



## **EXPLANATORY COMMENTARY FOR THE FAMILY RELATIONSHIPS BILL 2022**

### **OUTLINE OF PROVISIONS**

The following presents key parts and sections of the Family Relationships Bill 2022.

Section 1 defines the title of the Bill as the Family Relationships Bill 2022.

Section 2 explains when the provision of the Bill will come into force if it is enacted.

### **Part 1 - Preliminary matters**

Section 3 stipulates that the purpose of the Bill is to:

(a) to consolidate and simplify the law relating to marriage, and to provide for —

- (i) no-fault divorce; and
- (ii) the recognition of de facto relationships; and
- (iii) a default position of a 50:50 division of assets when a marriage or de facto relationship ends; and
- (iv) various forms of financial support to spouses and partners;

(b) to confirm that the best interests of the child are the paramount consideration in all matters relating to parenting and the care and protection of children;

(c) to confirm the responsibilities of parents to their children, and to update the law relating to adoption and guardianship;

(d) to provide the Secretary of Justice with powers to arrange for the care of children in need of care and protection;

(e) to provide a mechanism for the ongoing care of elderly parents whose children do not provide the care and support they need;

(f) to provide effective mechanisms to protect the victims of domestic violence.

Section 4 states that the Bill is proposed to bind the Government.

Section 5 is the interpretation section. It sets out the meanings of the key terms used in the Bill. It is noted that the definition of a child is any person under the age of 18.

## **Part 2 - Relationships between adults**

### Subpart 1 - Marriage

Section 6 stipulates the requirements that the applicants for marriage must comply with when applying. The applicants being a man and a woman, and the marriage must be solemnised before 2 witnesses.

Section 7 stipulates the capacity of persons seeking to be married and determines who a person may not marry as per Schedule 1 of the Act.

#### *How to get married*

Section 8 determines the formalities that must be undertaken before marriage

Section 9 determines that the solemnisation must be before a marriage celebrant and witnesses.

Section 10 requires that a record of the marriage must be made in the in the marriage register

Section 11 requires that the Registrar of Marriages is to keep and maintain the marriage register in which all marriages are recorded.

Section 12 provides that the Registrar of Marriages has the discretion to waive any procedural requirement

Section 13 defines the offences that may be committed by a party or parties to marriage being either a false statement or wilful misrepresentation.

Section 14 determines the offences that may be committed by a marriage celebrant or supposed marriage celebrant.

Section 15 determines that Cabinet is authorised to appoint marriage celebrants

Section 16 determines that the legal status of married persons does not confer on either party any rights to or in respect of the property of the other party, except in respect of intestate succession or will it affect the domicile of either party.

#### *How marriages end*

Section 17 determines who may apply for a divorce and stipulates the period of time (12 months) that the parties are required to be separated before they can file an application to divorce. No party needs to be at fault in order to provide grounds for divorce.

Section 18 determines the grounds by which a marriage may be declared void, in circumstances where the parties did not meet the requirements as provided in section 6 and if either or both of the parties did not have the capacity to marry.

## Subpart 2 - De facto relationships

Section 19 defines a De facto relationship being a relationship between a man and a woman both at least 18 years of age who cohabit in a relationship in the nature of a marriage.

Section 20 determines when a De facto relationship has ended.

## Subpart 3 – Property and financial support

### *Division of property*

Section 21 defines the property of the relationship.

Section 22 determines that relationship property will be divided on a 50/50 basis unless the parties agree or is determined by the court.

Section 23 provides how the court may determine how relationship property may be divided.

Section 24 stipulates that the right of either party to Niuean land may not be affected by a determination of the court however the court may take these rights into account when determining a fair division of the relationship property.

### *Domestic support*

Section 25 determines the nature of domestic support which is when one of the parties to the marriage or de facto relationship requires material support from the other.

Section 26 determines who may apply for domestic support.

Section 27 provides the court with the authority to make determinations in regard to domestic support orders.

Section 28 provides that domestic support orders may be discharged, suspended, varied or expire.

Section 29 provides for the measures by which domestic support orders may be enforced and determines additional penalties that may apply for non-compliance.

## **Part 3 -Children and parents**

Section 30 determines that the purpose of this Part is to —

- a) to promote the welfare and best interests of children, and facilitate their development, by providing for appropriate arrangements to be in place for their care; and
- b) to recognise certain rights of the child; and
- c) to ensure that children receive adequate and proper parenting to help them achieve their full potential; and
- d) to ensure that parents fulfil their duties and meet their responsibilities concerning the care, welfare, development, and financial support of their children; and

- e) to provide for the care of elderly parents whose children do not provide adequate care and support for them.
- Section 31 determines what the court must take into consideration when determining the best interests of the child
- Section 32 provides that in determining the relationship of a child to his/her parents that it is irrelevant whether his or her parents were married or not.
- Section 33 determines who may give consent to the treatment of a child.

#### Subpart 1- Parents

- Section 34 determines that the parents of a child are primarily responsible for that child unless subject to the provisions of this Act and an order of the Court.
- Section 35 determines that the parents of a child have a duty to maintain a child unless the court determines otherwise.

#### *Parentage*

- Section 36 establishes a presumption of who the father of the child is determined and provides for an exception to this presumption on the basis of a paternity test.
- Section 37 determines the manner that the court may take in determining applications to determine the parentage of a child.

#### Subpart 2 - Parenting

- Section 38 that parents are required as far as is possible in the raising of their children must wherever possible, seek agreement as to how they propose to care for the child/children and exercise their parental rights.

#### *Parenting plans*

- Section 39 determines the nature of a parenting plan and what the parenting plan must entail.
- Section 40 that a parenting plan may be registered with the court
- Section 41 that a registered parenting plan may be discharged or varied by the court or expire.

#### *Parenting orders*

- Section 42 determines the nature of a parenting order which will primarily establish who has the day-to-day care of the child, and when and where, who (if anyone) the child may, or may not, have contact with, and any restrictions or conditions on contact and allocate parental responsibilities, including financial support, for the child and additional matters that the court may address
- Section 43 determines who may apply to the court for a parenting order

- Section 44 allows the court to make parenting orders whether of its own volition or upon application requiring that the best interest of the child remains paramount.
- Section 45 allows for the parties to a parenting order to make application to the court for directions on major long-term issues in relation to the child.
- Section 46 determines that the court may give directions on the long-term issues.
- Section 47 provides that a parenting order may be discharged or varied by the court or expire.
- Section 48 make provision for the enforcement of a parenting order for non-compliance.

#### Subpart 3- Financial support orders

##### *Child maintenance*

- Section 49 determines the nature of a child maintenance order
- Section 50 determines who may apply for a child maintenance order.
- Section 51 determines that the court may make child maintenance orders if satisfied that it is reasonable to do so having regard to—  
 the proper needs of the child; and  
 the type and extent of the parental responsibilities that the intended recipient is exercising; and  
 the resources of the person from whom maintenance is sought.
- Section 52 provides that a child maintenance order may be discharged, suspended, varied or expire.
- Section 53 makes provision for the enforcement of a child maintenance order.

##### *Birth expenses*

- Section 54 makes provision for an application to the court to require the father of a child to contribute to the expenses incurred by the mother pertaining to the birth of the child.

#### Subpart 4 - Guardians

- Section 55 determines the nature of a guardianship order
- Section 56 determines who may apply for a guardianship order
- Section 57 provides that the court has jurisdiction to make guardianship orders
- Section 58 provides that a guardianship order may be discharged, varied by the court or expire.
- Section 59 makes provisions for situations where testamentary guardians have been nominated by a parent in order to exercise parental responsibilities and maintenance of the child.

The testamentary guardian of a child has all the parental responsibilities of a guardian appointed under a guardianship order and the duty to maintain the child.

#### Subpart 5 – Preventing removal of child from Niue

- Section 60 determines the process that may be undertaken to prevent the removal of a child from Niue.
- Section 61 determines the penalty for attempting or removing a child from Niue.

#### Subpart – 6 Adoption

- Section 62 determines who may adopt a child in Niue and the minimum age of the applicant to adopt a child.
- Section 63 provides the court with the jurisdiction to make adoption orders subject to the specific criteria listed.
- Section 64 provides that applications to adopt requires that the consent of the mother is a primary requirement, this may also include the consent of the father if he is listed on the birth certificate of the child.
- Section 65 provides that consent to the adoption of newly born infant may be revoked if made within 30 days of birth of child.
- Section 66 determines the effect of an adoption order.
- Section 67 provides that throughout the lifetime of the adoptive parent the child may not be adopted again unless the adoption is by the de facto partner or spouse of adoptive parent.
- Section 68 provides that an adoption order may be cancelled in limited situations.
- Section 69 determines that there is a prohibition of any payment in consideration of the adoption of a child.
- Section 70 allows for adoption records to be inspected by the following:
- a) any person who needs to inspect those records for some purpose in connection with the administration of an estate or a trust of which that person is executor, administrator, or trustee;
  - b) any person who was the subject of the adoption to which those records relate and their natural and adopted parents;
  - c) the Registrar;
  - d) the Secretary.
- Section 71 provides that adoption by Niuean custom remains invalid.
- Section 72 provides that existing adoptions made under the jurisdiction of the Niue Amendment Act (No 2) 1968 are not affected and remain valid.

## Subpart 7 – Care of elderly parents

- Section 73 determines the nature of a care of parent order
- Section 74 determines who may apply for a care of parent order
- Section 75 provides the court with the jurisdiction to make care of parent orders subject to certain criteria and subject to specific requirements.
- Section 76 provides that a care of parent order may be discharged, varied or expire.

## **Part 4**

### **Children in need of care and protection**

- Section 77 determines that the purpose of this part is:
- a) to affirm that the best interests of a child, both in childhood and later life, are the paramount consideration in all matters relating to the care and protection of the child;
  - b) to assist parents and guardians to exercise their responsibilities to prevent children from experiencing harm, abuse, neglect, or deprivation;
  - c) to provide for the care and protection of children who have experienced harm, abuse, neglect, or deprivation;
  - d) to ensure that a child is removed from the child's home only if there is a serious risk of harm to the child;
  - e) to ensure that, if a child is removed from the child's home, the child lives, wherever practicable, in an appropriate family-like setting in which the child's links with family members and other relevant persons are maintained.
- Section 78 determines when a child is in need of care and protection.
- Section 79 determines the actions that must be taken by the Secretary with respect to a child in need of care and protection.
- Section 80 determines that when a child is placed into the care of the Department that the Secretary assumes the parental responsibility for that child and must take steps to ensure the care and wellbeing of the child.
- Section 81 provides that carers may be appointed by the Secretary to provide for the day-to-day care of a child who has been placed into the care of the Department.
- Section 82 determines that a person who believes a child is in need of care and protection may report this to the Secretary.

However, the section also imposes a duty to report to the Secretary if a child is in need of care and protection, by certain government officials such as police officers, teachers at a school, doctors and nurses, as soon as practicable.

Section 83	provides that the court upon the application of the Secretary or a Police Officer may grant a safety warrant for a child in need of care and protection. The safety warrant will place the child into the care of the Department.
Section 84	A Police officer who believes on reasonable grounds believes that it is critically necessary may enter, search, remove or detain a child from any residence, building, vehicle or premises without a warrant.
Section 85	If the Secretary is satisfied after investigation (whether following a notification under section 82 or otherwise) that there are reasonable grounds for believing a child is in need of care and protection, but that the need is not sufficiently urgent to warrant an application for a safety warrant under section 83.  The Secretary must— <ul style="list-style-type: none"> <li>(a) convene a family group conference with the parents or guardians of the child, and any others recently responsible for the care of the child, for the purpose of consulting them— <ul style="list-style-type: none"> <li>(i) on plans for the care and protection of the child; and</li> <li>(ii) on the development, if appropriate, of a temporary care arrangement; or</li> </ul> </li> <li>(b) apply to the court for a care order.</li> </ul>
	<i>Temporary care arrangement</i>
Section 86	determines the nature of a temporary care arrangement, where a child may be placed into the care of the Department up to a period of 3 months
Section 87	determines the process and the criteria that is applied relating to the care of a child who is subject to a temporary care arrangement.
	<i>Care orders</i>
Section 88	determines the nature of a care order which is an order that relates to the care and protection of a child on a long-term basis which may end either when the child turns 18 or at a time determined by the court.
Section 89	determines that the Secretary may apply for a care order and stipulates the requirements that apply in order for the court to make its determination as to the granting of a care order.
Section 90	determines that the court may grant care orders.
Section 91	provides that a care order may be discharged, varied or expire.
Section 92	determines who may have access to any reports that have been compiled in relation to a child upon whom a care order has been placed.

- Section 93 provides that the court may direct that all or part of a report compiled in relation to a child to whom a care order has been issued must remain confidential.
- Section 94 determines that the Department must pay the fees and expenses of any person who provides a report under section 89(2).

## **Part 5**

### **Domestic violence**

- Section 95 determines the definition of a domestic relationship
- Section 96 determines the definition of domestic violence
- Section 97 determines the special obligation that is placed on police when attending incidents of domestic violence.

#### *Police safety orders*

- Section 98 defines the nature of a police safety order which is an order issued by a police officer against a person, in order to provide immediate short-term safety from domestic violence to another person.
- Section 99 provides that a police officer may issue a police safety order if the police officer has reasonable grounds to believe that person B who is in a domestic relationship with person A is at risk of domestic violence from person A
- Section 100 determines that a police safety order must be served, or notice given to the perpetrator that a police safety order has been issued.
- Section 101 determines the effect of a police safety order.
- Section 102 determines what the police may do in order to enforce a police safety order.

#### *Protection orders*

- Section 103 determines the nature of a protection order which the court may issue for the protection of a victim of domestic violence.
- Section 104 determines that an applicant may apply for a temporary or a full protection order.
- Section 105 determines that the court may make temporary protection orders
- Section 106 determines that the court may make full protection orders
- Section 107 determines the maximum period for a temporary protection order (30 days) or a full protection order (1 year) may apply.
- Section 108 requires that a protection order must be served on the respondent and that a copy submitted to the Chief of Police.

- Section 109 provides that a protection order may be discharged, varied or expire.
- Section 110 determines the steps that may be taken to enforce a protection order or registered foreign protection order and the penalties for repeat offending.
- Section 111 Registration of foreign protection orders
- Section 112 provides that the court may grant compensation to the victim of domestic violence from the offender.
- Section 113 determines what the court must do upon receipt of an application for a protection order
- Section 114 determines that applications for protection orders must be in a closed hearing, that the applicant may have a support person to accompany them and that questions of fact must be determined on the balance of probability.

*Procedures under this Part*

- Section 113 The process the court must follow if an application for a full protection order is made.
- Section 114 procedure that the court must follow when hearing an application for a full protection order.
- Section 115 the procedure that the court must follow if the complainant wishes to withdraw complaint or application for a full protection order.
- Section 116 the Court may order that any proceeding undertaken under this Part may not be published
- Section 117 determines that no fees or charges are payable by any person for making an application for a protection order or police safety order.

*Offence*

- Section 118 determines that the assault on a person in a domestic relationship is an offence punishable by a penalty of imprisonment up to a maximum term of 2 years.

**Part 6**

**Miscellaneous provisions**

- Section 119 determines the jurisdiction of the Court exercising its civil jurisdiction in relation to the provisions of this act.
- Section 120 determines that the court may receive any evidence that the court regards as suitable, whether or not the evidence is otherwise admissible in court.
- Section 121 that any decision of the court may be appealed except for an order for a divorce and an order for an adoption.
- Section 122 that if a child in the proceedings is of an age that he or she is too young to understand the nature of those proceedings the court may appoint a representative for the child who is to act in the best interests of the child.

- Section 123 that the court may determine how the evidence of a child may be taken for the court.
- Section 124 that the court may conduct hearings in private and may exclude any person from those hearings.
- Section 125 provides if any affected party is present when the court makes an order, the Registrar must explain the nature and effect of the order, and of non-compliance with the order, by informing the party about the order.
- Section 126 provides that Regulations may be made by Cabinet in relation to any aspect of the Act.
- Section 127 provides that any pre-existing orders that preceded the enactment of this Act will continue to have effect.
- Section 128 provides that specific provisions within certain enactments i.e Niue Act 1966 and the General Laws Act 1968 that are not listed in Schedule 2, are repealed.

### **Schedule 1**

#### **Forbidden marriages**

Determines who, a person may not marry

### **Schedule 2**

#### **Repealed enactments**

Determines the provisions in other legislation that will be repealed due to the enactment of the Family Relationships Act 2022