

Update

Family Law Service

Service 203 — July 2021

Law reform

Review of adoption law

The government is currently undertaking a review of Aotearoa New Zealand's adoption laws which will be led by Te Tāhu o te Ture — Ministry of Justice working closely with Oranga Tamariki and other relevant agencies. Closing date for public submissions is 31 August 2021. See [6.701J] and Adoption Law Reform | New Zealand Ministry of Justice.

Review of surrogacy law

Te Aka Matua o te Ture — Law Commission is currently undertaking a review of surrogacy in Aotearoa New Zealand. This review will consider whether the current adoption process is the best process for intending parents to become legal parents. The Law Commission will hold formal public consultation in August 2021. See [6.701J] and Te Kōpū Whāngai: He Arotake | Review of Surrogacy (surrogacyreview.nz).

Proposed legislative amendments

Family Court (Supporting Children in Court) Legislation Bill

The Bill (323–2) was reported back from the Justice Committee on 19 May 2021; and had a second reading on 1 July 2021. See [FDR2.2.3(a)], [6.104H.03], [6.104I], [6.105], [6.123] and [6.123A] and [6.131C.01].

Legislative amendments

District Court Amendment Rules 2021 (LI 2021/80)

These Rules amended rr 12.2 and 19.67 and schs 2 and 4 of the District Court Rules 2014, effective 20 May 2021.

Human Assisted Reproductive Technology Amendment Order 2021 (LI 2021/67)

This Order amended cl 3 and sch of the Human Assisted Reproductive Technology Order 2005, effective 17 May 2021.

Taxation (Budget 2021 and Remedial Measures) Act 2021 (2021 No 19)

This Act amended s 134 and sch 1, part 4 of the Child Support Act 1991, effective 1 April 2021.

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The Index for *Family Law Service* has been updated. This Index is current to and includes Service 202.

Case commentary

Adoption — intercountry adoption — purpose of adoption — best interests of child

In *Norman v Attorney-General* [2021] NZCA 78 the Court of Appeal stated that “the [Adoption] Act is relevant where: “(a) the child cannot, or will not, be cared for by his or her own parents; and (b) the proposed adoption will provide the child with a permanent family life.” The Court further noted that if both limbs of the Adoption Act’s purpose are engaged, the next inquiry includes whether the proposed adoption is in the best interests and welfare of the child. See [6.701A], [6.701D], [6.710C] and [6.712C].

Care and protection — special guardianship — tikanga Māori — s 113A, Oranga Tamariki Act 1989

In *Chief Executive of Oranga Tamariki — Ministry for Children v BH* [2021] NZFC 210 Judge Otene provided a comprehensive analysis of special guardianship and whether it accorded with tikanga Māori. Her Honour declined to make special guardianship order. See [6.583E.02].

Care and protection — special guardianship — tikanga Māori — s 113A, Oranga Tamariki Act 1989

In *Re SP* [2021] NZFC 4090 Judge Southwick QC made special guardianship and additional guardianship orders. The Court also appointed the chief executive as an additional guardian for six months to complete the research commenced on the child’s whakapapa and to report back to the court. See [6.583E.02].

Change of names — full names

In *Fuller v Rush* [2019] NZFC 6119 Judge Burns decided that a two-year-old girl would have no middle names and a double-barreled surname (combining the mother and father’s surnames). See [6.404C].

Day to day care and contact — parental alienation — Court changed care arrangements

In *Watkins v Watkins* [2020] NZFC 9832 the 11-year-old alienated child was placed in her father’s day-to-day care on an interim basis. See [6.108C.02].

Family violence — protection order at time of sentencing — protection order in favour of child — s 123B, Sentencing Act 2002

In *King v Police* [2021] NZHC 1217 a mother had been convicted of assault against her partner and her daughter, aged 14. The sentencing Judge granted a protection order for the daughter under s 123B of the Sentencing Act 2002. The mother appealed against the protection order, arguing that there was no jurisdiction to grant one in favour of a child. Nation J, somewhat surprisingly, accepted the argument. See [7.612].

Family violence — temporary protection order — s 57A, Care of Children Act 2004

In *J v Family Court at Auckland* [2021] NZHC 831 the applicant applied for judicial review of a Family Court Judge making a temporary protection order under s 57A of the Care of Children Act 2004 and s 79 of the Family Violence Act 2018. The temporary order

was quashed in the High Court but the Family Court was directed to reassess whether to give notice of an intention to make a s 57A order. See [7.612A].

Family violence — discharge of protection order — s 110, Family Violence Act 2018

In *RH v AH* [2021] NZHC 957, the wife unsuccessfully sought discharge of a protection order made against her in favour of the husband and 20 year old daughter. Her application was only eight months after the protection order had been made final and, on appeal, Hinton J upheld the decision to strike out the application to discharge the protection order. See [7.626].

Family violence — costs

In *Harrison v Michelle* [2021] NZHC 979 the respondent unsuccessfully appealed a costs award against him. He withdrew his objection to an order after hearing the claimant's evidence. Edwards J upheld the costs award on the basis that the man could have withdrawn his defence earlier. Also, an uplift in the costs would have been awarded had the opposition to the order not been withdrawn. See [7.650.01].

Guardianship — removal of natural parent as guardian — s 29 of the Care of Children Act 2004

In *Durak v Barnes* [2021] NZFC 7287 the father was deprived of guardianship. He had made clear by his actions that he was unwilling to perform or exercise the duties, powers, rights and responsibilities of a guardian. See [6.204.01].

Guardianship — disputes between guardians — taking children overseas for holiday

In *Aslan v Huffman* [2020] NZFC 10288, Judge O'Dwyer allowed two children to take a holiday of four weeks to visit their mother in Spain. This would only occur after the New Zealand travel advisory declared it was safe to travel to Spain (or the children had been vaccinated for COVID-19). The children must travel through Hague Convention signatory countries and their passports must be held by the New Zealand Embassy in Madrid. See [6.206.03(a)].

Guardianship — disputes between guardians — vaccinations

In *McLaughlin v McLaughlin* [2019] NZFC 7206 because of the child's past autoimmune issues, the mother preferred the child to be vaccinated by an expert immunologist in Australia. The Judge ordered a specialised vaccination programme (and travel to Australia for that purpose). See [6.206.03(a)].

Guardianship of Court — vaccination

In *Chief Executive of Oranga Tamariki v WN* [2020] NZFC 11597 Oranga Tamariki had an interim custody order in place. The mother opposed her two children being vaccinated. The children were placed under guardianship of the Court for the purpose of immunisation, given it was in their best interests. See [6.314.06].

Hague Convention — return of child abducted to New Zealand — applicant consented to or acquiesced in the removal — s 106(1)(b)(ii), Care of Children Act 2004

In *Brighton v Archer* [2019] NZFC 5803 the acquiescence defence was made out. The applicant father unsuccessfully sought an order for the return of his child to Australia. Judge Hunt decided not to make a return order, despite the residual discretion. See [6.165.03].

Maintenance — reasonable needs — s 64, Family Proceedings Act 1980

In *Rainey v Kwok* [2021] NZCA 199 the Court of Appeal dealt with a case where the relationship lasted seven and a half years. The woman was from Hong Kong, spoke hardly any English. In assessing reasonable needs for quantum purposes, the Court held that they are not to be measured by the amount that a person had been forced to live on following the separation. In particular, they would not be limited to the level of a social security benefit, which the woman resorted to in the case. See [5.7], [5.8.02], [5.11] and [5.12.03].

Marriage — 17 year old man — s 18, Marriage Act 1955

In *Palamo v Sale* [2020] NZFC 11107 a 17 year old man successfully sought permission from the Family Court to marry his pregnant partner of two years because it was important to the couple and their families that they were married before the baby arrived. See [1.3].

Relocation — children's views

In *Molloy v Molloy* [2020] NZFC 11546 Judge Geoghegan concluded it would wrong not to attach significant weight to the intelligent and articulate children's views. The 15-year-old son was torn between relocating to the United States or not; whereas his two younger siblings (13 and 10) were fully and firmly supportive of relocation. The youngest two children were to relocate to the United States while the eldest son remained in New Zealand. See [6A.10] and [6A.13].

Relocation — too adult-focused

In *Bhatia v Bhatia* [2019] NZFC 6062 the father applied to relocate with his child to another location in New Zealand. The father was offered a rare senior position of employment. Judge Brown refused the relocation application. See [6A.12] and [6A.21].