



ANALYSIS

<p>Title</p> <p>1. Short Title</p> <p>2. Repeal of sections 9 to 9c</p> <p>3. New cross-heading and sections inserted</p> <p style="padding-left: 40px;"><i>Guardianship of Court</i></p> <p>10A. Concurrent jurisdiction under section 10B</p> <p>10B. Application to Court</p> <p>10C. Notice to be given to Director-General in certain cases before Family Court</p> <p>10D. Orders of Court</p> <p>10E. Powers of Court</p> <p>4. Reports from other persons</p> <p>5. Power of Court to appoint solicitor or counsel</p>	<p>6. New sections substituted</p> <p>31. Procedure for bringing appeal to High Court</p> <p>31A. Procedure on appeal to High Court</p> <p>31B. Appeal to Court of Appeal</p> <p>7. Transitional provision relating to appeals from Family Court to High Court</p> <p>8. Consequential amendments</p> <p>9. Consequential repeals</p> <p style="text-align: center;">—————</p> <p style="text-align: center;">SCHEDULE</p> <p style="text-align: center;">Enactments Amended</p>
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1998, No. 48

An Act to amend the Guardianship Act 1968

[3 June 1998]

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

1. Short Title—This Act may be cited as the Guardianship Amendment Act 1998, and is part of the Guardianship Act 1968 (“the principal Act”).

2. Repeal of sections 9 to 9C—The principal Act is amended by repealing sections 9, 9A, 9B, and 9C.

3. New cross-heading and sections inserted—The principal Act is amended by inserting, after section 10, the following cross-heading and sections:

“Guardianship of Court

“10A. Concurrent jurisdiction under section 10B—

(1) The following courts have jurisdiction under section 10B:

“(a) The High Court:

“(b) Each Family Court.

“(2) A Family Court does not have jurisdiction under section 10B if—

“(a) The application is filed in the Family Court; and

“(b) At the date of filing, proceedings relating to the same matter have commenced in the High Court.

“(3) The High Court may order proceedings to be removed to a Family Court if—

“(a) An application is made under section 10B to the High Court; and

“(b) The High Court is satisfied that the proceedings would be more appropriately dealt with in a Family Court.

“(4) The High Court must order proceedings to be removed to the High Court if—

“(a) An application is made under section 10B to a Family Court; and

“(b) A party to the proceedings applies to the High Court to have the proceedings removed to the High Court; and

“(c) The High Court is satisfied that the proceedings would be more appropriately dealt with in the High Court.

“(5) Proceedings removed to the High Court continue in that Court as if they had been properly and duly commenced there.

“10B. Application to Court—(1) An application may be made to a Court with jurisdiction under this section for an order—

“(a) Placing an unmarried child under the guardianship of the Court:

“(b) Appointing a named person to be the agent of the Court either generally or for any particular purpose.

“(2) An application for an order may be made—

“(a) By a parent, guardian, or near relative of the child:

“(b) By the Director-General:

“(c) By the child, who may apply without guardian *ad litem* or next friend:

“(d) By any other person, with the leave of the Court.

“10C. Notice to be given to Director-General in certain cases before Family Court—(1) This section applies when—

“(a) An application is—

“(i) Made under section 10B to a Family Court; or

- “(ii) Removed under section 10A (3) to a Family Court; and
- “(b) Neither section 10A (2) nor section 10A (4) applies to the application; and
- “(c) Any of the following applies:
- “(i) The application seeks an order appointing the Director-General to be the agent of the Court, either generally or for a particular purpose, in respect of the child who is the subject of the application; or
- “(ii) The application does not seek an order of the kind described in subparagraph (i), but the Court considers, at any stage of the proceedings, that it is likely to make such an order; or
- “(iii) The child who is the subject of the application is in the custody or under the guardianship or in the care of the Director-General or any other person under the Children, Young Persons, and Their Families Act 1989; or
- “(iv) A warrant in respect of the child who is the subject of the application has been issued under any of sections 39, 40, 122, 157 (2), 205 (2) (b), or 386 of that Act.
- “(2) When this section applies,—
- “(a) The Court must give notice of the application to the Director-General; and
- “(b) On receipt of the notice, the Director-General is entitled to appear and be heard on the application.
- “(3) Subsection (2) does not apply if the Court considers that the delay that would be caused by giving notice would or might entail serious injury or undue hardship to the child.
- “(4) If this section applies and the Court makes an interim order without giving notice to the Director-General,—
- “(a) The Court must give notice of the application and the interim order to the Director-General; and
- “(b) On receipt of the notice, the Director-General is entitled to appear and be heard on the matters of the application and the interim order.
- “10D. **Orders of Court**—(1) A Court to which an application is made under section 10B may—
- “(a) Make an order under section 10B (1) (a); or
- “(b) Make orders under section 10B (1) (a) and (b); or
- “(c) Make—
- “(i) An order under section 10B (1) (a); and

“(ii) An order appointing any person whom the Court thinks fit to be the agent of the Court either generally or for any particular purpose.

“(2) An order ceases to have effect when the first of the following events occurs:

- “(a) The Court orders that the order ceases to have effect; or
- “(b) The child to whom it relates turns 20 years; or
- “(c) The child to whom it relates marries before turning 20 years.

“10E. **Powers of Court**—(1) A Court to which an application is made under section 10B has the rights and powers described in subsection (2)—

- “(a) Between the making of the application for an order and its disposal; and
- “(b) While an order is in force.

“(2) The Court has the same rights and powers in respect of the person and property of the child as the High Court had in relation to wards of Court immediately before the commencement of this Act, except that the Court may not—

- “(a) Direct any child who is 18 years or over to live with any person unless the circumstances are exceptional; or
- “(b) Commit for contempt of court a child or the child’s spouse for marrying without the Court’s consent while the child is under the guardianship of the Court.

“(3) The High Court has all the powers of a Family Court in relation to the custody of, or access to, any child who is the subject of an application under section 10B or an order under section 10D. An order of the High Court relating to the custody of, or access to, any such child may be enforced under this Act as if it were an order of the Family Court.”

4. Reports from other persons—Section 29A (6) of the principal Act (as substituted by section 2 of the Guardianship Amendment Act 1994 and amended by section 10 (1) of the Department of Justice (Restructuring) Act 1995) is amended by repealing paragraph (b), and substituting the following paragraph:

- “(b) Are payable by such party or parties to the proceedings as the Court orders or, if the Court so decides, are payable out of public money appropriated by Parliament for the purpose.”

5. Power of Court to appoint solicitor or counsel—Section 30 (4) (b) of the principal Act (as substituted by section

3 (1) of the Guardianship Amendment Act 1994 and amended by section 10 (1) of the Department of Justice (Restructuring) Act 1995) is amended by repealing paragraph (b), and substituting the following paragraph:

“(b) Are payable out of public money appropriated by Parliament for the purpose.”

6. New sections substituted—The principal Act is amended by repealing section 31, and substituting the following sections:

“**31. Procedure for bringing appeal to High Court**—(1) In this section, ‘proceedings’ does not include criminal proceedings or proceedings under section 13 or section 14.

“(2) A party to proceedings under this Act may appeal to the High Court if, in the proceedings, a Family Court or District Court—

“(a) Makes an order; or

“(b) Refuses to make an order; or

“(c) Otherwise finally determines or dismisses the proceedings.

“(3) An appeal must be brought—

“(a) Within 28 days after the making of the order or decision appealed against; or

“(b) Within such further time as the High Court may allow on an application made to it within 1 month after the expiration of that period of 28 days.

“(4) Despite subsections (2) and (3), if the Court makes an interlocutory order or an interim order, a party to the proceedings may, with the leave of the Court, appeal to the High Court against the whole or any part of the order, and section 71A (4) and (6) of the District Courts Act 1947 apply with all necessary modifications.

“(5) An appeal under subsection (2) or subsection (4) must be brought in accordance with the following provisions of the District Courts Act 1947 (which apply with all necessary modifications):

“(a) Section 71:

“(b) Section 72:

“(c) Section 73 (2), but the Court appealed from may, on the *ex parte* application of the appellant, order that security is not required to be given:

“(d) Section 73 (3) and (4):

“(e) Section 74:

“(f) Section 75.

“31A. Procedure on appeal to High Court—The following provisions apply to an appeal under section 31:

“(a) Sections 76 to 78 of the District Courts Act 1947 apply with all necessary modifications; and

“(b) An order or decision of the High Court is final (except as provided in section 31B (1) (b)).

“31B. Appeal to Court of Appeal—(1) An appeal lies to the Court of Appeal from an order or decision of the High Court under this Act, but—

“(a) No appeal lies from an order or decision under section 13:

“(b) If the order or decision was made on appeal from a Family Court or a District Court, an appeal lies only—

“(i) On a question of law; and

“(ii) With the leave of the Court of Appeal.

“(2) The Court of Appeal may in its discretion—

“(a) Rehear the whole or any part of the evidence; or

“(b) Receive further evidence,—

if it thinks that the interests of justice so require, but may not exercise either of these powers on an appeal on a question of law.

“(3) The decision of the Court of Appeal is final.”

7. Transitional provision relating to appeals from Family Court to High Court—(1) Despite the commencement of this Act, the principal Act applies as if this Act had not come into force if—

(a) The hearing of any appeal has commenced before the date on which this Act comes into force; or

(b) The High Court has set down a date for the hearing of an appeal before the date on which this Act comes into force.

(2) Despite the commencement of this Act, an appeal against an interim order lodged with the Court before the commencement of this Act does not require the leave of the Court.

8. Consequential amendments—The principal Act and other enactments are amended in the manner indicated in the Schedule.

9. Consequential repeals—The following enactments are consequentially repealed:

(a) Section 2 of the Guardianship Amendment Act 1971:

- (b) Section 4 of the Guardianship Amendment Act 1980:
- (c) Section 19 of the Guardianship Amendment Act 1980:
- (d) The Guardianship Amendment Act 1985:
- (e) The Guardianship Amendment Act (No. 2) 1991.

SCHEDULE

Section 8

ENACTMENTS AMENDED

Enactment	Amendment
1968, No. 63—The Guardianship Act 1968 (R.S. Vol. 9, p. 147)	<p>By omitting from section 4 (1) the expression “9, 9A (4)”, and substituting the expression “10A”.</p> <p>By inserting, before section 11, the following cross-heading: <i>“Custody Orders and Orders in Other Proceedings”.</i></p> <p>By omitting from section 12 (1) the expression “section 9 of this Act,” and substituting the expression “section 10B, a Family Court or”.</p> <p>By omitting from section 14 (1) the word “High”.</p> <p>By omitting from section 24 (4) the word “High”.</p> <p>By omitting from section 33 (2) the expression “section 9 of this Act”, and substituting the expression “section 10D”.</p>
1970, No. 137—The Age of Majority Act 1970 (R.S. Vol. 21, p. 1)	By omitting the item in the First Schedule relating to the Guardianship Act 1968.
1989, No. 24—The Children, Young Persons, and Their Families Act 1989	<p>By repealing section 22 (1) (g), and substituting the following paragraph: “(g) If the child or young person is under the guardianship of the Court under the Guardianship Act 1968, any person appointed as agent for the Court under that Act, or any representative of that person.”.</p> <p>By repealing section 114 (1) (b), and substituting the following paragraph: “(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 Guardianship Act 1968, that guardianship is suspended during the time when the person appointed under section 110 is the guardian (subject to section 117 (2)).”</p>

SCHEDULE—*continued*ENACTMENTS AMENDED—*continued*

Enactment	Amendment
1989, No. 24—The Children, Young Persons, and Their Families Act 1989— <i>continued</i>	<p>By repealing section 117 (2) and (3), and substituting the following subsections:</p> <p>“(2) A guardianship order made under section 110 ceases to have effect if, after it is made, a court having jurisdiction under section 10B of the Guardianship Act 1968—</p> <p>“(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</p> <p>“(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.</p> <p>“(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.”</p> <p>By repealing section 120 (2), and substituting the following subsection:</p> <p>“(2) Nothing in subsection (1) affects the power of a Court having jurisdiction under section 10B of the Guardianship Act 1968 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.”</p> <p>By repealing section 251 (1) (k), and substituting the following paragraph:</p> <p>“(k) If the child or young person is under the guardianship of the Court under the Guardianship Act 1968, any person appointed as agent for the Court under that Act, or any representative of that person:”.</p>

SCHEDULE—*continued*
ENACTMENTS AMENDED—*continued*

Enactment	Amendment
1990, No. 28—The Defence Act 1990	<p>By repealing section 36 (2) (c), and substituting the following paragraph: “(c) By a Court, if the minor is for the time being under the guardianship of that Court under the Guardianship Act 1968.”</p> <p>By repealing section 36 (4) (a) (vii), and substituting the following subparagraph: “(vii) If the minor is for the time being placed under the guardianship of the Court under the Guardianship Act 1968, from the Court that made the order placing the minor under its guardianship; and”.</p>
1995, No. 39—The Department of Justice (Restructuring) Act 1995	By omitting the item in the First Schedule relating to sections 29A (6) and 30 (4) of the Guardianship Act 1968.

This Act is administered in the Ministry of Justice.
