

**Reprint
as at 31 March 2014**



**Family Proceedings Amendment
Act (No 2) 2013**

Public Act 2013 No 80
Date of assent 24 September 2013
Commencement see section 2

Contents

	Page
1 Title	2
2 Commencement	2
3 Principal Act	2
4 Section 2 amended (Interpretation)	2
5 Section 5 repealed (Marriage or civil union guidance or counselling organisations)	3
6 Part 2 repealed	3
7 Section 160 amended (Applications may be heard together)	3
8 Section 162 replaced (Appointment of barrister or solicitor to assist court or represent children)	3
162 Appointment of lawyer to represent child in proceedings	3
162A Appointment of lawyer to assist court	4
162B Fees and expenses of lawyer appointed under section 162 or 162A	4

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 Justice.

	162C	Order requiring reimbursement of costs payments	5
	162D	Enforcement of orders made under section 162C	6
9		Section 165 amended (Power of District Court or Family Court to call witnesses)	6
10		Section 171 amended (Costs)	7
11		Section 174 amended (Appeals from decisions of District Courts and Family Courts)	7
12		Section 187 amended (Regulations)	7
13		New sections 193 and 194 inserted	7
	193	Transitional provision for counselling or mediation arranged before commencement of Family Proceedings Amendment Act (No 2) 2013	7
	194	Transitional provision for proceedings commenced before commencement of Family Proceedings Amendment Act (No 2) 2013	8
14		Schedule 2 amended	8

The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Family Proceedings Amendment Act (No 2) 2013.
- 2 Commencement**
This Act comes into force on 1 October 2014 unless it is earlier brought into force on a date appointed by the Governor-General by Order in Council.
Section 2: this Act brought into force, on 31 March 2014, by the Family Proceedings Amendment Act (No 2) 2013 Commencement Order 2014 (LI 2014/94).
- 3 Principal Act**
This Act amends the Family Proceedings Act 1980 (the **principal Act**).
- 4 Section 2 amended (Interpretation)**
In section 2, repeal the definitions of—

- (a) **approved marriage or civil union guidance organisation or counselling organisation:**
- (b) **attachment order:**
- (c) **charging order:**
- (d) **child of the civil union:**
- (e) **counsellor:**
- (f) **employer:**
- (g) **family chattels:**
- (h) **family home:**
- (i) **mediation conference:**
- (j) **salary or wages.**

5 Section 5 repealed (Marriage or civil union guidance or counselling organisations)

Repeal section 5.

6 Part 2 repealed

Repeal Part 2.

7 Section 160 amended (Applications may be heard together)

In section 160(1), delete “Care of Children Act 2004 or under the”.

8 Section 162 replaced (Appointment of barrister or solicitor to assist court or represent children)

Replace section 162 with:

“162 Appointment of lawyer to represent child in proceedings

“(1) In any proceedings under this Act (other than criminal proceedings), a court may appoint a lawyer to represent any child who is—

“(a) the subject of the proceedings; or

“(b) a party to the proceedings.

“(2) An appointment under subsection (1) may be made only if the court is satisfied that the appointment is necessary or desirable.

“162A Appointment of lawyer to assist court

In any proceedings under this Act (other than criminal proceedings), a court may—

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

“162B Fees and expenses of lawyer appointed under section 162 or 162A

- “(1) The fees and expenses of a lawyer appointed under section 162 or 162A must—
 - “(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 162 or 162A for fees and expenses must be given to the Registrar of the court in which the proceedings were heard, and the Registrar may 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 in any proceedings a lawyer has been appointed under section 162 or 162A and the fees and expenses relating to that appointment have been paid under subsection (1), the court must make an order under section 162C, unless the court declines to do so in accordance with that section.
- “(5) However, no order under section 162C may be made—
 - “(a) against the Crown, whether acting through the department for the time being responsible for the administration of this Act or otherwise; or
 - “(b) in respect of an appointment under section 162A, where a lawyer has been appointed under that section to pro-

vide to the court independent legal advice on any complex legal issue.

“162C Order requiring reimbursement of costs payments

- “(1) An order referred to in section 162B(4) must require the parties to reimburse to the Crown the prescribed proportion of the amount paid by the Crown, under section 162B(1)(b), in respect of the fees and expenses of a lawyer appointed under section 162 or 162A.
- “(2) Despite subsection (1), the court may decline to make an order against a party if satisfied that the order would cause serious hardship to the party or to a dependent child of the party.
- “(3) Each party against whom an order is made under subsection (1) must pay an equal share of the prescribed proportion.
- “(4) Despite subsection (3), if the court is satisfied that, in view of the circumstances of the case, including the conduct of any party, it would be inappropriate to require a party to pay the amount payable in accordance with that subsection, the court may substitute, for that party, a different amount not exceeding the prescribed proportion.
- “(5) In this section,—
- “**dependent child**, in relation to a party, means a child whose day-to-day care is substantially the responsibility of the party
- “**prescribed proportion** means the same proportion that is prescribed by regulations made under section 147 of the Care of Children Act 2004 for the purposes of section 135A of that Act
- “**serious hardship**, in relation to a party or a dependent child of the party,—
- “(a) includes significant financial difficulties that arise because of—
- “(i) the party’s inability to meet minimum living expenses according to normal community standards; or
- “(ii) the cost of medical treatment for an illness or injury of the party or a dependent child of the party; or

- “(iii) a serious illness suffered by the party or by a dependent child of the party; or
 - “(iv) the cost of education for a dependent child of the party:
- “(b) does not include significant financial difficulties that arise because—
- “(i) the social activities and entertainment of the party or those of a dependent child of the party may be limited; or
 - “(ii) the party is unable to afford goods or services that are expensive or of a high quality or standard according to normal community standards.

“162D Enforcement of orders made under section 162C

- “(1) The amount that a party is ordered to reimburse under section 162C is a debt due to the Crown by that party and may be enforced in a District Court or the High Court, as the case may require, in the same manner as a judgment of that court.
- “(2) Despite section 113 or 123 of the District Courts Act 1947 or section 100A of the Judicature Act 1908, no court fee is payable by a person who seeks to enforce, on behalf of the Crown, an order referred to in subsection (1), but the fee that would otherwise be payable—
- “(a) is to be added to the amount sought to be enforced; and
 - “(b) must be paid to the Registrar of the court out of any proceeds that result from the enforcement.
- “(3) For the purposes of section 14(1)(b) of the Crown Proceedings Act 1950, the Secretary for Justice may, on behalf of the Crown, enforce a debt under this section.”

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

Replace section 165(4) with:

- “(4) A witness called by the court under this section may be—
- “(a) examined and re-examined by the court, or by a lawyer appointed to assist the court; and
 - “(b) cross-examined by or on behalf of any party to the proceedings.”

10 Section 171 amended (Costs)

After section 171(2), insert:

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

11 Section 174 amended (Appeals from decisions of District Courts and Family Courts)

(1) In section 174(1AA), delete “(other than criminal proceedings or proceedings under section 130)”.

(2) In section 174(1), replace “subsection (1A)” with “subsection (1AA)”.

(3) Replace section 174(1A) with:

“(1A) However, no appeal may be made to the High Court under subsection (1) in relation to—

“(a) criminal proceedings; or

“(b) a decision under—

“(i) section 162 to appoint a lawyer to represent a child; or

“(ii) section 162A to appoint, or to direct the Registrar of the court to appoint, a lawyer to assist the court.

“(1B) The High Court Rules and sections 74 to 78 of the District Courts Act 1947, with all necessary modifications, apply to an appeal under subsection (1) as if it were an appeal under section 72 of that Act.”

12 Section 187 amended (Regulations)

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

13 New sections 193 and 194 inserted

After section 192, insert:

“193 Transitional provision for counselling or mediation arranged before commencement of Family Proceedings Amendment Act (No 2) 2013

If any counselling or mediation has been arranged under Part 2 before the date of commencement of the Family Proceedings Amendment Act (No 2) 2013, but that counselling or mediation has not been commenced or completed by that date,—

- “(a) the counselling or mediation may be commenced or completed on or after the date of commencement of the Family Proceedings Amendment Act (No 2) 2013 as if the Family Proceedings Amendment Act (No 2) 2013 had not come into force; but
- “(b) the counselling or mediation may not be commenced or continued 4 months after the date of commencement of the Family Proceedings Amendment Act (No 2) 2013.

“194 Transitional provision for proceedings commenced before commencement of Family Proceedings Amendment Act (No 2) 2013

- “(1) This section applies to proceedings under this Act that were commenced before the date of commencement of the Family Proceedings Amendment Act (No 2) 2013 but were not by that date completed (a **pending proceeding**).
- “(2) The following provisions do not apply to a pending proceeding:
 - “(a) section 162A:
 - “(b) section 162B:
 - “(c) section 162C:
 - “(d) section 162D.
- “(3) Section 162, as in force immediately before the date of commencement of the Family Proceedings Amendment Act (No 2) 2013, continues to apply to a pending proceeding with any necessary modifications as if the Family Proceedings Amendment Act (No 2) 2013 had not come into force.”

14 Schedule 2 amended

In Schedule 2, after the item relating to the Matrimonial Proceedings Amendment Act 1970, insert:

- “**Family Proceedings Amendment Act 2008 (2008 No 79)**
 - “**Family Proceedings Amendment Act 2013 (2013 No 47).**”
-

Reprints notes

1 *General*

This is a reprint of the Family Proceedings Amendment Act (No 2) 2013 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*

Family Proceedings Amendment Act (No 2) 2013 Commencement Order 2014 (LI 2014/94)
