
Covid 19 Protocol for the Guardianship of Unaccompanied or Separated Minors subject to evacuation from Afghanistan



Principal Family Court Judge Jacquelyn Moran
31 January 2022

What is the concern?

There are a number of unaccompanied¹ or separated² children who entered New Zealand on evacuation flights from Afghanistan as a result of the Taliban takeover of Kabul in August 2021.

There are likely to be further children who are yet to arrive in New Zealand, or are yet to be identified from the original group of arrivals.

The majority of these children will arrive in Auckland, and will be identified as vulnerable during the evacuation and immigration process.

The familial links for these children are uncertain. What is certain is that they need the immediate scaffolding of court orders to ensure their medical needs are addressed, and they have access to education, care and support.

New Zealand is obliged to ensure the welfare and best interests of these children are promoted to fulfil its obligations under the United Nations Convention on the Rights of the Child.

What can we do to help?

The Family Court will create a streamlined process for this cohort of children, to ensure that any application filed under the Care of Children Act 2004 or the Oranga Tamariki Act 1989 is considered without undue delay and process.

¹ Definition of an ‘unaccompanied child’ is a child who arrives in New Zealand with no parent, legal guardian or family member.

² Definition of a ‘separated child’ is a child who have been separated from their parent/s and arrive in New Zealand in the care of extended family members.

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The Family Court Rules permit applications to be filed on a without notice basis electronically. A Family Court Judge can make directions to expedite an application filed on notice.

With the use of AVL/VMR and electronic filing, together with a streamlined registry process and the use of specific judges to oversee this work, the applications can be determined promptly to meet the child's immediate needs.

How will this be implemented?

This protocol will only apply to cases where an unaccompanied or separated Afghan child or young person has arrived in New Zealand as a result of the New Zealand government humanitarian response to the Taliban takeover of Afghanistan.

Oranga Tamariki will work with the Ministry for Business, Innovation and Employment (Immigration New Zealand) to identify these children and young people.

Oranga Tamariki may apply for an order under 31(1)(a) of the Care of Children Act 2004 to place the child under the guardianship of the Family Court. Oranga Tamariki will indicate who should be appointed as the Court's agent, either the Chief Executive of Oranga Tamariki or another named person or agency. Oranga Tamariki will indicate the general and specific powers required to meet the child's immediate needs.

Alternatively, Oranga Tamariki may support a family member or person accompanying the child to make an application to the Court for parenting or guardianship orders.

Review

The protocol will be in operation until the end of 2022.

The protocol will be reviewed prior to its end date to assess its functioning and ongoing need.

Steps needed to implement

1. One registry and one Family Court Judge to oversee all Afghanistan evacuation unaccompanied and separated minor applications and hearings from, namely:
 - a. Waitakere Registry (Claire O'Connor/Lauren Stephenson) and Judge Pidwell.
2. A back up Judge will be available as needed, namely:
 - a. Judge Wagner
3. One Family Court Co-ordinator will be assigned to the protocol, namely:
 - a. Morgana Govindan (back up Natalie Pham).
4. A list of culturally appropriate Lawyer for Child will be identified to undertake this work from the pool of lawyers available in the Auckland region.
5. All applications to be filed directly with Waitakere registry, with cover letter highlighting the application falls within the ambit of this protocol. Electronic filing is permitted.

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6. If any application for an Afghan unaccompanied or separated minor is filed elsewhere, registrar to immediately transfer to Waitakere court under Rule 186.
7. Rule 186 application to be filed with application seeking proceedings to be dealt with in the Waitakere court, if the child is outside the Auckland region.
8. A without notice application is not to be placed on the National eDuty platform.
9. The registrar is to immediately refer the application to the protocol Judge to consider:
 - a. Rule 186 application (if filed)
 - b. Appointment of lawyer for child
 - c. Service directions if required
 - d. If without notice, interim determination
 - e. Directions for hearing or conference
10. Priority 30-minute AVL or VMR hearing or conference to be scheduled within 2 weeks before Judge Pidwell (or Judge Wagner as back up) or as directed
11. Afghan interpreter to be available as required.
12. Protocol to be sent to all Family Court managers to ensure understanding and compliance.
13. Schedulers for Auckland region to be notified of requirement for priority AVL/VMR hearings.