



ANALYSIS

<p>Title</p> <p>1. Short Title and commencement</p> <p>2. Jurisdiction of Courts</p>	<p>3. New sections inserted</p> <p>9A. Guardianship of Family Courts</p> <p>9B. Provision for review of order</p> <p>9C. Cessation of guardianship</p>
--	--

1991, No. 67

An Act to amend the Guardianship Act 1968

[12 July 1991]

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

1. Short Title and commencement—(1) This Act may be cited as the Guardianship Amendment Act (No. 2) 1991, and shall be read together with and deemed part of the Guardianship Act 1968 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of July 1992.

2. Jurisdiction of Courts—Section 4 of the principal Act (as substituted by section 3 of the Guardianship Amendment Act 1980) is hereby amended by inserting in subsection (1), after the expression “9,”, the expression “9A (4).”

3. New sections inserted—The principal Act is hereby amended by inserting, after section 9 (as amended by section 4 of the Guardianship Amendment Act 1980), the following section:

“9A. Guardianship of Family Courts—(1) A Family Court may, upon application made in the course of any proceedings relating to the custody of, or access to, a child, order that the child be placed under the guardianship of the Court, and may appoint any person to be the agent of the Court either generally or for any particular purpose.

“(2) An application for an order under subsection (1) of this section may be made—

- “(a) By a parent, guardian, or near relative of the child; or
- “(b) By the Director-General; or
- “(c) By the child, who may apply without guardian *ad litem* or next friend; or
- “(d) With the leave of the Court, by any other person.

“(3) An order may be made under subsection (1) of this section only where the Court is satisfied, having regard to the difficulty of the issues raised in the proceedings relating to custody or access or to the duration of those proceedings, that there is no other practicable means of protecting the child’s welfare.

“(4) Notwithstanding anything in subsection (1) of this section, the High Court, upon application by any party to proceedings for an order under that subsection, shall order that the proceedings be removed into the High Court unless it is satisfied that the proceedings would be more appropriately dealt with in a Family Court. Where the proceedings are so removed, they shall be continued in the High Court as if they had been properly and duly commenced in that Court.

“(5) An order made under subsection (1) of this section shall relate to the guardianship of the child generally; and a Family Court shall have no jurisdiction under this section to make an order limited to a particular purpose.

“(6) Subject to subsections (5), (9), and (10) of this section, between the making of the application for an order under subsection (1) of this section and its disposal, and (if an order is made) while the order is in force, the Family Court shall have the same rights and powers in respect of the person and property of the child as a guardian has, but subject to the terms of any custody order made by the Court.

“(7) Neither the making of an application for an order under subsection (1) of this section, nor the order itself, shall affect the jurisdiction of the Family Court to make any order relating to the custody of, or access to, the child.

“(8) While an order under subsection (1) of this section remains in force in respect of any child, the rights of the Court in respect of the guardianship of the child shall supersede the rights of any other person.

“(9) If the child is of or over the age of 18 years, the Court shall not direct the child to live with any person unless the circumstances are exceptional.

“(10) If the child, while under the guardianship of the Court, marries without the Court’s consent, the Court shall not have power to commit the child or his or her spouse for contempt of Court for so marrying.

“9B. Provision for review of order—(1) In any order under section 9A (1) of this Act, the Court may specify a date, being not later than 12 months after the date of the order, by which an application shall be made to the Court for a review of the order, in which case the Court shall also specify the person or persons who is or are to be responsible for applying for such a review.

“(2) If the Court makes no provision for review, the order shall expire with the close of the period of 12 months commencing with the date of the order.

“(3) If the Court makes provision for review, the application for review shall be made within the period of 12 months prescribed in subsection (2) of this section, and the order shall continue in force, notwithstanding the expiry of that period, until the application has been heard and determined. If for any reason an application for review is not made within that period, the order shall expire with the close of that period.

“(4) On any such application for review, the Court shall not make any order that would extend the effect of the original order beyond the date on which it would otherwise expire unless the Court is satisfied, having regard to section 9A (3) of this Act, that the order remains the only practicable means of protecting the child’s welfare.

“(5) On any subsequent application for review, the provisions of subsections (1) to (4) of this section shall apply with all necessary modifications.

“9C. Cessation of guardianship—A child who has been placed under the guardianship of a Family Court shall cease to be under such guardianship when the order expires and is not renewed, or when the Court so orders, or when the child attains the age of 20 years or sooner marries, whichever first occurs.”

This Act is administered in the Department of Justice.
