



# Family Proceedings Amendment Rules 2005

Silvia Cartwright, Governor-General

## Order in Council

At Wellington this 18th day of April 2005

Present:

Her Excellency the Governor-General in Council

Pursuant to section 188(1) of the Family Proceedings Act 1980 and to section 146(4) of the Care of Children Act 2004, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following rules.

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### Rules

#### 1 Title

- (1) These rules are the Family Proceedings Amendment Rules 2005.

- (2) In these rules, the Family Proceedings Rules 1981<sup>1</sup> are called “the principal rules”.

<sup>1</sup> SR 1981/261

## 2 Commencement

These rules come into force on 1 July 2005.

## 3 Application of rules

Rule 2(1)(b) of the principal rules is amended by omitting the expression “Guardianship Act 1968”, and substituting the expression “Care of Children Act 2004”.

## 4 Interpretation

Rule 3(1) of the principal rules is amended by omitting from the definition of **the Acts** the expression “Guardianship Act 1968”, and substituting the expression “Care of Children Act 2004”.

## 5 Applications on notice

Rule 15 of the principal rules is amended by adding the following subclauses:

- “(6) This subclause applies to every application under section 72(2) or section 73(2) of the Care of Children Act 2004 seeking a warrant directing that a child be delivered—
- “(a) to the applicant; or
  - “(b) to some other person or authority named in the warrant on behalf of the applicant.
- “(7) Every application to which subclause (6) applies must be accompanied by a written statement indicating what arrangements are being made for the child to be delivered to the applicant after execution of the warrant.”

## 6 *Ex parte* applications

- (1) Rule 16(1) of the principal rules is amended by revoking paragraphs (b) and (c), and substituting the following paragraph:

“(b) the Care of Children Act 2004—

- “(i) section 76, including as applied by sections 117(4) and 119(4) of that Act (authority to use faxed copy of warrant):

“(ii) section 77 (preventing removal of child from New Zealand):

“(iii) section 143(5) (order dispensing with security for appeal).”

(2) Rule 16 of the principal rules is amended by adding the following subclauses:

“(7) This subclause applies to every application under section 72(2) or section 73(2) of the Care of Children Act 2004 seeking a warrant directing that a child be delivered—

“(a) to the applicant; or

“(b) to some other person or authority named in the warrant on behalf of the applicant.

“(8) Every application to which subclause (7) applies must be accompanied by a written statement indicating—

“(a) whether the applicant intends to make himself or herself available near the place, and soon after the time, that the warrant is likely to be executed and, if not, how the child is proposed to be delivered to the applicant (as the case requires); or

“(b) how the child is proposed to be delivered by that other person or authority to the applicant.”

## **7 Powers of Registrar**

Rule 73(2) of the principal rules is amended by omitting the words “penal institution”, and substituting the word “prison”.

## **8 Procedure on arrest of respondent other than in respect of an offence**

Rule 74(6) of the principal rules is amended by omitting the words “Superintendent of the penal institution”, and substituting the words “manager of the prison”.

## **9 List of forms amended**

(1) The list of forms in Schedule 1 of the principal rules is amended by omitting from the items relating to forms F.P. 16 and F.P. 17 the expression “Guardianship Act 1968”, and substituting in each case the expression “Care of Children Act 2004”.

- (2) The list of forms in Schedule 1 of the principal rules is amended by omitting from the item relating to form F.P. 52 the words “Enforce Custody or Access”, and substituting the words “enforce role of providing day-to-day care for, or order for contact with, child”.
- (3) The list of forms in Schedule 1 of the principal rules is amended by omitting from the item relating to form F.P. 53 the words “Take Child”, and substituting the words “take child to prevent removal from New Zealand”.

## 10 New forms substituted

- (1) Schedule 1 of the principal rules is amended by revoking form F.P. 52, and substituting the form F.P. 52 set out in Schedule 1 of these rules.
- (2) Schedule 1 of the principal rules is amended by revoking form F.P. 53, and substituting the form F.P. 53 set out in Schedule 2 of these rules.

## 11 Forms amended

Schedule 1 of the principal rules is amended by—

- (a) omitting from the heading of form F.P. 15 the expression “*Guardianship Act 1968*”, and substituting the expression “*Care of Children Act 2004*”;
- (b) omitting from the heading to form F.P. 16 the expression “GUARDIANSHIP ACT 1968”, and substituting the expression “Care of Children Act 2004”;
- (c) omitting from the heading to form F.P. 17 the expression “GUARDIANSHIP ACT 1968”, and substituting the expression “Care of Children Act 2004”;
- (d) omitting from the paragraph in the notes to form F.P. 17 headed “*Jurisdiction of Court*” the expression “*Guardianship Act 1968*”, and substituting the expression “*Care of Children Act 2004*”;
- (e) omitting from the heading of form F.P. 22 the expression “*Guardianship Act 1968*”, and substituting the expression “*Care of Children Act 2004*”;
- (f) omitting from the heading of form F.P. 23 the expression “*Guardianship Act 1968*”, and substituting the expression “*Care of Children Act 2004*”;

- (g) omitting from the heading of form F.P. 24 the expression “*Guardianship Act 1968*”, and substituting the expression “*Care of Children Act 2004*”:
  - (h) omitting from the heading of form F.P. 27 the expression “*Guardianship Act 1968*”, and substituting the expression “*Care of Children Act 2004*”:
  - (i) omitting from the heading of form F.P. 28 the expression “*Guardianship Act 1968*”, and substituting the expression “*Care of Children Act 2004*”:
  - (j) omitting from the heading of form F.P. 29 the expression “*Guardianship Act 1968*”, and substituting the expression “*Care of Children Act 2004*”:
  - (k) omitting from form F.P. 41 the words “The Superintendent of [*Name of penal institution*]”, and substituting the words “The Manager of [*name of prison*]”:
  - (l) omitting from form F.P. 41 the words “penal institution”, and substituting the word “prison”:
  - (m) omitting from form F.P. 41 the word “Superintendent,”, and substituting the word “Manager,”:
  - (n) omitting from form F.P. 42 the word “forefeit”, and substituting the word “forfeit”:
  - (o) omitting from form F.P. 43 the words “The Superintendent of [*Name of penal institution*]”, and substituting the words “The Manager of [*name of prison*]”.
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r 10(1)

**Schedule 1**

**New form F.P. 52 substituted in Schedule 1 of  
Family Proceedings Rules 1981**

r 11

**Form F.P. 52**

**Warrant to enforce role of providing day-to-day care for, or  
order for contact with, child**

*Sections 72 and 73, Care of Children Act 2004*

(General heading—Form F.P. 6)

**To every constable (or social worker) (or [full name]).**

I am satisfied on the application of [full name], of [address], [occupation], that he (or she) has the role of providing day-to-day care for (or is entitled under a parenting order or other order specified in section 73(1) of the Care of Children Act 2004 to have direct contact with) [full name], a child aged [specify] years.

I direct you to take the child (using reasonable force if necessary) and to deliver the child to [full name of applicant or of other person or authority to whom child is to be delivered on behalf of applicant], and to report to this Court when you have done so.

For the purpose of executing this warrant, you are authorised by section 75(1) of the Care of Children Act 2004 to enter and search any building, aircraft, ship, vehicle, premises, or place, with or without assistance, and by force if necessary.

You are required to have this warrant with you when executing it and to produce it on initial entry and, if requested, at any later time.

You must also comply with any other applicable requirements of section 75(2) of the Care of Children Act 2004.

.....  
Judge

.....  
Date

Form F.P. 52—*continued***Note***Arrest of person resisting execution of warrant*

Under section 79 of the Care of Children Act 2004, you commit an offence for which you may be sentenced to imprisonment if you knowingly resist or obstruct a person executing this warrant, or knowingly fail or refuse to afford a person of that kind immediate entrance to (all or a part of) any premises. Under section 315(2) of the Crimes Act 1961, a constable (and persons the constable calls to his or her assistance) may arrest and take into custody without a warrant a person whom the constable finds committing, or has good cause to suspect of having committed, an offence punishable by imprisonment.

*Use of a faxed copy of warrant*

If use of a faxed copy of this warrant is authorised by an authority to prevent delay in execution of the warrant, the authority must, under section 76 of the Care of Children Act 2004, write and sign a note on the front of the warrant stating—

- (a) the fact that a faxed copy of the warrant may be used for the purpose of executing the warrant; and
  - (b) the date and time at which the authorisation expires, which must be the close of the third day after the day on which the authorisation is granted.
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r 10(2)

**Schedule 2**  
**New form F.P. 53 substituted in Schedule 1 of**  
**Family Proceedings Rules 1981**

r 11

**Form F.P. 53**

**Warrant to take child to prevent removal from New Zealand**  
*Sections 77 and 118, Care of Children Act 2004*

(General heading—Form F.P. 6)

**To every constable (or social worker).**

I have reason to believe that [full name], a child aged [specify] years, is about to be taken out of New Zealand with intent to, or in circumstances where the taking of the child would be likely to,—

\* defeat the claim of [full name], of [address], [occupation], who has applied for (or is about to apply for) the role of providing day-to-day care for, or for an order for contact with, the child; or

\* prevent an order made in the [Court] at [place] on [date] (or registered under section 81 of the Care of Children Act 2004) about the role of providing day-to-day care for, or about contact with, the child, from being complied with.

The child is said to be in the care of [full name] of [address].

(\*There being no High Court Judge or District Court Judge or Family Court Judge available) I direct you to take the child (using reasonable force if necessary) and place the child in the care of some suitable person pending the order or further order of the Court having jurisdiction in the case.

When you have executed this warrant in accordance with the direction, you must advise this Court immediately of the name and address of the person with whom you have placed the child.

\*Delete if inapplicable.

.....  
Judge  
(or Registrar (not being  
a constable))



Form F.P. 53—*continued*

.....  
Date

**Note***Arrest of person resisting execution of warrant*

Under section 79 of the Care of Children Act 2004, it is an offence punishable by imprisonment if you knowingly resist or obstruct a person executing this warrant, or knowingly fail or refuse to afford a person of that kind immediate entrance to (all or a part of) any premises. Under section 315(2) of the Crimes Act 1961, a constable (and persons the constable calls to his or her assistance) may arrest and take into custody without a warrant a person whom the constable finds committing, or has good cause to suspect of having committed, an offence punishable by imprisonment.

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- (b) the date and time at which the authorisation expires, which must be the close of the third day after the day on which the authorisation is granted.

Diane Morcom,  
Clerk of the Executive Council.

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**Explanatory note**

*This note is not part of the rules, but is intended to indicate their general effect.*

These rules, which come into force on 1 July 2005, amend the Family Proceedings Rules 1981 (“the principal rules”). Most of the

amendments are to align the principal rules with the Care of Children Act 2004. Amendments for this purpose include—

- replacing references to provisions of the Guardianship Act 1968 with references to provisions of the Care of Children Act 2004;
- replacing references to “custody of a child” with references to “the role of providing day-to-day care for a child”;
- replacing references to “access to” a child with references to “contact with” a child.

Other amendments make changes to terminology used in the principal rules in accordance with the Corrections Act 2004. In particular, references to “penal institutions” and their “Superintendents” are replaced with references to “prisons” and their “managers”.

There is also an amendment correcting a typographical error.

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Issued under the authority of the Acts and Regulations Publication Act 1989.  
Date of notification in *Gazette*: 21 April 2005.  
These rules are administered in the Ministry of Justice.

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