

PRESENTERS

Her Honour Judge Doogue, Auckland

Judge Doogue was appointed a Family Court and District Court judge in 1994. She has held a number of administrative positions within the judiciary and has presented numerous papers to conferences here and overseas. In May 2003 Judge Doogue was appointed to chair a Hague Conference committee which is drafting a new convention on the International Recovery of Maintenance.

Alastair Logan, Ross Dowling Marquet & Griffin, Dunedin

Alastair has practised family law for over 20 years. He chairs the Practice and Procedure Committee of the Family Law Section, and was the member of the NZLS Legislation Committee responsible for submissions on the Care of the Children Bill to the Justice and Electoral Committee.

Acknowledgement

The presenters would like to acknowledge the valuable assistance of Sharon Wing, Research Counsel to the Auckland District Court Judges.

The statements and conclusions contained in this booklet are those of the author(s) only and not those of the New Zealand Law Society. This booklet has been prepared for the purpose of a Continuing Legal Education course. It is not intended to be a comprehensive statement of the law or practice, and should not be relied upon as such. If advice on the law is required, it should be sought on a formal, professional basis.

CONTENTS

FOREWORD

INTRODUCTION 1

PART 1. PRELIMINARY PROVISIONS 3

Section 2: Commencement.....	3
Section 3: Purpose of this Act.....	3
Section 3(1).....	3
Section 3(2)(a)(i).....	4
Section 3(2)(a)(ii).....	5
Section 3(2)(a)(iii).....	6
Section 3(2)(b).....	6
Section 3(2)(c).....	7
Section 3(2)(d).....	8
Section 3(2)(e).....	9
Section 3(2)(f).....	9
Section 3(2)(g).....	10
Section 4: <i>Child's welfare and best interests to be paramount</i>	10
Section 5: <i>Principles relevant to child's welfare and best interests</i>	12
Section 6: <i>Child's views</i>	14
Section 7: <i>Lawyer to act for child</i>	15
Section 8: <i>Interpretation</i>	18
Section 9: <i>De facto partner defined</i>	21
Section 10: <i>De facto relationship defined</i>	21
Section 11: <i>Application</i>	23
Section 12: <i>Act binds the Crown</i>	23
Section 13: <i>Act a code</i>	24

PART 2: GUARDIANSHIP AND CARE OF CHILDREN 27

Subpart 1 – Guardianship, responsibility for children, and decisions about children..	27
Guardianship.....	27
Section 15: <i>Guardianship defined</i>	27
Section 16: <i>Exercise of guardianship</i>	27
Guardianship based on parental status.....	29
Section 17: <i>Child's father and mother usually joint guardians</i>	29
Section 18: <i>Father identified on birth certificate is guardian</i>	30
Section 19: <i>Father who was not mother's spouse or de facto partner may apply to be appointed as guardian</i>	31
Section 20: <i>Declaration that father is guardian because of section 17</i>	32
Parents and guardians may, with Registrar's approval, appoint eligible partner of parent as additional guardian.....	33
Section 21: <i>Who may appoint additional guardian under section 23</i>	33
Section 22: <i>Restrictions on making appointments under section 23</i>	34
Section 23: <i>Appointment of eligible partner of parent as additional guardian</i>	36
Section 24: <i>Declarations required by section 23(5)(a)</i>	38
Section 25: <i>Appointments under section 23 take effect on approval</i>	39
Testamentary guardians and court-appointed guardians.....	40
Section 26: <i>Testamentary guardians and Court-appointed guardians</i>	40

<i>Section 27: Court-appointed guardians</i>	41
Termination of guardianship	42
<i>Section 28: Time at which guardianship ends</i>	42
<i>Section 29: Court may remove guardians</i>	42
Guardianship of court	44
<i>Section 30: Concurrent jurisdiction under section 31</i>	44
<i>Section 31: Application to Court</i>	45
<i>Section 32: Notice to be given to chief executive in certain cases before Family Court</i>	45
<i>Section 33: Orders of Court</i>	46
<i>Section 34: Powers of Court</i>	49
<i>Section 35: Further provisions relating to powers of Court</i>	50
Consent to medical procedures	50
<i>Section 36: Consent to procedures generally</i>	50
<i>Section 37: Immunity of health practitioners administering certain blood transfusions without consent</i>	53
<i>Section 38: Consent to abortion</i>	54
Subpart 2 – Care of children: Making arrangements and resolving disputes	55
Making arrangements	55
<i>Section 39: Purpose of sections 40 to 43</i>	55
<i>Section 40: Agreements between parents and guardians</i>	56
<i>Section 41: Agreements between parents and donors</i>	57
<i>Section 42: Definitions for section 41</i>	58
<i>Section 43: Agreements may be entered into by minors</i>	59
Resolving disputes	60
<i>Section 44: Disputes between guardians</i>	60
<i>Section 45: Family Proceedings Act 1980 dispute resolution provisions apply to certain proceedings</i>	62
<i>Section 46: Certain children may seek review of parent’s or guardian’s decision or refusal to give consent</i>	64
Parenting orders	65
<i>Section 47: Who may apply for parenting order</i>	65
<i>Section 48: Parenting orders</i>	66
<i>Section 49: Applications to include statement on others’ involvement</i>	71
<i>Section 50: Parenting orders in respect of children of or over 16 years</i>	72
<i>Section 51: Court must consider protective conditions in certain cases</i>	72
<i>Section 52: Court must consider contact arrangements in certain cases</i>	74
<i>Section 53: Orders in proceedings under Family Proceedings Act 1980</i>	75
<i>Section 54: Orders in proceedings under Domestic Violence Act 1995</i>	76
<i>Section 55: Content and explanation of parenting orders</i>	77
<i>Section 56: Variation or discharge of parenting and other orders</i>	79
<i>Section 57: Procedure if child’s parents are parties to interim order</i>	80
Cases involving violence	82
<i>Section 58: Interpretation</i>	82
<i>Section 59: Allegations of violence made to proceedings relating to parenting orders</i>	83
<i>Section 60: Procedure for dealing with proceedings in section 59(1)</i>	84
<i>Section 61: Matters relevant to question in section 60(4)</i>	86
<i>Section 62: Costs of formal supervised contact</i>	89
Making parenting orders work	90
<i>Section 63: Purpose and overview of sections 64 to 80</i>	90

<i>Section 64: Guiding consideration and principles</i>	93
<i>Section 65: Request for counselling</i>	94
<i>Section 66: Procedure for request under section 65(1) or 65(2)</i>	95
<i>Section 67: Registrar may decline requests for counselling and recommend instead applications under section 68</i>	95
<i>Section 68: Court may make certain orders or respond in other ways to contravention of parenting orders</i>	96
<i>Section 69: Court may require parties to attend for counselling or for hearing of application under section 60</i>	97
<i>Section 70: Ordering party to enter into bond</i>	98
<i>Section 71: Costs of contravention</i>	100
<i>Section 72: Warrant to enforce role of providing day-to-day care for child</i>	101
<i>Section 73: Warrant to enforce order for contact with child</i>	102
<i>Section 74: Further provisions about warrants</i>	103
<i>Section 75: Execution of warrants</i>	104
<i>Section 76: Authority to use faxed copy of warrant</i>	105
<i>Section 77: Preventing removal of child from New Zealand</i>	106
Offences.....	108
<i>Section 78: Contravening parenting order</i>	108
<i>Section 79: Resisting execution of warrant</i>	109
<i>Section 80: Taking child from New Zealand</i>	109
Subpart 3 – Enforcing orders internationally.....	110
Enforcing overseas parenting orders in New Zealand.....	110
<i>Section 81: Registration of overseas parenting orders</i>	110
<i>Section 82: Effect of registration</i>	111
<i>Section 83: Exercise of jurisdiction in respect of child subject to registered overseas parenting order</i>	112
<i>Section 84: Variation or discharge of registered overseas parenting orders</i>	114
<i>Section 85: Registered overseas parenting orders not to be enforced in certain circumstances</i>	115
<i>Section 86: Evidence of orders made in overseas countries</i>	116
<i>Section 87: Costs of returning child: order for payment when warrant issued under section 72</i>	116
<i>Section 88: Evidence</i>	117
<i>Section 89: Proof of documents</i>	118
<i>Section 90: Depositions to be evidence</i>	119
<i>Section 91: Prescribed overseas countries</i>	120
Enforcing New Zealand orders overseas.....	120
<i>Section 92: Enforcement of New Zealand orders overseas</i>	120
<i>Section 93: Restrictions on right to make request under section 84</i>	122
Subpart 4 – International child abduction.....	123
Preliminary provisions.....	123
<i>Section 94: Purpose of this subpart</i>	123
<i>Section 95: Interpretation</i>	124
<i>Section 96: Application of this subpart</i>	127
<i>Section 97: Rights of custody defined</i>	127
<i>Section 98: Contracting States</i>	128
<i>Section 99: Certificates as to Contracting States</i>	129
<i>Section 100: Central Authority for New Zealand</i>	129
<i>Section 101: Courts having jurisdiction to entertain applications under Convention</i>	130

Application for return of child	131
<i>Section 102: Child abducted from New Zealand</i>	131
<i>Section 103: Child abducted to New Zealand</i>	132
<i>Section 104: Authority may request further information</i>	134
<i>Section 105: Application to Court for return of child abducted to New Zealand</i> ..	135
<i>Section 106: Grounds for refusal of order for return of child</i>	137
<i>Section 107: Applications to be dealt with speedily</i>	140
<i>Section 108: Interim powers</i>	141
<i>Section 109: No order or decision about role of providing day-to-day care for child to be made until application determined</i>	141
<i>Section 110: Contact with, and role of providing day-to-day care for, child, if application dismissed</i>	142
<i>Section 111: Request for declaration that child wrongfully removed</i>	143
Application for access to child	144
<i>Section 112: Child outside New Zealand</i>	144
<i>Section 113: Child in New Zealand</i>	145
Miscellaneous provisions	145
<i>Section 114: Translation to accompany application</i>	145
<i>Section 115: Evidentiary provisions</i>	146
<i>Section 116: Lawyer to act for applicant</i>	147
<i>Section 117: Preventing concealment of whereabouts of child</i>	148
<i>Section 118: Preventing removal of child to defeat application</i>	149
<i>Section 119: Enforcing order for return of child</i>	150
<i>Section 120: Security for costs, etc</i>	153
<i>Section 121: Costs of returning child: order for payment or refund when order under section 105(2) applied for or made</i>	154
<i>Section 122: Order under section 121 may be lodged in High Court</i>	156
<i>Section 123: Unfounded applications</i>	156
<i>Section 124: Other provisions not affected</i>	157
Jurisdictional provisions	158
<i>Section 125: Jurisdiction of Courts</i>	158
<i>Section 126: Personal jurisdiction</i>	160
<i>Section 127: Removal of High Court orders to Family Court</i>	160
<i>Section 128: Evidence</i>	161
<i>Section 129: Court's power to call witnesses</i>	162
<i>Section 130: Counsel to assist Court</i>	163
<i>Section 131: Costs of Court-appointed counsel</i>	163
<i>Section 132: Reports from chief executive or Social Worker</i>	164
<i>Section 133: Reports from other persons</i>	165
<i>Section 134: Distribution, etc, of reports under sections 132 and 133</i>	166
<i>Section 135: Costs of reports under section 133</i>	167
<i>Section 136: Court may hear person on child's cultural background</i>	169
<i>Section 137: Attendance at hearings generally</i>	169
<i>Section 138: Attendance at hearings of persons involved in counselling or conciliation under Family Proceedings Act 1980</i>	171
<i>Section 139: Publication of reports of proceedings</i>	172
<i>Section 140: Power to dismiss proceedings</i>	175
<i>Section 141: Power to restrict commencement of proceedings</i>	176
<i>Section 142: Costs</i>	177
<i>Section 143: Appeals to High Court</i>	178
<i>Section 144: Effect of High Court's Order or Decision</i>	179

<i>Section 145: Appeal to Court of Appeal</i>	180
<i>Section 146: Rules of Court</i>	180
<i>Section 147: Regulations</i>	181
<i>Section 148: Other Acts Not Affected</i>	182
Amendments to Family Proceedings Act 1980 (parentage tests in civil proceedings)	183
<i>Section 149: Amendments in Schedule 2</i>	183
<i>Section 150: Amendments in Schedule 3</i>	183
Other amendments and repeal	184
<i>Section 151: Other Amendments in Schedule 4</i>	184
<i>Section 152: Repeal</i>	184
Savings and transitional provisions.....	184
<i>Section 153: Orders under 1968 Act Appointing Person As Guardian</i>	184
<i>Section 154: Declarations under section 6A of 1968 Act As To Guardianship Of Fathers</i>	185
<i>Section 155: Appointments of Testamentary Guardians Under Section 7(2) of 1968 Act</i>	185
<i>Section 156: Orders under 1968 Act About Guardianship of Court</i>	185
<i>Section 157: Orders under 1968 Act About Custody</i>	186
<i>Section 158: Orders under 1968 Act About Access</i>	186
<i>Section 159: Other References to Custody and Access under 1968 Act</i>	186
<i>Section 160: Existing proceedings under 1968 Act</i>	187
<i>Section 161: Appointments under section 30 of 1968 Act</i>	187
<i>Section 162: Applications under 1991 Amendment Act</i>	188
<i>Section 163: Appointments under Section 23 of 1991 Amendment Act</i>	188
<i>Section 164: Orders Saved By Section 31(2) of 1991 Amendment Act</i>	188
PART 3. STATUS OF CHILDREN AMENDMENT ACT 2004	191
Introduction	191
<i>Section 1: Title</i>	191
<i>Section 2: Commencement</i>	191
<i>Section 3: Title repealed</i>	191
<i>Section 4: New Part heading and heading and section 2A inserted</i>	191
<i>Section 5: New heading inserted</i>	192
<i>Section 6: New heading inserted</i>	192
<i>Section 7: New heading inserted</i>	192
<i>Section 8: Warning notices</i>	192
<i>Section 9: New heading inserted</i>	193
<i>Section 10: Recognition of paternity</i>	193
<i>Section 12: New section 10 substituted</i>	194
<i>Section 13: New heading inserted</i>	195
<i>Section 13: Purpose of this Part</i>	195
<i>Section 14: Interpretation</i>	196
<i>Section 15: AHR procedure defined</i>	197
<i>Section 16: Application of Part</i>	199
Rule about maternity	200
<i>Section 17: Woman who becomes pregnant is mother even though ovum is donated by another woman</i>	200
Rule about when non-donor partner is parent.....	200
<i>Section 18: When woman's non-donor partner is parent, and non-partner semen donor or ovum donor is not parent</i>	200

Rules about donors of genetic material	201
<i>Section 19: Partnered woman: ovum donor not parent unless mother's partner at time of conception</i>	201
<i>Section 20: Woman acting alone" non-partner ovum donor not parent unless later becomes mother's partner</i>	202
<i>Section 21: Partnered woman: non-partner semen donor not parent</i>	202
<i>Section 22: Woman acting alone: non-partner semen donor not parent unless later becomes mother's partner</i>	203
Rights and liabilities if non-partner donor later becomes mother's partner.....	203
<i>Section 23: Non-partner ovum donor</i>	203
<i>Section 24: Non-partner semen donor</i>	204
<i>Section 25: Only first non-partner donor to later become mother's partner becomes parent</i>	205
Miscellaneous provisions	205
<i>Section 26: Conflicting evidence of paternity</i>	205
<i>Section 27: Partner's consent is presumed</i>	206
Amendments to other Acts	206
INDEX OF CASES.....	207