



ANALYSIS

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1996, No. 127

An Act to amend the Guardianship Act 1968

[2 September 1996]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title—This Act may be cited as the Guardianship Amendment Act 1996, and shall be read together with and deemed part of the Guardianship Act 1968 (hereinafter referred to as the principal Act).

2. Interpretation—Section 2(1) of the principal Act is hereby amended by inserting, after the definition of the term “Director-General” (as substituted by section 36(4)(a) of the Social Welfare (Transitional Provisions) Act 1990), the following definition:

“‘Facsimile copy’, in relation to a warrant issued under this Act, 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.”.

3. Jurisdiction of Courts—Section 4 (1) of the principal Act is hereby amended by inserting, after the expression “19”, the expression “, 19C,”.

4. New sections substituted—(1) The principal Act is hereby amended by repealing section 19, and substituting the following sections:

“19. Issue of warrant to enforce custody or access—
(1) Subject to subsections (4) and (5) of this section, where any person is entitled to the custody of a child pursuant to this Act or to the order of a Court (including an order that is registered under section 22A of this Act), a Family Court or a District Court may, on the application of the person so entitled, issue a warrant authorising any constable or social worker or any other person named in the warrant to take possession of the child and to deliver the child to the person entitled to custody or to some other person or authority (including a person in or from a prescribed overseas country) named in the warrant on behalf of the person entitled to custody.

“(2) Subject to subsection (4) of this section, where any person is entitled to access to a child pursuant to an order made under section 15 or section 16 of this Act or registered under section 22A of this Act, a Family Court or a District Court may, on the application of the person so entitled, issue a warrant authorising any constable or social worker or any other person named in the warrant to take possession of the child and deliver the child to the person entitled to access.

“(3) The powers conferred on a Court by subsections (1) and (2) of this section may be exercised on the making of the order or at any subsequent time.

“(4) In considering an application under subsection (1) or subsection (2) of this section, the Court shall not grant the application contrary to the wishes of the child if the child is of or over the age of 18 years, unless the circumstances are exceptional.

“(5) Where more than one person is entitled to the custody of a child, no warrant issued under subsection (1) of this section shall authorise the removal of the child from the possession of one of those persons and the delivery of the child to another of them.

“(6) Where a Family Court declines to enforce a right of custody or access it may of its own motion, but subject to

subsections (1) and (2) of section 22C of this Act, vary or discharge any existing order of custody or access accordingly.

“19A. Other powers—(1) Nothing in section 19 of this Act shall limit or affect any other power to enforce a right of custody or access exercisable by any Court at the commencement of this Act.

“(2) Where a Court exercises a power to which subsection (1) of this section applies, the Court shall not grant any application contrary to the wishes of the child if the child is of or over the age of 18 years, unless the circumstances are exceptional.

“(3) Where, in the exercise of a power to which subsection (1) of this section applies, a Family Court declines to enforce a right of custody or access, it may of its own motion, but subject to subsections (1) and (2) of section 22C of this Act, vary or discharge any existing order of custody or access accordingly.

“19B. Execution of warrant to enforce custody or access—(1) For the purpose of executing any warrant issued under section 19 of this Act, any constable or social worker or any other person named in the warrant may enter and search any building, aircraft, ship, vehicle, premises, or place, with or without assistance and by force if necessary.

“(2) The constable, social worker, or other person executing any warrant issued under section 19 of this Act—

“(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 building, aircraft, ship, vehicle, premises, or place who questions his or her right to enter and search the same or to take possession of the child; and

“(d) If he or she is a constable who is not in uniform, shall produce evidence that he or she is a member of the Police; 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 constable or a social worker) authorised by the warrant to take possession of the child, shall produce evidence that he or she is the person so authorised.

“(3) Every person commits an offence who—

“(a) Knowingly resists or obstructs any person executing any warrant issued under section 19 of this Act; or

“(b) Knowingly fails or refuses to afford immediate entrance to any premises or to any part thereof to any person executing any warrant issued under section 19 of this Act,—

and shall be liable on summary conviction to a fine not exceeding \$1,000.

“19C. **Authority to use facsimile copy of warrant issued under section 19 or section 20**—(1) Subject to subsection (2) of this section, where a warrant is issued under section 19 or section 20 of this Act, any High Court Judge or District Court Judge or, if no High Court Judge or District Court Judge is available, any Registrar of the High Court or of a District Court (not being a member of the Police) may,—

“(a) On the application of any party to the proceedings for the issue of the warrant; or

“(b) On the application of any person who is authorised to execute the warrant,—

authorise the use of a facsimile copy of the warrant for the purpose of executing the warrant.

“(2) No authorisation may be granted under subsection (1) of this section in relation to a warrant unless the Judge 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.

“(3) The power conferred by subsection (1) of this section may be exercised at the time that the warrant is issued or at any subsequent time.

“(4) Where a Judge or Registrar grants an authorisation under subsection (1) of this section in relation to a warrant, the Judge 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 purposes 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, section 19B

of this Act) shall apply accordingly with all necessary modifications.

“(6) Without limiting any other enactment or rule of law, it is hereby declared that section 39 of the Police Act 1958 (which relates to the protection of members of the Police 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.”

(2) The following provisions are hereby consequentially repealed:

- (a) Section 4 of the Guardianship Amendment Act 1971;
- (b) So much of the Schedule to the Guardianship Amendment Act 1979 as relates to section 19 of the principal Act;
- (c) Section 9 of the Guardianship Amendment Act 1980;
- (d) Section 2 of the Guardianship Amendment Act 1983.

5. Preventing removal of children from New Zealand—Section 20(1A) of the principal Act is hereby amended by omitting the expression “Subsections (4) to (6) of section 19”, and substituting the expression “Section 19B”.

6. Exercise of jurisdiction in respect of child subject to registered overseas custody order—Section 22C(1) of the principal Act is hereby amended by omitting the expression “section 19”, and substituting the expression “any of sections 19, 19A, 19B, or 19C”.

7. Proof of documents—(1) Section 22I(1) of the principal Act is hereby amended by omitting the expression “section 19”, and substituting the expression “sections 19 to 19C”.

(2) Section 22I(2) of the principal Act is hereby amended by omitting the expression “section 19”, and substituting the expression “sections 19 to 19C”.

8. Depositions to be evidence—Section 22J of the principal Act is hereby amended by omitting the expression “section 19” in both places where it appears, and substituting the expression “sections 19 to 19C” in both places.

9. Welfare of child paramount—Section 23(2) of the principal Act is hereby amended by omitting the expression “subsection (9) of section 19”, and substituting the expression “section 19(4) or section 19A(2)”.

10. Amendments to Guardianship Amendment Act 1991—(1) Section 2 of the Guardianship Amendment Act 1991 is hereby amended by inserting, after the definition of the term “The Convention”, the following definition:

“‘Facsimile copy’, in relation to a warrant issued under this Act, 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) The Guardianship Amendment Act 1991 is hereby further amended by inserting, after section 26, the following section:

“26A. Authority to use facsimile copy of warrant—

(1) Subject to subsection (2) of this section, where a warrant is issued under section 24 or section 26 of this Act, any High Court Judge or District Court Judge or, if no High Court Judge or District Court Judge is available, any Registrar of the High Court or of a District Court (not being a member of the Police) may,—

“(a) On the application of any party to the proceedings for the issue of the warrant; or

“(b) On the application of any person who is authorised to execute the warrant,—

authorise the use of a facsimile copy of the warrant for the purpose of executing the warrant.

“(2) No authorisation may be granted under subsection (1) of this section in relation to a warrant unless the Judge 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.

“(3) The power conferred by subsection (1) of this section may be exercised at the time that the warrant is issued or at any subsequent time.

“(4) Where a Judge or Registrar grants an authorisation under subsection (1) of this section in relation to a warrant, the Judge 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 purposes 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 shall apply accordingly with all necessary modifications.

“(6) Without limiting any other enactment or rule of law, it is hereby declared that section 39 of the Police Act 1958 (which relates to the protection of members of the Police 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.”

(3) The Guardianship Amendment Act 1991 is hereby further amended—

- (a) By omitting from section 24 (2) the expression “Subsections (4) to (6) of section 19”, and substituting the expression “Section 19B”:
- (b) By omitting from section 24 (2) the words “that section”, and substituting the words “section 19 of the principal Act”:
- (c) By omitting from section 26 (3) the expression “Subsections (4) to (6) of section 19”, and substituting the expression “Section 19B”:
- (d) By omitting from section 26 (3) the words “that section”, and substituting the words “section 19 of the principal Act”.

11. Amendment to Family Proceedings Rules 1981—

(1) The Family Proceedings Rules 1981 (as amended by the Family Proceedings Rules 1981, Amendment No. 1 and Amendment No. 2) are hereby amended by revoking rule 16 (1), and substituting the following subclause:

“(1) An order may be made, a warrant may be issued, or an authorisation may be granted, as the case may be, on an *ex parte* application under the following sections:

“(a) The Family Proceedings Act 1980—

“(i) Section 10 (2) (b) (direction that application for separation order not be referred to a counsellor or that a reference made by the Registrar be revoked):

“(ii) Section 147 (provisional maintenance order):

“(iii) Section 174 (2) (order dispensing with security for appeal):

“(iv) Section 183 (order restraining disposition):

“(b) The Guardianship Act 1968—

“(i) Section 19C (authority to use facsimile copy of warrant):

“(ii) Section 20 (prevention of removal of child from New Zealand):

“(iii) Section 31 (3) (order dispensing with security for appeal):

“(c) The Guardianship Amendment Act 1991, section 26A (authority to use facsimile copy of warrant).”

(2) Rule 16 (1) of the Family Proceedings Rules 1981, as substituted by subsection (1) of this section, may be amended or revoked as if the substitution had been effected by Order in Council and not by that subsection.

This Act is administered in the Ministry of Justice.
