any premises pursuant to subsection (1)(a) to the social service or support service concerned.
- (3) Every social worker or officer shall, on entering any premises under this section, and when requested at any subsequent time, produce—
  - (a) evidence of that person's authority to enter the premises; and
  - (b) evidence of that person's identity.
- (4) Any social worker or officer who is carrying out an assessment under section 400 may at any time be accompanied by such other person or persons (including a medical practitioner) as may be necessary to carry out the assessment.

Section 401: replaced, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

Section 401(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 401(4): amended, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

#### **402 Convener of iwi social service or cultural social service to have power of decision for purposes of this Act**

Where, pursuant to any provision of this Act, a child or young person is placed in the care or custody or under the guardianship of an iwi social service or a cultural social service, the convener of that social service shall have and may exercise or carry out, on behalf of the social service, all rights, powers, and duties in respect of the child or young person that are conferred or imposed on the social service by virtue of this Act.

Section 402: replaced, on 8 January 1995, by section 46 of the Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121).

*Community services*

**403 Approval of community services**

- (1) The chief executive may, from time to time, on application by any person, body, or organisation whether incorporated or unincorporated, approve any service as a community service for the purposes of this Act, either generally or subject to such limitations as the chief executive may specify.
- (2) The chief executive may grant an approval under this section subject to such conditions as the chief executive thinks fit.
- (3) The chief executive shall not approve any service to be a community service unless the chief executive is satisfied that the service will provide services designed to further all or any of the objects of this Act (as set out in section 4).

Section 403(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 403(2): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 403(3): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**404 Chief executive not to decline application without giving applicant opportunity to make submissions**

The chief executive shall not decline an application for an approval under section 403 without giving the applicant—

- (a) a copy of any information on which the chief executive relies in proposing to decline the application; and
- (b) a reasonable opportunity to make written submissions to the chief executive in relation to that information.

Section 404 heading: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 404: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 404(a): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 404(b): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**405 Revocation of approval**

- (1) Subject to this section, where the chief executive is satisfied, in relation to any community service, that the service is no longer providing services designed to further the objects of this Act, or is not providing services of an adequate standard, the chief executive may exercise either or both of the following powers:
- (a) if the chief executive considers that suspension of the approval of the community service is desirable in the public interest, the chief executive may suspend the approval of the service:
  - (b) after giving the service not less than 60 days' notice of the date on which the chief executive will consider the matter, the chief executive may revoke the approval of the service.
- (2) Where the chief executive revokes or suspends the approval of a community service under subsection (1), the chief executive shall—
- (a) give notice of the suspension or revocation to the community service and the reasons for it; and
  - (b) give notice of the suspension or revocation in the *Gazette*.
- (3) Every community service to whom a notice is given under subsection (1)(b) is entitled to make submissions to the chief executive, and the chief executive shall have regard to those submissions before deciding whether or not to revoke the approval of the service.

Section 405(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 405(1)(a): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 405(1)(b): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 405(2): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 405(3): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**406 Financial assistance to community services**

- (1) Subject to any general directions given from time to time by the Minister, the chief executive may, from time to time, make



grants or provide financial assistance to any community service.

- (2) Any grants made, or financial assistance provided, under subsection (1) may be made or provided on such conditions, including conditions as to repayment and the giving of security to secure repayment, as the chief executive thinks fit.

Section 406(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 406(2): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**407 Chief executive may contract with community services for provision of services**

The chief executive may from time to time, on behalf of the Crown, enter into a contract with any community service for the provision, by that community service, of such services as the chief executive considers necessary or desirable for the purposes of enabling the chief executive to carry out any function imposed on the chief executive by or under this Act.

Section 407 heading: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 407: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**408 Assessment of community services**

- (1) Any social worker or other officer of the department authorised by the chief executive may, from time to time, carry out an assessment of a community service for the purpose of assessing—
- (a) the operation of that community service:
  - (b) the standard of the services being provided by that service:
  - (c) the practices and procedures applying in respect of the service.
- (2) Every social worker or officer of the department who carries out an assessment of a community service under subsection (1) shall prepare a report on that assessment for the chief executive, and a copy of that report shall be supplied by the chief executive to that service.

Section 408(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 408(2): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**409 Powers of person carrying out assessment of community service**

- (1) For the purpose of carrying out an assessment of a community service under section 408, a social worker or other officer of the department authorised by the chief executive may—
  - (a) at any reasonable time enter any premises that are occupied by the service and inspect any part of those premises;
  - (b) interview any officer or employee of the service;
  - (c) communicate with any person to whom the service is providing, or has provided, any service;
  - (d) examine any documents or records that are held by the service and that relate to the provision by that service of any service to which the approval granted under section 403 relates.
- (2) Every social worker or officer shall give reasonable notice of that person's intention to enter any premises pursuant to subsection (1)(a) to the service concerned.
- (3) Every social worker or officer shall, on entering any premises under this section, and when requested at any subsequent time, produce—
  - (a) evidence of that person's authority to enter the premises; and
  - (b) evidence of that person's identity.
- (4) Any social worker or officer who is carrying out an assessment under section 408 may at any time be accompanied by such other person or persons (including a medical practitioner) as may be necessary to carry out the assessment.

Section 409(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 409(4): amended, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

**Part 9  
Commissioner for Children**

*[Repealed]*

Part 9: repealed, on 26 November 2003, by section 37 of the Children's Commissioner Act 2003 (2003 No 121).

*Appointment and functions*  
*[Repealed]*

Heading: repealed, on 26 November 2003, by section 37 of the Children's Commissioner Act 2003 (2003 No 121).

**410 Commissioner for Children**  
*[Repealed]*

Section 410: repealed, on 26 November 2003, by section 37 of the Children's Commissioner Act 2003 (2003 No 121).

**411 Functions of Commissioner**  
*[Repealed]*

Section 411: repealed, on 26 November 2003, by section 37 of the Children's Commissioner Act 2003 (2003 No 121).

*Proceedings of Commissioner*  
*[Repealed]*

Heading: repealed, on 26 November 2003, by section 37 of the Children's Commissioner Act 2003 (2003 No 121).

**412 Powers of Commissioner**  
*[Repealed]*

Section 412: repealed, on 26 November 2003, by section 37 of the Children's Commissioner Act 2003 (2003 No 121).

**413 Commissioner may regulate own procedure**  
*[Repealed]*

Section 413: repealed, on 26 November 2003, by section 37 of the Children's Commissioner Act 2003 (2003 No 121).

**414 Commissioner not to make adverse comment unless  
opportunity to be heard given***[Repealed]*

Section 414: repealed, on 26 November 2003, by section 37 of the Children's Commissioner Act 2003 (2003 No 121).

**415 Annual report***[Repealed]*

Section 415: repealed, on 26 November 2003, by section 37 of the Children's Commissioner Act 2003 (2003 No 121).

*Conditions of employment**[Repealed]*

Heading: repealed, on 26 November 2003, by section 37 of the Children's Commissioner Act 2003 (2003 No 121).

**416 Appointment of Commissioner***[Repealed]*

Section 416: repealed, on 26 November 2003, by section 37 of the Children's Commissioner Act 2003 (2003 No 121).

**417 Term of office and conditions of employment of  
Commissioner***[Repealed]*

Section 417: repealed, on 26 November 2003, by section 37 of the Children's Commissioner Act 2003 (2003 No 121).

**418 Removal from office***[Repealed]*

Section 418: repealed, on 26 November 2003, by section 37 of the Children's Commissioner Act 2003 (2003 No 121).

**419 Superannuation or retiring allowances***[Repealed]*

Section 419: repealed, on 26 November 2003, by section 37 of the Children's Commissioner Act 2003 (2003 No 121).

*Miscellaneous provisions*  
*[Repealed]*

Heading: repealed, on 26 November 2003, by section 37 of the Children's Commissioner Act 2003 (2003 No 121).

**420 Proceedings privileged**  
*[Repealed]*

Section 420: repealed, on 26 November 2003, by section 37 of the Children's Commissioner Act 2003 (2003 No 121).

**421 Commissioner deemed to be official**  
*[Repealed]*

Section 421: repealed, on 26 November 2003, by section 37 of the Children's Commissioner Act 2003 (2003 No 121).

**422 Money to be appropriated by Parliament for purposes  
of this Part**  
*[Repealed]*

Section 422: repealed, on 26 November 2003, by section 37 of the Children's Commissioner Act 2003 (2003 No 121).

**Part 10**  
**Miscellaneous provisions**

*Care and protection co-ordinators and youth  
justice co-ordinators*

**423 Appointment of care and protection co-ordinators**

- (1) The chief executive shall, from time to time, for the purposes of this Act, appoint under the State Sector Act 1988 a sufficient number of care and protection co-ordinators.
- (2) A person shall not be appointed to be a care and protection co-ordinator unless that person is, by reason of his or her personality, training, and experience, suitably qualified to exercise or perform the functions, duties, and powers conferred or imposed on a care and protection co-ordinator by or under this Act.

Section 423(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**424 Duties of care and protection co-ordinator**

The duties of a care and protection co-ordinator are as follows:

- (a) to receive reports and referrals in accordance with Part 2:
- (b) to convene family group conferences in accordance with Part 2, and, where necessary, to convene further meetings of any such conference:
- (c) to consult with any care and protection resource panel as appropriate:
- (d) to consult, as appropriate, with persons having knowledge of or experience in cultural matters:
- (e) to record the details of any decision, recommendation, or plan made or formulated by a family group conference pursuant to Part 2:
- (f) to ensure that any decision, recommendation, or plan made or formulated by a family group conference pursuant to Part 2 is reviewed regularly:
- (g) to notify the results of a family group conference in accordance with section 32:
- (h) to perform such other duties as may be prescribed by or under this Act or any other Act.

**425 Appointment of youth justice co-ordinators**

- (1) The chief executive shall, from time to time, for the purposes of this Act, appoint under the State Sector Act 1988 a sufficient number of youth justice co-ordinators.
- (2) A person shall not be appointed to be a youth justice co-ordinator unless that person is, by reason of his or her personality, training, and experience, suitably qualified to exercise or perform the functions, duties, and powers conferred or imposed on a youth justice co-ordinator by or under this Act.

Section 425(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**426 Duties of youth justice co-ordinator**

The duties of a youth justice co-ordinator are as follows:

- (a) to receive reports in accordance with section 18(3):
- (b) where a child or young person is alleged to have committed an offence, to explore with the relevant enforce-

ment agency the possibility of dealing with the matter by means other than the institution of criminal proceedings:

- (c) to convene family group conferences in accordance with Part 4, and, where necessary, to convene further meetings of any such conference:
- (d) to record the details of any decision, recommendation, or plan made or formulated by a family group conference pursuant to Part 4:
- (e) to notify the results of a family group conference in accordance with section 265:
- (f) to perform such other duties as may be prescribed by or under this Act or any other Act.

**427 Delegation of functions of care and protection  
co-ordinator or youth justice co-ordinator to social  
worker**

- (1) A care and protection co-ordinator or a youth justice co-ordinator may, from time to time, delegate to any social worker (being a social worker who is, in the opinion of that co-ordinator, suitable by reason of his or her training or experience to carry out that function or power) any function or power of that co-ordinator under this Act.
- (2) Every delegation under subsection (1)—
  - (a) shall be in writing:
  - (b) may be given on such terms and conditions as the co-ordinator thinks fit:
  - (c) shall be revocable in writing at will by the co-ordinator or the chief executive.
- (3) Subject to any terms or conditions imposed by the co-ordinator, a social worker to whom any functions or powers are delegated under subsection (1) may exercise those functions or powers as if they had been conferred on that person directly by this Act and not by delegation.
- (4) Every person purporting to act pursuant to any delegation under subsection (1) shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

- (5) No delegation under subsection (1) shall affect or prevent the exercise of any function or power by the care and protection co-ordinator or youth justice co-ordinator who made the delegation.
- (6) Any delegation under subsection (1), until it is revoked by the chief executive, shall continue in force according to its tenor, notwithstanding that the care and protection co-ordinator or youth justice co-ordinator by whom the delegation was made may have ceased to hold office.

Section 427(2)(c): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 427(6): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

### *Care and protection resource panels*

#### **428 Care and protection resource panels**

- (1) The chief executive shall establish advisory committees, to be known as care and protection resource panels, which shall have the functions specified in section 429 and such other functions as the chief executive thinks fit.
- (2) Every care and protection resource panel shall consist of such number of members as the chief executive thinks fit, which members shall be appointed by the chief executive.
- (3) In making appointments to a care and protection resource panel the chief executive shall have regard to the desirability of having as members of such panels persons from occupations and organisations (including voluntary and statutory organisations, cultural and community groups, government departments, and government agencies) that are concerned with the care and protection of children and young persons.
- (4) Every care and protection resource panel may at any time be discharged, altered, or reconstituted by the chief executive.

Section 428(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 428(2): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 428(3): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 428(4): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).



**429 Functions of care and protection resource panels**

The functions of every care and protection resource panel shall be—

- (a) to provide advice to social workers, care and protection co-ordinators, and constables on the exercise or performance, by such persons, of the functions, powers, and duties conferred or imposed on them by or under Part 2 or Part 3;
- (b) to receive reports from care and protection co-ordinators on matters relating to the exercise or performance, by such co-ordinators, of the functions, powers, and duties conferred or imposed on them by or under this Act;
- (c) to promote co-ordination of the provision of services by the community to children and young persons in need of care or protection, and to the families and family groups of such children and young persons;
- (d) to advise the chief executive on matters relating to the appointment of care and protection co-ordinators.

Section 429(a): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 429(d): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**430 Care and protection resource panels may regulate own procedure**

Every care and protection resource panel may regulate its own procedure.

**431 Annual report**

Without limiting the right of a care and protection resource panel to report at any other time, each care and protection resource panel shall, within 3 months after the expiration of each year ending 31 March or such other date as may from time to time be directed by the chief executive, furnish to the chief executive a report on the exercise of that panel's functions under this Act during that year.

Section 431: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**432 Fees and allowances**

- (1) Every care and protection resource panel is hereby declared to be a statutory board within the meaning of the Fees and Travelling Allowances Act 1951.
- (2) There may be paid out of funds appropriated by Parliament for the purpose to the members of any care and protection resource panel remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly.

*Youth Courts***433 Establishment of Youth Courts**

Every District Court shall have a division to be known as a Youth Court.

**434 Principal Youth Court Judge**

- (1) The Governor-General must, on the advice of the Attorney-General, appoint a Principal Youth Court Judge.
- (2) The appointment must be for a period of 8 years, and the person is not eligible for reappointment as Principal Youth Court Judge.
- (3) A person's appointment as Principal Youth Court Judge ceases if he or she ceases to hold office as a District Court Judge.
- (4) With the prior approval of the Governor-General, the Principal Youth Court Judge may resign that office but continue in office as a District Court Judge.
- (5) To avoid doubt, a person does not cease to hold office as a District Court Judge solely because the term of the person's appointment as Principal Youth Court Judge has come to an end.
- (6) Despite subsection (2), the Principal Youth Court Judge continues in office until his or her successor comes into office.
- (7) The Principal Youth Court Judge is responsible for ensuring the orderly and expeditious discharge of the business of the court in consultation with the Chief District Court Judge.

Section 434: replaced, on 20 May 2004, by section 3 of the Children, Young Persons, and Their Families Amendment Act 2004 (2004 No 39).

**435 Designation of Youth Court Judges**

- (1) The Chief District Court Judge shall, from time to time, on the recommendation of the Principal Youth Court Judge, designate a sufficient number of District Court Judges as Youth Court Judges, and may, from time to time, revoke any such designation.
- (2) For the avoidance of doubt, it is hereby declared that a Family Court Judge may be designated as a Youth Court Judge.
- (3) A person shall not be designated a Youth Court Judge unless that person is a suitable person to deal with matters within the jurisdiction of a Youth Court by virtue of that person's training, experience, and personality and understanding of the significance and importance of different cultural perspectives and values.
- (4) A Family Court Judge shall not be designated as a Youth Court Judge without the concurrence of the Principal Family Court Judge.

**435A Stationing of Judges and sittings of courts**

- (1) Each Youth Court Judge must be stationed in the town, and must sit in the court, that may from time to time be determined by the Principal Youth Court Judge.
- (2) Despite subsection (1), the fact that a Youth Court Judge sits in any particular court is conclusive evidence of the Judge's authority to do so, and no exercise of any jurisdiction or power by a Youth Court Judge may be questioned on the ground that the Judge was not stationed in the town or authorised to sit in the court where he or she exercised the jurisdiction or power.
- (3) Sittings of a Youth Court for the dispatch of its business must be held on the days and times that may be appointed by the Judge exercising the jurisdiction of the court at the place at which the sittings are held.
- (4) However, the days appointed for regular sittings of a Youth Court are subject to the approval of the Principal Youth Court Judge.
- (5) In exercising his or her powers under this section, the Principal Youth Court Judge must consult with the Chief District Court Judge.

- (6) This section is subject to section 9 of the District Courts Act 1947.

Section 435A: inserted, on 20 May 2004, by section 5 of the Children, Young Persons, and Their Families Amendment Act 2004 (2004 No 39).

**436 District Court Judge may exercise jurisdiction in absence of Youth Court Judge**

- (1) In the case of the absence from any court of any Youth Court Judge (from whatever cause the absence may arise), or in any case where no District Court Judge has been designated as a Youth Court Judge to exercise jurisdiction in a Youth Court, any District Court Judge may exercise jurisdiction in that court.
- (2) The fact that a District Court Judge exercises jurisdiction in a Youth Court under this section shall be conclusive evidence of the authority of that District Court Judge to do so, and no act done by that District Court Judge while acting as such shall, in any proceedings, be questioned on the ground that the occasion for so acting had not arisen or had ceased.

*Miscellaneous provisions relating to  
proceedings under this Act*

**437 Notice of proceedings and orders to be given to parents or guardians or other persons having care of child or young person**

- (1) Where any application is made to, or any proceedings are commenced in, any court under this Act, being an application or proceedings relating to any child or young person, it shall be the duty of the person making the application or commencing the proceedings to give notice of the application or proceedings to a parent or guardian or other person having the care of the child or young person together with a copy of any such application or proceedings.
- (2) Every notice given under subsection (1) shall specify—
- (a) the nature of the application or proceedings and any orders sought in sufficient detail to enable that parent or guardian or other person to understand both the nature and implications of the application or proceedings; and

- (b) the rights or obligations of any parent or guardian or other person to appear at the hearing of the application or proceedings or be represented by a barrister or solicitor.
- (3) Where any order is made by a court on any application made or in any proceedings brought under this Act relating to a child or young person, it is the duty of the Registrar of the court by which the order was made to give notice of the making of the order to a parent or guardian or other person having the care of the child or young person, and also give that parent or guardian or other person a copy of the order.
- (4) Every notice given under subsection (3) shall specify—
  - (a) the terms of the order made in sufficient detail to enable the parent or guardian or other person to understand both the nature and implications of it; and
  - (b) any rights of appeal against the order.

**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—

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

Section 437A: inserted, on 18 May 2009, by section 8 of the Children, Young Persons, and Their Families Amendment Act 2008 (2008 No 76).

**438 Publication of reports of proceedings under Part 4**

- (1) Subject to subsection (2), no person shall publish any report of proceedings under Part 4 except with the leave of the court that heard the proceedings.
- (2) Nothing in subsection (1) applies to the publication of—
  - (a) any report in any publication that—
    - (i) is of a bona fide professional or technical nature; and
    - (ii) is intended for circulation among members of the legal, medical, or teaching professions, officers

- of the Public Service, psychologists, counsellors carrying out duties under this Act, counsellors and mediators carrying out duties under the Care of Children Act 2004 or the Family Proceedings Act 1980, or social workers:
- (b) statistical information relating to proceedings under this Act;
  - (c) the results of any bona fide research relating to proceedings under this Act.
- (3) In no case shall it be lawful to publish, in any report of proceedings under Part 4,—
- (a) the name of any child or young person or the parents or guardians or any person having the care of the child or young person; or
  - (b) the name of any school that the child or young person is or was attending; or
  - (c) any other name or particulars likely to lead to the identification of the child or young person or of any school that the child or young person is or was attending;
  - (d) the name of any complainant.
- (4) Nothing in this section shall be construed to limit—
- (a) the provisions of any other enactment relating to the prohibition or regulation of the publication of reports or particulars relating to judicial proceedings; or
  - (b) the power of any court to punish any contempt of court.
- (5) Every person who contravenes this section commits an offence against this Act and is liable on conviction,—
- (a) in the case of an individual, to a fine not exceeding \$2,000;
  - (b) in the case of a body corporate, to a fine not exceeding \$10,000.

Compare: 1974 No 72 s 24; 1980 No 94 s 169; 1982 No 135 s 6

Section 438 heading: replaced, on 18 May 2009, by section 9(1) of the Children, Young Persons, and Their Families Amendment Act 2008 (2008 No 76).

Section 438(1): amended, on 18 May 2009, by section 9(2) of the Children, Young Persons, and Their Families Amendment Act 2008 (2008 No 76).

Section 438(2)(a)(ii): amended, on 18 May 2009, by section 9(3)(a) of the Children, Young Persons, and Their Families Amendment Act 2008 (2008 No 76).

Section 438(2)(a)(ii): amended, on 18 May 2009, by section 9(3)(b) of the Children, Young Persons, and Their Families Amendment Act 2008 (2008 No 76).

Section 438(3): amended, on 18 May 2009, by section 9(4) of the Children, Young Persons, and Their Families Amendment Act 2008 (2008 No 76).

Section 438(3)(d): amended, on 18 May 2009, by section 9(5) of the Children, Young Persons, and Their Families Amendment Act 2008 (2008 No 76).

Section 438(5): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

**439 Proceedings not invalid because of mistake as to age**

- (1) No conviction or order or direction or other process or proceedings or action taken shall be held invalid by reason only that it related to a person who was not a child or young person if there were, at the time of conviction, order, direction, process, proceedings, or action, reasonable grounds for believing that that person was a child or young person.
- (2) Despite subsection (1), on the application of either party, a rehearing of a charge may be granted under section 177 of the Criminal Procedure Act 2011.
- (3) For the purposes of this section, section 177 of that Act must be treated as applying in relation to all offence categories.
- (4) If the proceedings should have been dealt with in a District Court or the High Court, the proceedings must be remitted to a District Court or the High Court, as the case may require, to be reheard in that court.

Compare: 1974 No 72 s 44

Section 439(2): replaced, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 439(3): inserted, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 439(4): inserted, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

**440 Proceedings not to be questioned for want of form**

No charging document, summons, conviction, order, sentence, bond, warrant, or other document under this Act, and no application, proceedings, or process under this Act, shall be quashed, set aside, or held invalid by any court by reason only of any defect, irregularity, omission or want of form unless the court is satisfied that there has been a miscarriage of justice.

Compare: 1974 No 72 s 45

Section 440: amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

**441 Court may determine age of child or young person in absence of evidence**

- (1) If, in any application or proceedings under this Act, the age of any child or young person is in question, the court in which the application is made or the proceedings are brought shall, in the absence of sufficient evidence, fix the age of the child or young person, and the age so fixed shall, for the purposes of this Act, be the true age of that child or young person.
- (2) Every guardianship order or custody order made pursuant to this Act shall specify the age of the child or young person to whom it relates, and where the age of the child or young person is fixed under subsection (1), the order shall be endorsed to that effect.

Compare: 1974 No 72 s 98

**442 No court fees payable**

No court fees of any of the following kinds shall be payable in respect of any proceedings under this Act:

- (a) any fee for the filing of any document:
- (b) any setting down fee:
- (c) any hearing fee.

Compare: 1974 No 72 s 99(5)

**443 Issue and execution of warrants**

Any warrant issued under any provisions of this Act may be issued or executed at any hour of the day or night and may be issued or executed on a Sunday as on any other day.

Compare: 1974 No 72 s 101

**444 Liability of persons providing reports**

No person who furnishes a report to any court for the purposes of any proceedings under this Act or who supplies any information for the purposes of any such report shall be under any civil or criminal liability in respect of the furnishing of that report or the supply of that information unless the report was furnished or the information was supplied in bad faith.



**445 Witnesses expenses**

- (1) Where any person is required to give evidence before a Family Court or a Youth Court, that person may, if the court so directs, be paid fees, allowances, and expenses, and the provisions of any regulations in that behalf under the Criminal Procedure Act 2011 and for the time being in force shall apply accordingly.
- (2) A Family Court or Youth Court, as the case may be, shall have the powers of a court under any such regulations to fix or disallow, in whole or in part, or increase the amounts payable under those regulations.

Compare: 1974 No 72 s 102

Section 445(1): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

*Search warrants*

Heading: inserted, on 2 September 1996, by section 2(1) of the Children, Young Persons, and Their Families Amendment Act 1996 (1996 No 112).

**445A Person executing warrant to produce evidence of  
authority and identity**

Every social worker, constable, or other person executing any warrant issued under section 122 or section 157(2) or section 205(2)(b) or section 296C—

- (a) shall have that warrant with him or her; and
- (b) shall produce it on initial entry and, if requested, at any subsequent time; and
- (c) shall identify himself or herself to any person in or on the dwellinghouse, building, aircraft, ship, carriage, vehicle, premises, or place who questions his or her right to enter or search the same or to take possession of the child or young person; and
- (d) if he or she is a constable who is not in uniform, shall produce evidence that he or she is a constable; and
- (e) if he or she is a social worker, shall produce evidence that he or she is a social worker; and
- (f) if he or she is a person (not being a social worker) authorised by the warrant to take possession of the child

or young person, shall produce evidence that he or she is the person so authorised.

Compare: 1968 No 63 s 19(5); 1983 No 76 s 2

Section 445A: inserted, on 2 September 1996, by section 2(1) of the Children, Young Persons, and Their Families Amendment Act 1996 (1996 No 112).

Section 445A: amended, on 1 October 2012, by section 208(1)(a) of the Search and Surveillance Act 2012 (2012 No 24).

Section 445A: amended, on 1 October 2012, by section 208(1)(b) of the Search and Surveillance Act 2012 (2012 No 24).

Section 445A: amended, on 1 October 2010, by section 51 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 445A: amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 445A(d): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

#### **445B Authority to use facsimile copy of warrant**

- (1) In this section, the term **facsimile copy**, in relation to a warrant, means a copy of the warrant that is produced by a facsimile machine, computer, or other electronic device when the warrant is sent by facsimile transmission.
- (2) Any District Court Judge, Justice, Community Magistrate, or Registrar (not being a constable) may authorise the use of a facsimile copy of a warrant issued under section 122, 157(2), 205(2)(b), or 296C in the execution of that warrant.
- (2A) The use of a facsimile copy of a warrant may be authorised when the warrant is issued, or later.
- (2B) Subsection (2) is subject to subsection (3).
- (3) No authorisation may be granted under subsection (2) in relation to a warrant unless the District Court Judge, Justice, Community Magistrate, or Registrar is satisfied, having regard to the circumstances of the case, that any delay in executing the warrant that may be caused if a facsimile copy is not able to be used for that purpose would or might unduly prejudice the purpose for which the warrant was issued.
- (4) Where a District Court Judge, Justice, Community Magistrate, or Registrar grants an authorisation under subsection (2) in relation to a warrant, the Judge, Justice, Community Magistrate,

or Registrar, as the case may be, shall endorse on the face of the warrant—

- (a) the fact that a facsimile copy of the warrant may be used for the purpose of executing the warrant; and
  - (b) the date and time at which the authorisation expires, which shall be the close of the third day after the day on which the authorisation is granted,—
- and shall sign that endorsement.

- (5) A facsimile copy of a warrant in respect of which an authorisation granted under this section is in force shall be treated, for all purposes, as if it were the warrant, and the provisions of this Act (including, without limitation, sections 445A and 445C and section 446(1)(a) and (b)) shall apply accordingly with all necessary modifications.
- (6) Without limiting any other enactment or rule of law, it is hereby declared that section 44 of the Policing Act 2008 (which relates to protection of Police employees for acts pursuant to process) applies in relation to a facsimile copy of a warrant in respect of which an authorisation granted under this section is in force as if that facsimile copy were the warrant.

Section 445B: inserted, on 2 September 1996, by section 2(1) of the Children, Young Persons, and Their Families Amendment Act 1996 (1996 No 112).

Section 445B(2): replaced, on 20 September 2007, by section 4 of the Children, Young Persons, and Their Families Amendment Act 2007 (2007 No 46).

Section 445B(2): amended, on 1 October 2012, by section 208(2) of the Search and Surveillance Act 2012 (2012 No 24).

Section 445B(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 445B(2A): inserted, on 20 September 2007, by section 4 of the Children, Young Persons, and Their Families Amendment Act 2007 (2007 No 46).

Section 445B(2B): inserted, on 20 September 2007, by section 4 of the Children, Young Persons, and Their Families Amendment Act 2007 (2007 No 46).

Section 445B(3): amended, on 30 June 1998, by section 7 of the District Courts Amendment Act 1998 (1998 No 76).

Section 445B(4): amended, on 30 June 1998, by section 7 of the District Courts Amendment Act 1998 (1998 No 76).

Section 445B(6): amended, on 1 October 2008, by section 130(1) of the Policing Act 2008 (2008 No 72).

**445C Issue and execution of warrants**

Any warrant issued under any provision of this Act may be issued or executed at any hour of the day or night and may be issued or executed on a Sunday as on any other day.

Compare: 1974 No 72 s 101

Section 445C: inserted, on 2 September 1996, by section 2 of the Children, Young Persons, and Their Families Amendment Act 1996 (1996 No 112).

**445D Certain provisions of Search and Surveillance Act 2012  
apply to some warrants**

Sections 101 and 105 of the Search and Surveillance Act 2012 apply, with any necessary modifications, in respect of any warrant applied for or issued under section 39, 40, or 386.

Section 445D: inserted, on 1 October 2012, by section 209 of the Search and Surveillance Act 2012 (2012 No 24).

*Offences***446 Offences**

- (1) Every person commits an offence and is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$1,000 who—
  - (a) knowingly hinders or obstructs any person in the execution of a warrant under section 39 or section 40 or section 122 or section 157(2) or section 205 or section 386, or in the exercise of the power conferred by section 42(1) or section 105(2) or section 318(1) or section 401(1)(a) or section 409(1)(a) (including the power conferred by section 105(2) and applied in sections 80, 82(5), 104(3)(c), and 106(2)); or
  - (b) wilfully fails or refuses to afford to any person engaged in the execution of the warrant or the exercise of the power immediate entrance to any premises or any part of any premises; or
  - (c) without lawful authority removes from the custody of the chief executive any child or young person who has been placed in the custody of the chief executive pursuant to section 39 or section 40 or section 42.
- (2) Every person commits an offence and is liable on conviction to a fine not exceeding \$1,000 who—

- (a) incites or knowingly assists any child or young person to depart without proper authority from any residence under this Act, or from the custody and care of any person who for the time being has been lawfully entrusted under this Act with the custody or care of the child or young person:
- (b) without lawful authority removes any child or young person from any residence under this Act, or from the custody or care of any person as aforesaid:
- (c) harbours or conceals any child or young person who has departed without proper authority or been removed without lawful authority from any residence under this Act, or from the custody or care of any person as aforesaid:
- (d) obstructs any social worker or other officer of the department in obtaining possession of any child or young person for the time being in the care of the chief executive or placed under the guardianship of the chief executive, or in carrying out any order under this Act.

Compare: 1974 No 72 s 103

Section 446(1): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 446(1)(c): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 446(2): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 446(2)(d): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

#### **446A Children and young persons to whom section 446B applies**

- (1) Section 446B applies to a child or young person who is the subject of a protection order (as defined in section 207C) that has not ceased to have effect under this Act in accordance with section 207ZI(1) and—
  - (a) that the chief executive proposes to transfer under section 207D to a participating State (as defined in section 207B); or
  - (b) that the chief executive has decided to transfer under section 207D to a participating State; or

- (c) that is an order in relation to which the chief executive has filed in a court an application under section 207K; or
  - (d) that a court has ordered under section 207K be transferred to a participating State.
- (2) Section 446B applies to a child or young person who is the subject of protection proceedings (as defined in section 207B) that have not been discontinued under this Act in accordance with section 207W and—
  - (a) that are proceedings in relation to which the chief executive has filed in a court an application under section 207Q; or
  - (b) that a court has ordered under section 207Q be transferred to a participating State.
- (3) Section 446B applies to a child or young person who is the subject of a protection order registered in a court under section 207X.
- (4) Section 446B applies to a child or young person who is the subject of protection proceedings registered in a court under section 207X.

Section 446A: inserted, on 1 November 1999, by section 4 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

**446B Offences available if child or young person is subject of certain protection orders or proceedings under Part 3A**

- (1) If this section applies to a child or young person,—
  - (a) a person may be prosecuted for an offence against section 446 in relation to that child or young person; and
  - (b) it does not matter whether the conduct that constitutes the offence occurs wholly within or wholly outside New Zealand or partly within or partly outside New Zealand.
- (2) A person is not liable to be prosecuted under section 446 in respect of conduct—
  - (a) that constitutes an offence not only under section 446 but also under a law of a participating State (as defined in section 207B); and
  - (b) for which the person was prosecuted in the participating State and convicted or found guilty or acquitted.

- (3) The Attorney-General must be consulted before a prosecution is commenced for an offence against section 446 that is alleged to have occurred partly or wholly outside New Zealand.

Section 446B: inserted, on 1 November 1999, by section 4 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

### *Regulations*

#### **447 Regulations**

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

- (aa) declaring a law of a participating State to be a child welfare law for the purposes of Part 3A:
- (ab) declaring a law to be an interstate law in relation to a participating State for the purposes of Part 3A:
- (ac) declaring the holder of an office or position to be the interstate officer in relation to a participating State for the purposes of Part 3A:
- (ad) regulating the administration, management, and control of the residential component (within the meaning of section 290A) of a specified programme or activity:
  - (a) providing for the management and inspection of residences established pursuant to section 364:
  - (b) defining the rights of children and young persons placed in any residence established pursuant to section 364:
  - (c) limiting the powers of the staff of any residence established pursuant to section 364 to punish or discipline the children or young persons placed in the residence:
- (ca) regulating searches conducted under sections 384C and 384E and the inspection of incoming and outgoing mail under section 384B including, without limitation,—
  - (i) prescribing the manner in which the searches and inspections may be carried out:
  - (ii) prescribing the powers that may be exercised when conducting a search or inspection:
  - (iii) providing for the seizure, disposal, safe keeping, or return of any article, drug, or substance found during a search or inspection:

- (iv) prescribing conditions on the disposal of any seized article, drug, or substance:
  - (v) prescribing procedures by which a child or young person may lay a complaint in relation to an inspection of mail or a search, and how the complaint is to be dealt with:
- (d) providing for the administration, management, and control of any centre that is established to provide for the part-time care, training, or occupation of children or young persons:
- (e) prescribing the amounts payable to—
  - (i) *[Repealed]*
  - (ii) any lay advocate appointed under section 163 or section 326:
  - (iii) any youth advocate appointed under section 323:
- (f) prescribing forms of applications, licences, notices, or other documents for the purposes of this Act, or authorising the chief executive to prescribe or approve forms, and requiring the use of such forms:
- (g) conferring rights of review of any decision or determination made or any requirements or conditions imposed under regulations made pursuant to this section:
- (h) providing for such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.

Compare: 1974 No 72 s 105; 1983 No 129 s 15

Section 447(aa): inserted, on 1 November 1999, by section 5 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

Section 447(ab): inserted, on 1 November 1999, by section 5 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

Section 447(ac): inserted, on 1 November 1999, by section 5 of the Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116).

Section 447(ad): inserted, on 1 October 2010, by section 53 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 447(ca): inserted, on 25 June 2001, by section 5 of the Children, Young Persons, and Their Families Amendment Act 2001 (2001 No 3).

Section 447(e)(i): repealed, on 31 March 2014, by section 9 of the Children, Young Persons, and Their Families Amendment Act 2013 (2013 No 76).



Section 447(e)(ii): amended, on 1 November 1989, by section 5 of the Children, Young Persons, and Their Families Amendment Act 1989 (1989 No 70).

Section 447(f): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**448 Rules of procedure**

- (1) The Governor-General may, by Order in Council, make rules regulating the practice and procedure of Youth Courts under this Act.
- (2) Rules may be made regulating the practice and procedure of courts (other than Youth Courts) under this Act,—
  - (a) in the case of the High Court, under section 51C of the Judicature Act 1908:
  - (b) in the case of District Courts, under section 122 of the District Courts Act 1947:
  - (c) in the case of Family Courts, under section 16A of the Family Courts Act 1980.

Section 448: replaced, on 13 September 2002, by section 6 of the Family Courts Amendment Act 2000 (2000 No 65).

**448A Transitional provisions relating to rules**

- (1) Subsections (2) to (4) apply to rules made under section 448 that are in force immediately before the commencement of this section, unless those rules are revoked on or after the commencement of this section.
- (2) Rules to which this subsection applies that regulate the practice or procedure of the Youth Courts continue to regulate the practice or procedure of the Youth Courts as if they had been made under section 448(1).
- (3) Rules to which this subsection applies that regulate the practice or procedure of the High Court continue to regulate the practice or procedure of the High Court until any rules referred to in section 448(2)(a) come into force.
- (4) Rules to which this subsection applies that regulate the practice or procedure of the District Courts continue to regulate the practice or procedure of the District Courts until any rules referred to in section 448(2)(b) come into force.

Section 448A: inserted, on 13 September 2002, by section 6 of the Family Courts Amendment Act 2000 (2000 No 65).

**Part 11**  
**Amendments to other enactments,**  
**repeals, savings, and transitional**  
**provisions**

*Amendments to other enactments*

**449 Consequential amendments**

The enactments specified in Schedule 2 are hereby consequentially amended in the manner indicated in that schedule.

**450 Adoption Act 1955 amended**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) Notwithstanding anything in subsection (1), where, immediately before the commencement of this section, any person has a child in that person's home for care under a licence or warrant of exemption granted under section 73 of the Children and Young Persons Act 1974, nothing in section 6 of the Adoption Act 1955 shall apply, during the period of 6 months beginning on the date of the commencement of this section, to the keeping of that child by that person.

**451 Department of Social Welfare Act 1971 consequentially amended**

*[Repealed]*

Section 451: repealed, on 1 April 1990, by section 33(2)(e) of the Social Welfare (Transitional Provisions) Act 1990 (1990 No 26).

**452 Local Government Act 1974 consequentially amended**

*[Repealed]*

Section 452: repealed, on 1 July 1992, by section 92(2) of the Building Act 1991 (1991 No 150).

**453 Summary Offences Act 1981 amended**

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

**454 Criminal Justice Act 1985 amended**

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

**455 Child Care Regulations 1985 consequentially amended**

- (1) *Amendment(s) incorporated in the regulations.*
- (2) The amendment, by subsection (1), of the Child Care Regulations 1985 shall be without prejudice to any power of amending or revoking those regulations.

*Repeals and savings*

**456 Repeals and savings**

- (1) The enactments specified in Schedule 3 are hereby repealed.
- (2) The repeal of the Children and Young Persons Amendment Act 1982 by subsection (1) shall not affect the amendment made by section 20 of that Act to the Department of Social Welfare Act 1971.

*2010 Amendment Act*

Heading: inserted, on 1 October 2010, by section 54 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

**456A Purpose and application**

- (1) The purpose of Part 1 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 is to amend this Act to—
  - (a) enable proceedings to be commenced under the Summary Proceedings Act 1957 or the Criminal Procedure Act 2011 against—
    - (i) a child aged 12 or 13 years who is alleged to have committed an offence (other than murder or manslaughter) for which the maximum penalty available is or includes imprisonment for life or for at least 14 years; or
    - (ii) a child aged 12 or 13 years who is alleged to have committed an offence (other than murder or manslaughter) for which the maximum penalty available is or includes imprisonment for at least 10 years but less than 14 years and who is a previous offender; and
  - (b) require to be brought before a Youth Court to be dealt with in accordance with this Act, and provide certain

- protections for, a child of that kind against whom proceedings under the Summary Proceedings Act 1957 or the Criminal Procedure Act 2011 have been commenced for an offence of that kind; and
- (c) strengthen and expand the orders available to a Youth Court sentencing or otherwise dealing with a child or young person against whom a charge is proved before a Youth Court, including by ensuring that measures for dealing with offending address the causes underlying the offending.
- (2) A child aged 12 or 13 years is a previous offender for the purposes of subsection (1)(a)(ii) if, in accordance with section 272(1A) or (1B) (as substituted by section 14(2) of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010), he or she has been—
- (a) proved before a Family Court to have committed an offence for which the maximum penalty available is or includes imprisonment for life or for at least 10 years; or
- (b) convicted by the High Court of murder or manslaughter; or
- (c) convicted by a District Court or the High Court, as a result of an election of jury trial made in a Youth Court, of 1 or more offences (other than murder or manslaughter) for which the maximum penalty available is or includes imprisonment for life or for at least 14 years; or
- (d) proved before a Youth Court to have committed 1 or more offences (other than murder or manslaughter) for which the maximum penalty available is or includes imprisonment for life or for at least 14 years.
- (3) The amendments made by a provision of that Part apply only—
- (a) in respect of an offence committed or alleged to have been committed after the commencement of that provision; and
- (b) in accordance with subsection (4) in respect of an offence committed or alleged to have been committed before the commencement of that provision.

- (4) If the child or young person gives consent to its doing so, the court may make an order, or exercise or perform any other authority, power, or function, under an amendment made by a provision of that Part in respect of an offence committed or alleged to have been committed before the commencement of that provision.
- (5) A reference in subsection (3) or (4) to an offence committed or alleged to have been committed includes a reference to each of the child's 1 or more earlier offences referred to in section 272(1A)(b) or (1B)(a), (b), or (c) if—
  - (a) the offence is one of the kind specified in section 272(1)(c) and one committed or alleged to have been committed by a child aged 12 or 13 years; and
  - (b) proceedings under the Summary Proceedings Act 1957 or the Criminal Procedure Act 2011 against the child for the offence have been or are to be commenced in accordance with section 272(1)(c).

Section 456A: inserted, on 1 October 2010, by section 54 of the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2).

Section 456A(1)(a): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 456A(1)(b): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

Section 456A(5)(b): amended, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

### *Transitional provisions*

#### **457 Complaints**

*[Repealed]*

Section 457: repealed, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

#### **458 Informations**

*[Repealed]*

Section 458: repealed, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**459 Guardianship orders**

*[Repealed]*

Section 459: repealed, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**460 Plans and reports to be furnished to court in respect of orders deemed to be guardianship orders under this Act**

*[Repealed]*

Section 460: repealed, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**461 Review of orders deemed to be guardianship orders under this Act**

*[Repealed]*

Section 461: repealed, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**462 Applications for review of guardianship orders**

*[Repealed]*

Section 462: repealed, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**463 Supervision orders**

*[Repealed]*

Section 463: repealed, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**464 Applications for review of supervision orders**

*[Repealed]*

Section 464: repealed, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**465 Complaints for failure to observe conditions of supervision order**

*[Repealed]*

Section 465: repealed, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**466 Agreements for control of child or young person by the  
Director-General**

*[Repealed]*

Section 466: repealed, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**467 Homes registered or deemed to be registered under Part 9  
of Children and Young Persons Act 1974**

*[Repealed]*

Section 467: repealed, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**467A Building Act 2004**

- (1) Where any person making inspections under this Act believes that any building or sitework does not comply with the Building Act 2004, that person shall by notice in writing give to the appropriate territorial authority details of the respects in which the building or sitework is believed not to comply.
- (2) For the purposes of this section, the terms **building**, **sitework**, and **territorial authority** have the meanings ascribed to them by the Building Act 2004.

Section 467A: inserted, on 1 July 1992, by section 92(1) of the Building Act 1991 (1991 No 150).

Section 467A heading: amended, on 31 March 2005, by section 414 of the Building Act 2004 (2004 No 72).

Section 467A(1): amended, on 31 March 2005, by section 414 of the Building Act 2004 (2004 No 72).

Section 467A(2): amended, on 31 March 2005, by section 414 of the Building Act 2004 (2004 No 72).

**468 Agreements for assumption of care of child or young  
person by manager of home or recognised system of foster  
care**

*[Repealed]*

Section 468: repealed, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

**469 Administration of property by Public Trustee**

*[Repealed]*

Section 469: repealed, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

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## **Schedule 1AA**

s 2A

### **Transitional and savings provisions relating to amendments to this Act**

Schedule 1AA: inserted, on 5 December 2013, by section 9 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2013 (2013 No 110).

#### **1 Application of sections 311, 314, and 317 (supervision with residence orders: early release from custody)**

Sections 311, 314, and 317, as those sections are amended by the Children, Young Persons, and Their Families Amendment Act (No 2) 2013, apply to a supervision with residence order under section 311(1)—

- (a) made, and that has not expired, before that Act's commencement; or
- (b) made after that Act's commencement.

#### **2 Adjournment date of pre-commencement supervision with residence orders**

Section 314 as amended by the Children, Young Persons, and Their Families Amendment Act (No 2) 2013 applies to an order specified in clause (1)(a) as if the adjournment date under section 311(2A)(a) (as in force before that Act's commencement) were the adjournment date under section 311(2A)(a) (as in force after that commencement).

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**Schedule 1**

s 321

**Provisions applied to Youth Courts and to  
proceedings in such courts**

Schedule 1: replaced, on 1 July 2013, by section 4 of the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83).

- 1 The District Courts Act 1947, except that—
  - (a) where any provisions of this Act conflict with any of the provisions of the District Courts Act 1947, the provisions of this Act prevail:
  - (b) nothing in section 22 of the District Courts Act 1947 applies in respect of Youth Court Judges or the business of Youth Courts.
- 2 Section 10, 13, Part 2, subparts 1 to 4 of Part 3, subparts 1 and 3 of Part 4, and subparts 1 and 2 of Part 5 of the Criminal Procedure Act 2011, except that—
  - (a) charging documents against children or young persons must continue to be filed in District Courts even though they may be heard and determined in Youth Courts:
  - (b) unless a District Court Judge orders otherwise, charges that are within the jurisdiction of the Youth Court must be heard and determined in the Youth Court that is a division of the District Court in which the charging document is filed:
  - (c) section 35 of that Act does not apply:
  - (d) sections 37(4), 38, and 40 of that Act do not apply:
  - (e) section 53 of that Act does not apply:
  - (f) sections 54 to 57 of that Act apply to a proceeding only if, and to the extent that, a Youth Court Judge directs that those provisions apply:
  - (g) sections 60 to 62(1), 62(3) to 65, and 116 of that Act (which relate to sentence indications) apply at the discretion of the Judge:
  - (h) section 106 of that Act does not apply:
  - (i) section 137 of that Act applies as if the proving of a charge were a conviction:
  - (j) section 114(1) of that Act does not apply, but section 114(2) of that Act applies only in respect of a defendant

- who pleads guilty to a charge of murder or manslaughter:
- (k) sections 119 and 121 to 130 of that Act (which relate to a defendant who does not appear) do not apply:
  - (l) sections 139(2) and 140 of that Act do not apply:
  - (m) section 147(5) of that Act does not apply:
  - (n) section 177 of that Act applies to all offence categories as if the proving of a charge were a conviction:
  - (o) section 178 of that Act applies as if the proving of a charge were a conviction:
  - (p) section 184 of that Act does not apply.
- 3 Part 3 of the Bail Act 2000 except that—
- (a) neither a Justice nor a Community Magistrate may exercise any of the powers conferred by section 33:
  - (b) the provisions of section 30 apply as if there were inserted in that section, as subsections (1A) and (1B), the following subsections:
    - “(1A) Despite anything in subsection (1), if the hearing is adjourned for the purpose of enabling a family group conference to be held under the provisions of the Children, Young Persons, and Their Families Act 1989, the defendant must be excused from attending at the time and place to which the hearing is adjourned if, before that time, the Youth Justice Co-ordinator convening that conference notifies the court, in writing, that the proceedings of that family group conference will not be completed by that time.
    - “(1B) If, under subsection (1A), the defendant is excused from attending any hearing, and the court adjourns that hearing, the Registrar must notify the defendant of the time and place to which the hearing is adjourned.”
- 4 The Criminal Disclosure Act 2008.
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**Schedule 2**

s 449

**Enactments amended****Coroners Act 1988 (1988 No 111)***Amendment(s) incorporated in the Act(s).***Criminal Justice Act 1985 (1985 No 120)***Amendment(s) incorporated in the Act(s).***District Courts Act 1947 (1947 No 16) (RS Vol 5, p 1)***Amendment(s) incorporated in the Act(s).***Education Act 1964 (1964 No 135) (RS Vol 34, p 355)***Amendment(s) incorporated in the Act(s).***Family Courts Act 1980 (1980 No 161)***Amendment(s) incorporated in the Act(s).***Guardianship Act 1968 (1968 No 63)***Amendment(s) incorporated in the Act(s).***Higher Salaries Commission Act 1977 (1977 No 110) (RS Vol 35,  
p 307)***Amendment(s) incorporated in the Act(s).***Immigration Act 1987 (1987 No 74)***Amendment(s) incorporated in the Act(s).***Legal Aid Act 1969 (1969 No 47) (Reprinted 1975, Vol 3, p 2111)***Amendment(s) incorporated in the Act(s).***Maori Language Act 1987 (1987 No 176)***Amendment(s) incorporated in the Act(s).***Offenders Legal Aid Act 1954 (1954 No 62) (RS Vol 10, p 513)***Amendment(s) incorporated in the Act(s).*

**Ombudsmen Act 1975 (1975 No 9) (RS Vol 21, p 657)**

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

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

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

**Summary Proceedings Act 1957 (1957 No 87) (RS Vol 9, p 583)**

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

**Wanganui Computer Centre Act 1976 (1976 No 19)**

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

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### **Schedule 3**

#### **Enactments repealed**

s 456

**Area Health Boards Act 1983 (1983 No 134)***Amendment(s) incorporated in the Act(s).***Children and Young Persons Act 1974 (1974 No 72)****Children and Young Persons Amendment Act 1977 (1977  
No 126)****Children and Young Persons Amendment Act 1980 (1980 No 87)****Children and Young Persons Amendment Act 1982 (1982  
No 135)****Children and Young Persons Amendment Act 1983 (1983  
No 129)****Disabled Persons Community Welfare Act 1975 (1975 No 122)***Amendment(s) incorporated in the Act(s).***Education Amendment Act 1986 (1986 No 28)***Amendment(s) incorporated in the Act(s).***Local Government Amendment Act 1979 (1979 No 59)***Amendment(s) incorporated in the Act(s).***Social Security Amendment Act 1987 (1987 No 106)***Amendment(s) incorporated in the Act(s).***State Sector Act 1988 (1988 No 20)***Amendment(s) incorporated in the Act(s).*

Reprinted as at  
1 July 2014

**Children, Young Persons, and Their  
Families Act 1989**

Schedule 3

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**Summary Offences Act 1981 (1981 No 113)**

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

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## Children, Young Persons, and Their Families Amendment Act (No 2) 2011

Public Act    2011 No 83  
Date of assent    17 October 2011  
Commencement    see section 2

### **1    Title**

This Act is the Children, Young Persons, and Their Families Amendment Act (No 2) 2011.

### **2    Commencement**

This Act comes into force on the day that is 2 years after the date on which this Act receives the Royal assent unless it is brought into force on an earlier date appointed by the Governor-General by Order in Council.

Section 2: this Act brought into force, on 1 July 2013, by the Children, Young Persons, and Their Families Amendment Act (No 2) 2011 Commencement Order 2013 (SR 2013/158).

### **3    Principal Act amended**

This Act amends the Children, Young Persons, and Their Families Act 1989.

### **5    Application of amendments made by section 4**

The amendments made by section 4 apply in relation to a proceeding being dealt with in the Youth Court before section 4 came into force in accordance with the provisions of sections 397 and 399 to 401 of the Criminal Procedure Act 2011.

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## **Reprints notes**

### **1     *General***

This is a reprint of the Children, Young Persons, and Their Families Act 1989 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### **2     *Legal status***

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### **3     *Editorial and format changes***

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### **4     *Amendments incorporated in this reprint***

KiwiSaver (Vulnerable Children) Amendment Act 2014 (2014 No 42): section 6

Children, Young Persons, and Their Families (Vulnerable Children) Amendment Act 2014 (2014 No 41)

Children, Young Persons, and Their Families Amendment Act (No 2) 2013 (2013 No 110)

Children, Young Persons, and Their Families Amendment Act 2013 (2013 No 76)

Bail Amendment Act 2013 (2013 No 66): section 41

Psychoactive Substances Act 2013 (2013 No 53): section 109

Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19): section 8

Sale and Supply of Alcohol Act 2012 (2012 No 120): section 416

Children, Young Persons, and Their Families Amendment Act 2012 (2012 No 99)

Children, Young Persons, and Their Families (Indexation—Budget Measures) Amendment Act 2012 (2012 No 78)

Search and Surveillance Act 2012 (2012 No 24): sections 207–209

Road User Charges Act 2012 (2012 No 1): section 94  
 Children, Young Persons, and Their Families Amendment Act (No 2) 2011 (2011 No 83)  
 Children, Young Persons, and Their Families Amendment Act 2011 (2011 No 33)  
 Land Transport (Road Safety and Other Matters) Amendment Act 2011 (2011 No 13): section 100(3)  
 Children, Young Persons, and Their Families Amendment Act 2010 (2010 No 102)  
 Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010 (2010 No 2)  
 Accident Compensation Amendment Act 2010 (2010 No 1): section 5(1)(b)  
 Immigration Act 2009 (2009 No 51): section 406(1)  
 Children, Young Persons, and Their Families Amendment Act 2008 (2008 No 76)  
 Policing Act 2008 (2008 No 72): sections 116(a)(i), (ii), (b), (d), 130(1)  
 Land Transport Management Amendment Act 2008 (2008 No 47): section 50(1)  
 Children, Young Persons, and Their Families Amendment Act 2007 (2007 No 46)  
 Sentencing Amendment Act 2007 (2007 No 27): section 58  
 Relationships (Statutory References) Act 2005 (2005 No 3): section 7  
 Crown Entities Act 2004 (2004 No 115): section 200  
 Care of Children Act 2004 (2004 No 90): section 151  
 Building Act 2004 (2004 No 72): section 414  
 Corrections Act 2004 (2004 No 50): section 206  
 Children, Young Persons, and Their Families Amendment Act 2004 (2004 No 39)  
 Children's Commissioner Act 2003 (2003 No 121): section 37  
 Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115): section 51  
 Supreme Court Act 2003 (2003 No 53): sections 47, 48(2)  
 Health Practitioners Competence Assurance Act 2003 (2003 No 48): section 175(1)  
 Local Government Act 2002 (2002 No 84): section 262  
 District Courts Amendment Act 2002 (2002 No 63): section 4  
 Sentencing Act 2002 (2002 No 9): sections 163, 186  
 Health and Disability Services (Safety) Act 2001 (2001 No 93): section 58(1)  
 Accident Compensation Act 2001 (2001 No 49): section 337(1)  
 Children, Young Persons, and Their Families Amendment Act 2001 (2001 No 3)  
 New Zealand Public Health and Disability Act 2000 (2000 No 91): section 111(1)  
 Family Courts Amendment Act 2000 (2000 No 65): section 6  
 Bail Act 2000 (2000 No 38): section 74(2)  
 Accident Insurance Amendment Act 2000 (2000 No 6): section 9(1)

Children's Health Camps Board Dissolution Act 1999 (1999 No 141): section 8

Children, Young Persons, and Their Families (Trans-Tasman Transfer of Protection Orders and Proceedings) Amendment Act 1999 (1999 No 116)

Department of Child, Youth, and Family Services Act 1999 (1999 No 82): sections 11(3), 13

Land Transport Act 1998 (1998 No 110) section 215(1)

District Courts Amendment Act 1998 (1998 No 76): section 7

Guardianship Amendment Act 1998 (1998 No 48): section 8

Children, Young Persons, and Their Families Amendment Act 1996 (1996 No 112)

Medical Practitioners Act 1995 (1995 No 95): section 143(1)

Domestic Violence Act 1995 (1995 No 86): section 131

Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121)

Transport Amendment Act (No 2) 1992 (1992 No 67): section 36

Social Security Amendment Act 1992 (1992 No 15): section 4(f)

Building Act 1991 (1991 No 150): section 92(1), (2)

Child Support Act 1991 (1991 No 142): section 244

Social Welfare (Transitional Provisions) Amendment Act 1991 (1991 No 4): section 4(1)

Social Welfare (Transitional Provisions) Act 1990 (1990 No 26): sections 33(2)(e), 35(1)(d), (3)

Children, Young Persons, and Their Families Amendment Act 1989 (1989 No 70)

Public Finance Act 1989 (1989 No 44): section 83(7)

Children, Young Persons, and Their Families Act 1989 (1989 No 24): section 239A

Family Courts Act 1980 (1980 No 161): section 17A(d)

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