

# GUARDIANSHIP AMENDMENT BILL

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## EXPLANATORY NOTE

THE purpose of this Bill is to provide a system for the recognition and enforcement in New Zealand of custody orders made in prescribed overseas countries. This Bill also provides for the transmission of New Zealand custody orders to prescribed overseas countries. The term "prescribed overseas country" means:

- (a) The United Kingdom; or
- (b) Australia; or
- (c) Any State or Territory of Australia; or
- (d) Any other country outside New Zealand that is declared by Order in Council to be a prescribed overseas country for the purposes of the Guardianship Act 1968.

*Clause 1* relates to the Short Title.

*Clause 2* inserts new *sections 22A to 22K* in the Guardianship Act 1968.

### *Enforcement of Overseas Custody Orders*

The new *section 22A* provides for the registration in New Zealand of overseas custody orders made in prescribed overseas countries.

The new *section 22B* deals with the effect of the registration in New Zealand of an overseas custody order.

The new *section 22C* sets out certain limitations on the exercise of jurisdiction in respect of any child who is subject to an overseas custody order that is registered in New Zealand.

The new *section 22D* prescribes the procedure to be followed where an overseas custody order that is registered in New Zealand is varied or discharged by a Court in New Zealand.

The new *section 22E* provides, in *subsection (1)*, that overseas custody orders registered in New Zealand are not to be enforced in certain circumstances (as, for example, where the overseas custody order is no longer enforceable in the country in which it was made).

*Subsection (2)* provides for the cancellation of the registration of an overseas custody order which is no longer enforceable in the prescribed overseas country in which it was made.

The new *section 22F* authorises the Court to make an order against any person (being a person who has knowingly abducted a child, or is deliberately holding a child, in contravention of an overseas custody order) requiring that person to pay the whole or part of the cost of returning the child to the person entitled to custody under the overseas custody order, which cost may include the cost and travelling expenses of any necessary escort.

The new *section 22e* provides that, where an application pursuant to sections 17 and 22b of the principal Act is heard in a Magistrate's Court, the evidence of any person beyond New Zealand may be taken in accordance with the rules of the Supreme Court.

The new *section 22h* provides for the proof of documents.

The new *section 22i* provides for the receipt in evidence of depositions taken for the purposes of any of the provisions of *sections 22A to 22F* in any prescribed overseas country.

The new *section 22j* empowers the Governor-General by Order in Council to declare any country outside New Zealand to be a prescribed overseas country for the purposes of the Guardianship Act 1968.

*Transmission of New Zealand Orders Overseas*

The new *section 22k* provides for the transmission of New Zealand orders to prescribed overseas countries.

*Clause 3* makes consequential amendments to the Guardianship Act 1968 and the Department of Social Welfare Act 1971.

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Hon. Mr McLay

## GUARDIANSHIP AMENDMENT

### ANALYSIS

Title	
1. Short Title	22E. Overseas custody orders not to be enforced in certain circumstances
2. New sections inserted	22F. Costs of travel
<i>Enforcement of Overseas Custody Orders</i>	22G. Evidence
22A. Registration of overseas custody orders	22H. Proof of documents
22B. Effect of registration	22I. Depositions to be evidence
22C. Exercise of jurisdiction in respect of child subject to registered overseas custody order	22J. Prescribed overseas countries
22D. Variation or discharge of registered overseas custody order	<i>Transmission of New Zealand Orders Overseas</i>
	22K. Transmission of New Zealand orders to prescribed overseas countries
	3. Consequential amendments
	Schedule

### A BILL INTITULED

#### An Act to amend the Guardianship Act 1968

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,  
5 as follows:

1. **Short Title**—This Act may be cited as the Guardianship Amendment Act 1979, and shall be read together with and deemed part of the Guardianship Act 1968\* (hereinafter referred to as the principal Act).
- 10 2. **New sections inserted**—The principal Act is hereby amended by inserting, after section 22, the following headings and sections:

\*Reprinted 1973, Vol. 2, p. 1527  
Amendment: 1977, No. 115

No. 20—1

*“Enforcement of Overseas Custody Orders*

**“22A. Registration of overseas custody orders—**  
**(1) Where—**

**“(a) A certified copy of an overseas custody order; and**

**“(b) A certificate—**

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**“(i) Which is signed by an officer of a Court in the overseas country in which the order was made; and**

**“(ii) Which contains a statement that the order is, at the date of the certificate, enforceable in the overseas country; and**

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**“(c) Written information tending to show that the child who is the subject of the order, or a parent of that child, or a person having the right of custody of, or access to, that child, is present in New Zealand or is proceeding to, or is about to proceed to, New Zealand—**

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have been transmitted to the Secretary, he shall send the documents to the Registrar of a Magistrate’s Court.

**“(2) The Registrar of the Magistrate’s Court shall register the order by filing a certified copy of the order in the Court.**

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**“(3) Where the Registrar of a Magistrate’s Court receives the documents referred to in subsection (1) of this section other than from the Secretary, the Registrar may register the order if he is satisfied that the nature of the documents is such that they would, if they had been transmitted to the Secretary, have been sent to the Registrar by the Secretary.**

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**“(4) Nothing in this section precludes a Court having jurisdiction under this Act from receiving evidence of an order made in an overseas country (whether or not such a country is a prescribed overseas country) with respect to the custody of, or access to, a child.**

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**“22B. Effect of registration—Subject to sections 22c and 22E (1) of this Act, where an overseas custody order is registered in a Court pursuant to section 22A of this Act and so long as the registration is not cancelled, the order may be enforced, varied, or discharged as if it were an order made by that Court under this Act.**

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**“22c. Exercise of jurisdiction in respect of child subject to registered overseas custody order—**(1) Where an overseas custody order is registered in a Court pursuant to section 22A of this Act and that order relates to custody or access or both,  
5 a Court in New Zealand (other than in proceedings under section 19 of this Act) shall not, in respect of any matter determined by the overseas custody order, exercise jurisdiction in relation to the child who is the subject of the order unless—

10 “(a) Every person having rights of custody or access in relation to the child pursuant to the overseas custody order consents to the exercise of jurisdiction by the Court in the proceedings; or

15 “(b) The Court is satisfied that there are substantial grounds for believing that the welfare of the child will be adversely affected if the Court does not exercise jurisdiction in the proceedings.

20 “(2) Where a Court in New Zealand exercises jurisdiction in proceedings for the custody of, or access to, a child who is the subject of an overseas custody order, the Court shall not make an order with respect to the custody of, or access to, the child unless the person who instituted the proceedings satisfies the Court—

25 “(a) That the welfare of the child is likely to be adversely affected if the order is not made; or

“(b) That there has been such a change in the circumstances of the child that the order ought to be made.

30 “(3) Where a Court in New Zealand exercises jurisdiction in proceedings for the custody of, or access to, a child and does so without notice of the existence of an overseas custody order relating to that child which is registered in New Zealand, any order which is made by the Court on or after the date of the registration of the overseas custody order and  
35 which is in respect of any matter determined by the overseas custody order is of no effect.

**“22d. Variation or discharge of registered overseas custody order—**(1) Where a Court exercising jurisdiction pursuant to sections 17 and 22B of this Act makes an order varying  
40 or discharging an overseas custody order, the Registrar of the Court so exercising jurisdiction—

“(a) Shall forward to the Court, or to the appropriate authority, in the prescribed overseas country—

“(i) Three certified copies of the order varying or discharging the overseas custody order and the reasons for the variation or discharge; and

“(ii) Such further material as the Court directs; and

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“(b) Unless he is the Registrar of the Court in which the overseas custody order is registered, shall forward to the Registrar of that Court a copy of the order varying or discharging the overseas custody order.

“(2) The Registrar of the Court in which the overseas custody order is registered shall, on receiving notice of the discharge or variation of that order, note his records accordingly, and, where the overseas custody order is discharged, shall cancel the registration of that order.

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“22E. Overseas custody orders not to be enforced in certain circumstances—(1) Where a Court is satisfied that an overseas custody order—

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“(a) Was not, at the time of its registration in New Zealand, enforceable in the country in which it was made; or

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“(b) Has, since its registration in New Zealand, ceased to be enforceable in the country in which it was made,—

the Court shall not enforce that order under section 19 of this Act and shall not exercise jurisdiction in respect of that order pursuant to sections 17 and 22B of this Act.

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“(2) Where the Registrar of a Court in which an overseas custody order is registered believes that the order is not enforceable in the prescribed overseas country in which it was made and this belief is based on—

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“(a) Documentary evidence received by him; or

“(b) The refusal of a New Zealand Court, on the grounds set out in subsection (1) of this section,—

“(i) To enforce the order under section 19 of this Act; or

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“(ii) To exercise jurisdiction pursuant to sections 17 and 22B of this Act in respect of the order,—

the Registrar shall cancel the registration of the order and shall inform the Court in the prescribed overseas country that he has done so.

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“22F. Costs of travel—Where a Court, for the purpose of enforcing a right of custody conferred by an overseas custody order, issues, in relation to any child, a warrant under section

19 (1) of this Act, the Court may, if it thinks just, make, against any person who has knowingly abducted the child, or is deliberately holding the child, in contravention of the overseas custody order, an order for the payment of the whole  
5 or part of the cost of returning the child to the person entitled to custody under the overseas custody order, which cost may include the cost and travelling expenses of any necessary escort.

“22G. **Evidence**—Where an application pursuant to sections  
10 17 and 22B of this Act is heard in a Magistrate’s Court, the evidence of any person beyond New Zealand may be taken in accordance with the rules of the Supreme Court covering the examination of witnesses beyond New Zealand and the provisions of the Code of Civil Procedure, as far as they are  
15 applicable and with all necessary modifications, shall apply.

“22H. **Proof of documents**—(1) For the purposes of sections  
20 22A to 22G of this Act, any document purporting to be signed by any Judge, Magistrate, or officer of a Court in any prescribed overseas country shall, until the contrary is proved, be deemed to have been so signed without proof of the signature or judicial or official character of the person appearing to have signed it; and the officer of a Court by whom a document purports to be signed shall, until the contrary is proved, be deemed to have been the proper officer of the Court to  
25 sign the document.

“ (2) Every document purporting to be signed, certified, or verified by any of the persons mentioned in subsection (1) of this section shall be admitted in evidence in proceedings for the purposes of sections 22A to 22F of this Act if it appears  
30 to be relevant to those proceedings.

“22I. **Depositions to be evidence**—Depositions taken for the purposes of any of the provisions of sections 22A to 22F of this Act in a Court in any prescribed overseas country may be received in evidence in proceedings for the purposes of  
35 any of the provisions of sections 22A to 22F of this Act.

“22J. **Prescribed overseas countries**—(1) The Governor-General may from time to time, by Order in Council, declare any country outside New Zealand to be a prescribed overseas country for the purposes of this Act.

40 “ (2) Any Order in Council made under subsection (1) of this section may be revoked or varied by a subsequent Order in Council.

*“Transmission of New Zealand Orders Overseas*

**“22K. Transmission of New Zealand orders to prescribed overseas countries—**(1) Where an order made by a Court in New Zealand with respect to the custody of, or access to, a child may be enforced in a prescribed overseas country under provisions corresponding to the provisions of sections 22A and 22B of this Act, the Registrar of the Court in which the order was made, or last varied, or filed in accordance with section 26 of this Act shall, if so requested in writing by a person having rights of custody or access in relation to the child pursuant to the order, send to the Secretary for transmission to an appropriate Court or authority in that country—

“(a) Three certified copies of the order; and

“(b) Such information and material (if any) as the Registrar possesses for ascertaining the identity and whereabouts of the child and any other person who is subject to the order; and

“(c) A statement that the order is enforceable in New Zealand and a request in writing that the order be made enforceable in that prescribed overseas country; and

“(d) Such other documents and information as he believes are necessary for securing the enforcement of the order in that prescribed overseas country.

“(2) Where a Court in a prescribed overseas country has made an order in proceedings for the custody of, or access to, a child, being proceedings to which provisions corresponding to subsections (1) and (2) of section 22C of this Act apply, a Court in New Zealand may thereafter treat the order as an overseas custody order and may exercise jurisdiction accordingly in respect of the order.

“(3) Where a Court exercises jurisdiction pursuant to subsection (2) of this section, the Registrar of the Court shall forthwith forward to the Court in the prescribed overseas country—

“(a) Three certified copies of the further order of the Court and the reasons for the order; and

“(b) Such further material as the Court directs.

“(4) Where a person has rights of custody or access in relation to a child pursuant to an order made by a Court in New Zealand, nothing in this section prevents that person from—



“(a) Obtaining certified copies of the order; or

“(b) Applying to a Court in an overseas country (whether or not it is a prescribed overseas country) for enforcement or registration and enforcement of the order in that country.

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“(5) Registration in an overseas country of an order for custody of, or access to, a child which is made in New Zealand does not prevent the expiry of that order or its variation or discharge pursuant to this Act.”

10 **3. Consequential amendments**—(1) The principal Act is hereby amended in the manner indicated in the Schedule to this Act.

15 (2) Section 27 of the Department of Social Welfare Act 1971 is hereby consequentially amended by repealing sub-sections (1) and (2).

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Section 3 (1)

## SCHEDULE

## CONSEQUENTIAL AMENDMENTS OF PRINCIPAL ACT

Section Amended	Amendment
Section 2 ..... ..	<p>By repealing this section, and substituting the following section:</p> <p>“2. <b>Interpretation</b>—(1) In this Act, unless the context otherwise requires,—</p> <p>“‘Certified copy’, in relation to an order of a Court, means a copy certified by the proper officer of the Court to be a true copy of the order:</p> <p>“‘Child’ means a person under the age of 20 years:</p> <p>“‘Country’ includes any State, territory, province, or other part of a country:</p> <p>“‘Court’ means a Court having jurisdiction in the proceedings by virtue of section 4 of this Act:</p> <p>“‘Director-General’ means the Director-General of Social Welfare under the Department of Social Welfare Act 1971:</p> <p>“‘Magistrate’s Court’ means a Magistrate’s Court presided over by a Magistrate appointed under the Domestic Proceedings Act 1968 to exercise the domestic jurisdiction of the Court:</p> <p>“‘Near relative’ means a step-parent, grandparent, aunt, uncle, brother, or sister; and includes a brother or sister of the half-blood as well as of the full-blood:</p> <p>“‘Overseas custody order’ means an order made by a Court in a prescribed overseas country, being—</p> <p>“(a) An order for custody of, or access to, a child; or</p> <p>“(b) An order varying or discharging an order of the kind referred to in <u>paragraph (a)</u> of this definition:</p>

SCHEDULE—*continued*CONSEQUENTIAL AMENDMENTS OF PRINCIPAL ACT—*continued*

Section Amended	Amendment
Section 2— <i>continued</i>	<p>“‘Prescribed’ means prescribed by rules of Court or regulations or Order in Council:</p> <p>“‘Prescribed overseas country’ means—</p> <p>    “(a) The United Kingdom;</p> <p>    or</p> <p>    “(b) Australia; or</p> <p>    “(c) Any State or Territory of Australia; or</p> <p>    “(d) Any other country outside New Zealand that is declared by Order in Council to be a prescribed overseas country for the purposes of this Act:</p> <p>“‘Secretary’ means the Secretary for Justice:</p> <p>“‘Social Worker’ means a Social Worker under the Department of Social Welfare Act 1971:</p> <p>“‘Supreme Court’ includes a Judge thereof:</p> <p>“‘Upbringing’ includes education and religion.</p> <p>“(2) For the purposes of the definition of the term ‘overseas custody order’ in <u>subsection (1)</u> of this section, ‘custody’ has the meaning given to it by section 3 of this Act.”</p>
Section 19 .....	<p>By repealing subsections (1) and (2), and substituting the following subsections:</p> <p>“(1) Where any person is entitled to the custody of a child, whether pursuant to this Act or to the order of a Court (including an order that is registered pursuant to <u>section 22A</u> of this Act), the Court may at any time, on the application of the person so entitled to custody, 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 him 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:</p> <p>“Provided that where more than one</p>

SCHEDULE—*continued*  
 CONSEQUENTIAL AMENDMENTS OF PRINCIPAL ACT—*continued*

Section Amended	Amendment
Section 19— <i>continued</i>	<p>person is entitled to the custody of a child no warrant issued under this subsection shall authorise the removal of the child from the possession of one of those persons and the delivery of him to another of them.</p> <p>“(2) The Court may at any time, on the application of the person entitled to access to a child pursuant to an order of a Court (including an order that is registered pursuant to <u>section 22A</u> of this Act) 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 him to the person entitled to access in accordance with the order.”</p> <p>By inserting in subsection (8), after the words “of its own motion”, the words “; but subject to <u>subsections (1) and (2) of section 22C</u> of this Act,”.</p>
Section 20	<p>By inserting in subsection (1), and also in subsection (2), after the words “any order of any Court”, the words “(including an order that is registered pursuant to <u>section 22A</u> of this Act)”.</p>
Section 32	<p>By repealing subsection (3).</p>