

Child and Family Protection Bill

Government Bill

As reported from the Justice and Electoral
Committee

Commentary

Recommendation

The Justice and Electoral Committee has examined the Child and Family Protection Bill and recommends that it be passed with the amendments shown.

Introduction

The bill seeks to amend the Domestic Violence Act 1995, the Care of Children Act 2004, and the Adoption Act 1955. The bill is intended to provide more protection for children who are the victims of domestic violence, to ensure that Family Courts can manage concurrent proceedings involving children appropriately, and to reduce administrative barriers to court processes. The amendments proposed in the bill as introduced include the following:

- extending the circumstances in which a child or young person would remain covered by a protection order
- enhancing consistency between the Domestic Violence Act and the Care of Children Act regarding day-to-day care of and contact arrangements for children where violence is present or where an allegation of violence is made

- clarifying the transition between temporary and final protection orders
- enhancing consistency between the Domestic Violence Act and the Care of Children Act regarding psychological abuse
- reducing the risk of children being wrongfully removed from New Zealand
- providing for the discharge of orders for the return of children abducted to New Zealand
- creating a new extraterritorial offence of improper inducement of consent to adoption.

Our commentary covers the major amendments we recommend and issues brought to our attention by submitters. Minor and technical amendments are not discussed.

Amendments to the Domestic Violence Act

Protection of persons other than applicant

Clause 6 would amend section 16 of the Domestic Violence Act to extend the circumstances under which a child of the applicant's family would be covered by a protection order. We recommend amending clause 6(2) to provide that a child of the applicant's family would not be required to apply to the court for a direction that the protection order continue to apply for his or her benefit after turning 17 years of age, while they continue to ordinarily or periodically reside with the applicant. Our proposed new section 16(1B) makes it clear that a protection order would automatically continue for the benefit of a child of the applicant's family, irrespective of their age, until that child stops ordinarily or periodically residing with the applicant, or the order sooner lapsed or was discharged.

Some submitters also suggested that protection orders should continue indefinitely even when the child was no longer living with the applicant. New Zealand National members of the committee do not support this proposal, as they consider that when a young person is ready to leave home they are asserting a level of independence. Providing for indefinite coverage for children who no longer live with the applicant could have undesirable legislative and operational implications.

New Zealand Labour and Green Party members of the committee do not hold this view and agree with submitters that protection orders should continue to apply to young people after they turn 17, whether or not they reside with the applicant. These young people have been exposed to considerable acrimony and violence and may still be in the future. Protection should be maintained until young people themselves decide that a protection order is no longer required. Those members believe that allowing young people to retain a protection order or not is more efficient and equitable than instigating a new one, which could act as a deterrent for a vulnerable young person. Those members also believe that where an age threshold is set it should be 18 years of age in keeping with New Zealand's responsibilities under the United Nation Convention on the Rights of a Child.

Review of contact arrangements

Clause 13 of the bill as introduced would insert new section 79A into the Domestic Violence Act to provide an early opportunity for the Family Court to review contact issues after a temporary protection order had been made.

Proposed new section 79A(3) specifies the people who may attend a review of arrangements for contact. We recommend amending new section 79A(3) to include any lawyer appointed under the Care of Children Act to act for a child who, in proceedings under the Domestic Violence Act, is a child of the applicant's family. This amendment is consistent with clause 16, which would amend section 83(1) of the Domestic Violence Act to allow a lawyer appointed under the Care of Children Act to act for a child to be present at the hearing of proceedings under the Domestic Violence Act where the child was a child of the applicant's family.

We further recommend amending new section 79A(3) to allow the Family Court Judge to permit any other person to be present at a review. We consider that it would be helpful to the review and appropriate in some instances for other people to be present.

Amendments to the Care of Children Act

Allegations of violence made in proceedings relating to parenting orders

Clauses 22 to 24 would amend sections 58 to 60 of the Care of Children Act, which set out the procedure for dealing with applications for day-to-day care of, or contact with, a child where there is an allegation that one of the parties has used violence against the child or the other party to the proceedings. The effect of these clauses is to extend the application of the procedure to apply not only where an allegation of violence is made, but also where there is currently in force a protection order against one of the parties for the protection of the child or other party. This would include a protection order that had been made on the grounds of psychological abuse.

We recommend amending the definition of an “allegation of violence” to refer expressly to an allegation of physical or sexual abuse, rather than to “violence” as a defined term.

We also recommend amending the definition of “protection order” to include a protection order that has been made by a sentencing court under section 123B of the Sentencing Act 2002, which came into force on 1 July 2010.

We further recommend inserting new section 61A (new clause 24A) to re-enact section 60(6) of the Care of Children Act. As a consequence of our proposed amendments to section 60 (clause 24) of the Care of Children Act, it is no longer appropriate that subsection (6) appear in section 60. However it is still important that a Family Court should continue to have the ability to make any order that it thinks fit to protect the safety of a child where, although it is not satisfied that an allegation of violence is proved, it believes that there is a real risk to the child’s safety.

Amendments to the Adoption Act

Part 3 of the bill as introduced would amend the Adoption Act 1955 to create a new criminal offence of inducing another person by fraud, duress, undue influence, or other improper means to consent to an adoption. Clause 32 would insert this offence as new section 27A into the Adoption Act and new section 27C would provide for extraterritorial jurisdiction in respect of this new criminal offence. New section 27C would provide that even if the offence was committed

outside New Zealand, proceedings might be brought if the person to be charged is a New Zealand citizen, or is ordinarily resident in New Zealand, or is found in New Zealand and has not been extradited. We recommend amending new section 27C(2)(a) to also enable proceedings to be brought in respect of the offence provided for by new section 27A if the person to be charged is a body corporate or a corporation sole incorporated under the laws of New Zealand. This amendment would create consistency with section 7A(1)(a) of the Crimes Act 1961, which provides for extraterritorial jurisdiction in respect of certain offences with a transnational aspect.

Proposals in the Domestic Violence Reform Bill

The Domestic Violence Reform Bill was introduced into Parliament on 30 September 2008, but has still not had its first reading. We heard from submitters who noted their concern that some proposals in the Domestic Violence Reform Bill have not been included in the bill as introduced. New Zealand Labour and Green Party members of the committee are very concerned about this given the high levels of domestic violence in New Zealand, and consider this bill falls short of achieving its purpose.

We would encourage the Government to give serious consideration to progressing a number of proposals in the Domestic Violence Reform Bill, such as requiring judges to provide reasons for declining an application for a protection order, enabling the Courts to order respondents to undertake an alcohol or other drug assessment, and enabling protected persons to attend more than one programme at a time. We consider that these and other proposals in the Domestic Violence Reform Bill would help to ensure that the purpose of this bill was achieved.

Appendix

Committee process

The Child and Family Protection Bill was referred to us on 11 February 2010. The closing date for submissions was 1 April 2010. We received and considered 24 submissions from interested groups and individuals. We heard eight submissions.

We received advice from the Ministry of Justice.

Committee membership

Chester Borrows (Chairperson)

Jacinda Ardern

Kanwaljit Singh Bakshi

Simon Bridges

Dr Kennedy Graham

Hekia Parata

Hon David Parker

Lynne Pillay

Paul Quinn

Child and Family Protection Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Simon Power

Child and Family Protection Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Child and Family Protection Act **2009**.

2 Commencement

This Act comes into force 3 months after the date on which it receives the Royal assent.

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Part 1

Amendments to Domestic Violence Act 1995

3 Principal Act amended

This **Part** amends the Domestic Violence Act 1995.

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4 Purpose of this Part

The purpose of this **Part** is to strengthen the objects and implementation of the principal Act by—

- (a) providing for certain persons to have extended protection; and
- (b) enabling the court to make interim orders to protect the welfare and best interests of a child; and
- (c) empowering a Registrar to amend the terms of a direction made under section 32 of the principal Act; and
- (d) extending the period for objecting to a direction made under section 32 of the principal Act; and

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- (e) clarifying that where a temporary order becomes final by operation of law, the final order comes into force immediately; and
- (f) allowing a lawyer appointed to act for a child under the Care of Children Act 2004 to attend the hearing of proceedings under the principal Act. 5

5 Interpretation

Section 2 is amended by inserting the following definitions in their appropriate alphabetical order:

“**day-to-day care** has the meaning given to it by section 8 of the Care of Children Act 2004 10

“**parenting order** has the meaning given to it by section 8 of the Care of Children Act 2004”.

6 Protection of persons other than applicant

(1) Section 16(1) is amended by adding “until that child reaches the age of 17 years, unless the order is sooner discharged”. 15

(2) Section 16 is amended by inserting the following subsections after subsection (1):

“(1A) The Court, on an application by a child of the applicant’s family, must direct that a protection order continues to apply for his or her benefit after he or she has attained the age of 17 years until whichever of the following occurs first: 20

“(a) he or she no longer ordinarily or periodically resides with the applicant; or

“(b) the order is discharged by the Court. 25

“(1B) An application for a direction under **subsection (1A)** may be made by—

“(a) the child; or

“(b) a representative of the child.

“(1C) A protection order continues to apply for the benefit of a child of the applicant’s family until the issue of a direction under **subsection (1A)** where— 30

“(a) an application for a direction under **subsection (1A)** is made before the child attains the age of 17 years; but

“(b) the direction has not issued by the time the child attains the age of 17 years. 35

- “(1A) A protection order continues to apply for the benefit of a child of the applicant’s family until—
“(a) the child ceases to be a child of the applicant’s family;
or
“(b) the order sooner lapses or is discharged.” 5
- “(1B) If a child of the applicant’s family having attained the age of 17 years continues to ordinarily or periodically reside with the applicant (an **adult child**), a protection order continues to apply for the benefit of the adult child until—
“(a) the adult child ceases to ordinarily or periodically reside with the applicant; or
“(b) the order sooner lapses or is discharged.” 10
- (3) Section 16 is amended by adding the following ~~subsection~~ subsections:
- “(5) A protection order that has not lapsed or been discharged continues to apply for the benefit of a person described in subsection (1), ~~(1A)~~, or (2) notwithstanding the death of the applicant. 15
- “(5) If the applicant dies at any time after a protection order is made for the protection of the applicant, then, notwithstanding the death of the applicant, the order (if it has not sooner lapsed or been discharged) continues to apply for the benefit of—
“(a) a child who at the time of the applicant’s death was a child of the applicant’s family, until that child attains the age of 17 years; and
“(b) a person in respect of whom a direction has been made under **subsection (2)**, until the order lapses or is discharged. 20 25
- “(6) **Subsections (1A), (1B), and (5)** apply in respect of a protection order regardless of whether the protection order is made before or after the commencement of those subsections.” 30

7 New heading and sections 28B to 28D inserted

The following heading and sections are inserted ~~after section 28A~~ before the heading above section 29:

“Interim care and contact orders

- “28B Interim orders in respect of child of applicant’s family** 35
“(1) This section applies when—

- “(a) an application has been made to the Family Court for a protection order; and
- “(b) there is a child of the applicant’s family.
- “(2) The Family Court may make 1 or more of the following orders if it considers the order or orders are necessary to protect the welfare and best interests of the child concerned: 5
- “(a) an interim order or orders about the role of providing day-to-day care for, or about contact with, a child of the applicant’s family:
- “(b) any interim order or orders varying any order of the kind referred to in **paragraph (a)**. 10
- “(3) An order must not be made under **subsection (2)** in respect of a child of the applicant’s family of or over the age of 16 years unless there are special circumstances.
- “(4) ~~In considering whether an order or orders are necessary to protect the welfare and best interests of the child concerned, the Court must take into account any of the principles specified in section 5 of the Care of Children Act 2004 that are relevant to the particular circumstances of the child.~~ 15
- “**28C Duration of interim order** 20
- An interim order made under **section 28B** ceases to have effect (if it has not ceased to have effect sooner) on the earlier of—
- “(a) the date that is 1 year after the day on which the order is made; or 25
- “(b) the date that the child attains the age of 16 years, unless the Family Court in special circumstances orders otherwise on or after making the order.
- “**28D Application for parenting order under Care of Children Act 2004 must be made** 30
- “(1) Where 1 or more interim orders have been made under **section 28B**, a party in whose favour an order has been made must as soon as possible (if that party has not already done so) make an application under the Care of Children Act 2004 for a parenting order. 35

“(2) For the purposes of section 16(1) of the Legal Services Act 2000, proceedings that relate to, or arise out of, an application for a protection order under Part 2 of the Domestic Violence Act 1995 include proceedings commenced pursuant to an application referred to in **subsection (1)**.” 5

8 Terms of direction that respondent or associated respondent attend programme

Section 33 is amended by inserting the following subsections after subsection (1):

“(1A) **Section (1B) Subsection (1B)** applies if— 10

“(a) the court makes a direction under section 32; and

“(b) the respondent or associated respondent, as the case requires, has not been served with a copy of the protection order at least 10 working days prior to the date specified in the direction for his or her first attendance at the programme. 15

“(1B) The Registrar may amend the direction made under section 32 to specify that the respondent or associated respondent, as the case requires, attend the programme for the first time on a later date and, if necessary, at a different— 20

“(a) time:

“(b) place.”

9 Direction to attend programme made on application without notice

Section 36 is amended by repealing subsections (2) and (3) 25 and substituting the following subsections:

“(2) Where this section applies,—

“(a) the direction does not take effect until 10 working days after a copy of the direction is served on the person to whom it relates; and 30

“(b) that person may, within those 10 days, notify the court that he or she objects to the direction.

“(3) Where the respondent or associated respondent notifies the court, in accordance with **subsection (2)(b)**, that he or she objects to the direction,— 35

- “(a) the Registrar must, if the respondent or associated respondent wishes to be heard, assign a hearing date, which must be—
- “(i) as soon as practicable; and
 - “(ii) unless there are special circumstances, in no case 5
later than 42 days after receipt of the notice of objection; and
- “(b) the direction is suspended from the date on which the court receives the notice of objection until the court, after considering the person’s objection, confirms the 10
direction (whether with or without variation).”

10 Application without notice for occupation order or tenancy order

Section 60 is amended by inserting the following subsection after subsection (2): 15

- “(2A) When a temporary order becomes a final order pursuant to subsection (2), the final order comes into effect immediately.”

11 Application without notice for ancillary furniture order or furniture order

Section 70 is amended by inserting the following subsection after subsection (2): 20

- “(2A) When a temporary order becomes a final order pursuant to subsection (2), the final order comes into effect immediately.”

12 Procedure where respondent does not require hearing

Section 77 is amended by inserting the following subsection after subsection (1): 25

- “(1A) When a temporary order becomes a final order pursuant to subsection (1), the final order comes into effect immediately.”

13 New section 79A inserted

The following section is inserted after section 79: 30

“79A Review of contact arrangements

- “(1) When making a temporary protection order, the Family Court may direct the Registrar to convene a review before a Family

- Court Judge of the arrangements for contact between the respondent and a child of the applicant's family.
- “(2) On receiving a ~~request~~ direction under **subsection (1)**, the Registrar must—
- “(a) appoint a time and place for the holding of the review; 5
and
- “(b) inform the applicant and respondent of the date, time, and place of the review, and invite them to attend.
- “(3) Only the following persons may attend the review:
- “(a) the applicant: 10
- “(b) the respondent:
- “(c) a lawyer representing the applicant:
- “(d) a lawyer representing the respondent:
- “(e) a lawyer appointed under section 81:
- “(f) any lawyer appointed under section 7(1) of the Care of Children Act 2004 to act for a child who in proceedings under this Act is a child of the applicant's family: 15
- “(g) any other persons whom the Family Court Judge permits to be present.
- “(4) If both the applicant and the respondent attend or are represented at the review, the Judge may— 20
- “(a) make an interim order relating to contact under **section 28B:**
- “(b) impose any condition under section 27 relating to the matter set out in subsection (2)(a) of that section: 25
- “(c) give any directions that the Judge considers necessary.
- “(5) The provisions of this section, so far as applicable and with the necessary modifications, apply to an associated respondent as if the person were a respondent.”
- 14 Procedure where hearing required** 30
Section 80(1) is amended by repealing paragraph (b) and substituting the following paragraph:
- “(b) make the temporary order a final order (whether with or without variation); or”.
- 15 New section 80A inserted** 35
The following section is inserted after section 80:

“80A Temporary order discharged when made final order under section 80(1)

“(1) ~~Where~~ When a temporary order is ~~made~~ becomes a final order ~~under~~ pursuant to **section 80(1)(b)**, the temporary order is automatically discharged. 5

“(2) Where the part of a temporary order not already a final order is confirmed under section 80(1)(c)(i) or (ii), the temporary order is automatically discharged.”

16 Conduct of proceedings

Section 83(1) is amended by inserting the following paragraph after paragraph (d): 10

“(da) any lawyer appointed ~~pursuant to~~ under section 7(1) of the Care of Children Act 2004 to act for a child who in proceedings under this Act is a child of the applicant’s family:”. 15

Part 2

Amendments to Care of Children Act 2004

17 Principal Act amended

This **Part** amends the Care of Children Act 2004. 20

18 Purpose of this Part

The purpose of this **Part** is to strengthen certain provisions of the principal Act to further promote the safety of children by—

- (a) enhancing the protections against psychological abuse; and 25
- (b) lowering the threshold for obtaining an order preventing the removal of a child from New Zealand, and providing for more flexibility in the terms of those orders; and
- (c) providing for the discharge of an order for the return of a child abducted to New Zealand. 30

19 Principles relevant to child’s welfare and best interests

Section 5(e) is amended by inserting “as defined in section 3(2) to (5) of the Domestic Violence Act 1995” after “violence”.

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|------------|--|----|
| 19A | <u>Court must consider protective conditions in certain cases</u> Section 51(1)(b) is amended by omitting “used violence (as defined in section 58) against” and substituting “physically or sexually abused”. | |
| 20 | Section 54 repealed Section 54 is repealed. | 5 |
| 21 | Procedure if child’s parents are parties to interim order Section 57(5)(b) is amended by omitting “or section 54(1)”. | |
| 22 | Interpretation | |
| (1) | Section 58 is amended by inserting the following definitions in their appropriate alphabetical order: “ allegation of violence , in relation to a party to proceedings, means an allegation that that party has used violence against physically or sexually abused— “(a) another party to the proceedings; or “(b) a child who is the subject of the proceedings; or “(c) a child of the family “protection order means a protection order, including a temporary order, made under the Domestic Violence Act 1995 “protection order means— | 10 |
| | “ (a) a protection order, including a temporary protection order, made under section 14 of the Domestic Violence Act 1995: | 15 |
| | “ (b) a protection order made under section 123B of the Sentencing Act 2002 | 20 |
| | “ violent party means a party to the proceedings against whom— “(a) there is currently in force a protection order for the protection of any of the following persons: “ (i) another party to the proceedings: “ (ii) a child who is the subject of the proceedings: “ (iii) a child of the family; or “ (b) an allegation of violence is made that, on the basis of the evidence presented by, or on behalf of, the parties to the proceedings (without the court being required to make | 25 |
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| | | 35 |

inquiries on its own initiative), the court is satisfied is proved”.

(2) The definition of **violence** in section 58 is repealed.

23 Allegations of violence made in proceedings relating to parenting orders

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(1) Section 59 is amended by omitting the heading and substituting the following heading: “**Application of section 60**”.

(2) Section 59(1) is amended by omitting paragraph (b) and substituting the following paragraph:

“(b) in which there is a violent party.”

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24 Procedure for dealing with proceedings in section 59(1)

(1) Section 60(1) and (2) are repealed.

(2) ~~Section 60(3) is repealed and the following subsections are substituted~~ is amended by repealing subsection (3) and substituting the following subsections:

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“(3) In proceedings to which this section applies in accordance with section 59 (the **proceedings**), the court must not make—

“(a) an order giving the violent party the role of providing day-to-day care for the child to whom the proceedings relate; or

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“(b) any order allowing the violent party contact (other than supervised contact) with that child.

“(3A) **Subsection (3)** is subject to subsection (4).”

(3) Section 60(6) is repealed.

24A New section 61A inserted

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The following section is inserted after section 61:

“61A Court may make orders to ensure safety of child in other cases

“(1) This section applies if—

“(a) there are proceedings before the court relating to any of the kinds of application specified in section 59(1)(a); and

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“(b) section 60 does not apply to the proceedings because—

“(i) the court is not satisfied that an allegation of violence (as defined in section 58) is proved; and

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- “(ii) there is not otherwise a violent party (as defined in section 58) to the proceedings.”
- “(2) If the court is satisfied that there is a real risk to the safety of a child, the court may make any order under this Act that it thinks fit in order to ensure the safety of the child.” 5
- 25 Preventing removal of child from New Zealand**
- (1) Section 77(2) is amended by omitting “is about to” and substituting “may”.
- (2) Section 77(3) is amended by repealing paragraph (c) and substituting the following paragraph: 10
- “(c) may, whether or not a warrant has been issued under paragraph (a) (either with or without an additional order under paragraph (b)), order that the child not be removed from New Zealand by—
- “(i) any person; or 15
- “(ii) any person other than a person named in the order.”
- (3) Section 77 is amended by inserting the following subsection after subsection (3):
- “(3A) An order made under **subsection (3)(c)** may specify that the order is to continue until— 20
- “(a) the expiry of a specified period; or
- “(b) a further order is made by an authority.”
- 26 New sections 77A and 77B inserted**
- The following sections are inserted after section 77: 25
- “77A Orders under section 77(3)(c) in respect of children of or over 16 years**
- “(1) An order under **section 77(3)(c)** must not be made in respect of a child of or over the age of 16 years unless there are special circumstances. 30
- “(2) An order under **section 77(3)(c)** made in respect of a child under the age of 16 years expires when the child attains that age unless the court in special circumstances orders otherwise on or after making the order.

“77B Orders under section 77(3)(c) may be suspended for specified period

- “(1) On an application for the purpose by any person, a High Court Judge, a District Court Judge, or a Family Court Judge may suspend an order made under **section 77(3)(c)**. 5
- “(2) On an application for the purpose, a Registrar of the High Court, or of a District Court, may suspend an order made under **section 77(3)(c)** if—
- “(a) the application is made by a party to the proceedings under section 77 in which the order was made (the **earlier proceedings**); and 10
- “(b) every other person who was a party to the earlier proceedings consents.
- “(3) A suspension of an order made under **section 77(3)(c)** must be— 15
- “(a) for a specified time; and
- “(b) in relation to a specified person.”

27 Preventing removal of child to defeat application

Section 118(3) is amended by—

- (a) omitting “section 77(4) and (5)” and substituting “sections 77(4) and (5), **77A**, and **77B**”; and 20
- (b) omitting “applies” and substituting “apply”.

28 New section 122A inserted

The following section is inserted after section 122:

- “122A Discharge of order under section 105 for return of child 25**
- “(1) This section applies where a court makes an order under section 105(2) for the return of a child (the **removal return order**).
- “(2) A party to the proceedings under section 105 in which the **removal return** order was made (the **removal return proceedings**) may apply to the court for the discharge of the **removal return** order. 30
- “(3) On an application under **subsection (2)**, the court may discharge the **removal return** order if—
- “(a) the application is made not earlier than 1 year after the **removal return** order was made, or any appeal in relation 35

to the ~~removal~~ return order was determined, and the court is satisfied that—

- “(i) the child is now settled in his or her new environment in New Zealand; and
 - “(ii) having regard to all the circumstances of the case, the discharge of the ~~removal~~ return order is warranted; or
- “(b) every other person who was a party to the ~~removal~~ return proceedings consents.”

Part 3

10

Amendments to Adoption Act 1955

29 Principal Act amended

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

30 Purpose of this Part

The purpose of this **Part** is to enable New Zealand to meet its international obligations under Article 3(1)(a)(ii) of the Optional Protocol to the ~~United Nations~~ Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography by creating a new offence prohibiting the improper inducement of a consent for the adoption of a child.

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31 Offences

- (1) The heading to section 27 is amended by omitting “**Offences**” and substituting “**Summary offences**”.
- (2) Section 27(3) is repealed.

32 New sections 27A to 27D inserted

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The following sections are inserted after section 27:

“27A Offence to induce consent

- “(1) Every person commits an offence who induces another person, by fraud, duress, undue influence (by payment or otherwise), or other improper means, to consent to an adoption.
- “(2) Every person who commits an offence under **subsection (1)** is liable on conviction on indictment to imprisonment for a term not exceeding 7 years.

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- “27B Safety of child where offence committed**
- “(1) Where a court is satisfied that an offence against section 27 or **27A** has been committed in respect of any child, the court may order the child to be removed to a place of safety until—
- “(a) the child can be restored to his or her parent or guardian; 5
or
“(b) other arrangements can be made for the child.
- “(2) **Subsection (1)** applies whether or not any person has been convicted of the offence.
- “27C Extraterritorial jurisdiction in respect of offence under section 27A as required by Optional Protocol** 10
- “(1) In this section, **Optional Protocol** means the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, adopted by the General Assembly of the United Nations at New York on 25 May 2000. 15
- “(2) Even if the acts alleged to constitute an offence under **section 27A** occurred wholly outside New Zealand, proceedings may be brought in respect of that offence—
- “(a) if the person to be charged— 20
“(i) is a New Zealand citizen; or
“(ii) is ordinarily resident in New Zealand; or
“(iii) has been found in New Zealand and has not been extradited; or
“(iv) is a body corporate, or a corporation sole, incorporated under the law of New Zealand; or 25
- “(b) if the person whose consent to an adoption has been induced—
“(i) is a New Zealand citizen; or
“(ii) is ordinarily resident in New Zealand. 30
- “(3) Nothing in this section limits the application of **section 27A** in respect of—
- “(a) acts that occurred wholly within New Zealand; or
“(b) the application of section 7 of the Crimes Act 1961 to the occurrence in New Zealand of— 35
“(i) an act forming part of an offence; or
“(ii) an event necessary to the completion of an offence; or

- “(c) the application of section 8 of the Crimes Act 1961; or
 “(d) the application of section 8A of the Crimes Act 1961.

“27D Attorney-General’s consent required where jurisdiction claimed under section 27C

- “(1) No proceedings for an offence against **section 27A** may be brought in a New Zealand court in respect of any person without the consent of the Attorney-General if jurisdiction over the person is claimed by virtue of **section 27C**. 5
- “(2) However, a person alleged to have committed an offence against **section 27A** may be arrested, or a warrant for the person’s arrest may be issued and executed, and the person may be remanded in custody or on bail, even though the Attorney-General’s consent under **subsection (1)** has not been obtained.” 10

33 Consequential amendment to Summary Proceedings Act 1957 15

- (1) This section amends the Summary Proceedings Act 1957.
- (2) Part 2 of Schedule 1 is amended by inserting the following item in its appropriate alphabetical order:
- Adoption Act 1955 **27A** Inducing consent to an adoption

34 Consequential amendments to Extradition Act 1999 20

- (1) This section amends the Extradition Act 1999.
- (2) ~~Section 101C(1)(c) is amended by adding “; and”.~~
- (3) ~~Section 101C(1) is amended by adding the following paragraph:~~
- “(d) every offence against **section 27A** of the Adoption Act 1955 is deemed to be an offence described in any extradition treaty concluded before the commencement of **section 32 of the Child and Family Protection Act 2009** and for the time being in force between New Zealand and any foreign country that is a party to the protocol referred to in subsection (5).” 25
- (2) Section 101C(1) is amended by adding “; and” and also by adding the following paragraph: 30

- “(d) every offence against **section 27A** of the Adoption Act 1955 is deemed to be an offence described in any extradition treaty concluded before the commencement of **section 32 of the Child and Family Protection Act 2009** and for the time being in force between New Zealand and any foreign country that is a party to the protocol referred to in subsection (5).” 5
- (3) Section 101C(2) is amended by omitting “of section 10 of the Crimes Amendment Act 2005” and substituting “referred to in subsection (1)(a), (b), (c), or **(d)**, as the case requires”. 10

35 Consequential amendment to Mutual Assistance in Criminal Matters Act 1992

- (1) This section amends the Mutual Assistance in Criminal Matters Act 1992.
- (2) Item 29 of the Schedule is amended by inserting the following item in the second column above the first row: 15

An offence against the following section of the Adoption Act 1955:

| <i>section</i> | <i>subject matter</i> |
|----------------|---------------------------|
| 27A | Offence to induce consent |

Legislative history

20 August 2009
11 February 2010

Introduction (Bill 72–1)
First reading and referral to Justice and Electoral Committee
