

Chair
Cabinet

PAPER C – VULNERABLE CHILDREN'S BILL: ADDITIONAL AMENDMENTS TO LEGISLATION TO ASSIST CHILDREN IN CARE (FAMILY COURT APPEAL PROCESS FOR HOME FOR LIFE CAREGIVERS)

Proposal

- 1 Cabinet has already approved a number of changes that will greatly improve the experiences of children and young people in care and their caregiver(s), including introducing new guardianship provisions for children leaving care on the Home for Life programme. I now want to streamline the support processes for these children and their caregivers to focus on the reasonable needs of the child and enhance efficient and consistent decision-making.
- 2 To achieve this, I propose to amend the Children, Young Persons, and Their Families Act 1989 (CYPF Act) to establish an appeal process in the Family Court for Home for Life caregivers who consider that the Chief Executive of the Ministry of Social Development (MSD) has wrongly or unreasonably declined to provide support under the new obligation already agreed [CAB Min (13) 13/4 refers]. This, alongside the new guardianship provisions, would provide an alternative to services orders, which would no longer be available for Home for Life caregivers.

Executive Summary

- 3 On 22 April 2013, Cabinet agreed to the introduction of new guardianship provisions to provide increased security for children and young people who leave out-of-home care to live permanently with Home for Life caregivers¹. The new guardianship provisions include specifying which guardianship rights will be shared with existing guardians, and which will be held only by the new guardian(s) [CAB Min (13) 13/4 refers].
- 4 Cabinet also agreed at that time to amend the CYPF Act to place an obligation on the Chief Executive of MSD to provide support to Home for Life caregivers that:
 - cannot be met by existing sources of government support
 - is over and above what it is reasonable to expect the caregiver to fund, and
 - arises as a result of the child's care and protection needs or as a result of extraordinary health, education or developmental needs [CAB Min (13) 13/4 refers].
- 5 The intention of placing the above obligation on the Chief Executive is to provide Home for Life caregivers with the confidence that they will receive reasonable support from Child, Youth and Family without needing to seek this support through services orders in the Family Court.
- 6 Following further consultation between MSD officials and the Principal Family Court Judge, Judge Ryan, I believe we can go further in supporting our Home for Life children and their caregivers.

¹ Home for Life aims to provide a secure and safe home for our most vulnerable children and young people

- 7 I am proposing to:
- introduce an appeal process in the Family Court for Home for Life caregivers who consider that the Chief Executive has wrongly or unreasonably declined to provide support under this obligation
 - further clarify the circumstances in which the Chief Executive is obliged to provide support, including by requiring the Chief Executive to comply with any directions given to the Chief Executive in writing by the Minister for Social Development and published in the Gazette.
- 8 The appeal process, and the obligation on the Chief Executive of MSD to provide reasonable support, would replace the need to use services orders to provide support to Home for Life caregivers. Services orders would, therefore, no longer be available for caregivers using the new guardianship orders under the CYPF Act or parenting and additional guardianship orders under the Care of Children Act 2004.
- 9 These new processes should result in more streamlined, efficient and consistent decision-making around support for Home for Life caregivers, which will help to ensure stability and security for children on the Home for Life programme.

Background

- 10 In September 2012, Cabinet agreed that the White Paper for Vulnerable Children (the White Paper) signal the Government's intention to introduce a Vulnerable Children's Bill to provide for a number of legislative changes to address child abuse and neglect in New Zealand [CAB Min (12) 34/9 refers].
- 11 On 22 April 2013, Cabinet agreed to a suite of proposals to be included in the Vulnerable Children's Bill, including proposals for new guardianship provisions to provide increased security for children who leave out-of-home care to live permanently with Home for Life caregivers [CAB Min (13) 13/4 refers].
- 12 The Home for Life programme offers children² a stable environment in which to grow up, and provides relationships for life which are permanent, secure and nurturing. The new guardianship provisions will allow guardianship rights to be limited to the extent necessary to achieve stability and security of care for the child. They will enable the Court to specify which guardianship rights will be shared with existing guardians, and which will be held only by the new guardians.

New obligation on the Chief Executive of the Ministry of Social Development

- 13 As part of these new guardianship provisions, Cabinet also agreed to amend the CYPF Act to place an obligation on the Chief Executive of MSD to provide support to Home for Life caregivers that:
- cannot be met by existing sources of government support
 - is over and above what it is reasonable to expect the caregiver to fund, and
 - arises as a result of the child's care and protection needs or as a result of extraordinary health, education or developmental needs [CAB Min (13) 13/4 refers].
- 14 This new obligation was introduced as an additional measure to services orders, which provide another pathway for accessing support from Child, Youth and Family. Services orders

² The term 'children' refers to children and young people.

enable Home for Life caregivers to apply under section 86 of the CYPF Act to the Family Court for support, instead of seeking support directly from the Chief Executive of MSD. The relevant Section of the CYPF Act is provided in Annex One.

- 15 The intention of placing the above obligation on the Chief Executive of MSD is to provide Home for Life caregivers with the confidence that they will receive reasonable support from Child, Youth and Family without the need for services orders, and the disruption caused through the required involvement in an annual, or six monthly, court review.

Proposal for introducing an appeal process in the Family Court

- 16 I want to go further in supporting our Home for Life children and their caregivers. Following further discussion between MSD officials and Principal Family Court Judge, Judge Ryan, I propose creating a new appeals process that would enable any Home for Life caregiver who considers that the Chief Executive of MSD has wrongly or unreasonably declined support under the obligation to appeal that decision to the Family Court, where timely resolution using internal complaints mechanisms has been unsuccessful.
- 17 I further propose that an additional two criteria are added to the set of criteria which apply to the Chief Executive's obligation to provide support (referred to in paragraph 12 above). These are that the support:
 - is unlikely to be provided otherwise
 - is reasonable to be provided by the Chief Executive.
- 18 If an appeal is successful, the Family Court would be given the power to order the Chief Executive of MSD to provide the particular support that had been declined, as long as the need for support meets the criteria specified in paragraphs 12 and 16 above.
- 19 To ensure that the Chief Executive of MSD, and those with delegated authority, exercise consistent and reasonable decision-making, the legislation will require the Chief Executive of the MSD to comply with any general or specific decisions given to the Chief Executive in writing by the Minister for Social Development and published in the Gazette in the exercise of the decision as to whether to provide support.
- 20 The appeal process, and the obligation on the Chief Executive of MSD to provide reasonable support, would replace the need to use services orders to provide support to Home for Life caregivers. Services orders would, therefore, no longer be available for caregivers using the new guardianship orders under the CYPF Act or parenting and additional guardianship orders under the Care of Children Act 2004.

Rationale

- 21 Replacing access to services orders for Home for Life caregivers with the ability to appeal a decision made by the Chief Executive of MSD under the new obligation will result in more streamlined, efficient and consistent decision-making around support for children on the Home for Life programme and their caregivers. Most importantly, it will help ensure the success of Home for Life by giving caregivers an assurance that the process by which decisions are made around the exercise of the new obligation is fair, robust and accountable.
- 22 Currently, caregivers are often advised by their legal representatives to apply to the Family Court for a services order rather than seeking support directly from Child, Youth and Family. This reflects a view in some areas that support has not always been forthcoming from Child, Youth and Family.

- 23 The preference for accessing support via services orders has seen an increase in the use of these orders by caregivers in recent years. Services orders are often made on a contingency basis rather than to address known needs, as some needs may not manifest until later in the child's life. In addition, services orders are often used for costs that a parent or caregiver would be reasonably expected to meet, for example, music lessons or clothing. This means that scarce resources do not always go towards meeting the most serious needs of our most vulnerable children.
- 24 As services orders require regular court reviews, they are resource intensive for the social worker and the court, and require caregivers to have input into reports and regularly go back to court.
- 25 The new processes will:
- give caregivers the confidence that they will be given support that is reasonable for them to expect, without having to use potentially disruptive and destabilising ongoing court processes as the primary means of gaining reasonable support
 - lead to more consistent and better targeted support for children on the Home for Life programme and their caregivers by Child, Youth and Family
 - provide for more efficient use of Child, Youth and Family and Family Court resources
 - provide Child, Youth and Family with an opportunity to better exercise its responsibilities under the CYPF Act, by encouraging managers to give meaningful consideration to reasonable requests for support in order to avoid having their decision appealed.
- 26 A direction from the Minister for Social Development would support the proper and consistent exercise of this function. The need for caregivers to have pursued internal review processes before having recourse to the appeal will also reduce the likelihood of cases progressing to Family Court appeals.
- 27 Child, Youth and Family will make changes to its practice to support these provisions. I also note that, as is currently the case, social work support will continue to be available if required by caregivers, for example support in accessing other government services.

Consultation

- 28 The following agencies have been consulted: the Ministries of Justice, Health, Education, and Business, Innovation and Employment (MBIE), New Zealand Police, Te Puni Kōkiri and Treasury. The Department of the Prime Minister and Cabinet has been informed. We have also consulted with the Principal Family Court Judge who is supportive of these proposals as they should lead to more streamlined, efficient and consistent decisions.

Human rights implications

- 33 There are no apparent inconsistencies with the New Zealand Bill of Rights Act 1990 in relation to the proposed amendments.
- 34 These proposals will help to increase New Zealand's alignment with the United Nations Convention on the Rights of the Child. In particular, they will help to progress the recommendation of the Committee on the Rights of the Child that New Zealand maintains a focus on the child during legal proceedings. Under these proposals, the service level for a child in the Home for Life placement remains the same and may be more consistently applied in some areas. However, the process is more efficient for caregivers, and should therefore enhance the stability of Home for Life placements.

Legislative implications

- 35 The proposals in this paper will be included in the Vulnerable Children's Bill, which is proposed for introduction in August 2013.
- 36 Drafting instructions will be issued to the Parliamentary Counsel Office based on Cabinet decisions. I am also seeking authorisation to make any minor technical and administrative changes required to finalise draft legislation, in consultation with other Ministers as appropriate. Any substantive policy decisions required to finalise draft legislation for inclusion in the Vulnerable Children's Bill will be submitted to Cabinet for decisions.

Regulatory impact analysis

Regulatory impact analysis requirements

- 37 The regulatory impact analysis requirements apply to the proposals in this paper. A Regulatory Impact Statement (RIS) has been prepared for this paper and is attached.

Quality of the impact analysis

- 38 A Principal Advisor from within MSD, not otherwise involved in the preparation of this Regulatory Impact Statement (RIS), has reviewed the RIS and advised that the information and analysis summarised, and associated supporting material, meets the quality assurance criteria.

Consistency with Government Statement on Regulation

- 39 I have considered the analysis and advice of officials, as summarised in the attached RIS and I am satisfied that, aside from the risks, uncertainties and caveats already noted in this Cabinet paper, the regulatory proposals recommended in this paper:
 - are required in the public interest

- will deliver the highest net benefits of the practical options available, and
- are consistent with our commitments in the Government statement "Better Regulation, Less Regulation".

Gender implications

40 There are no specific gender implications of the proposals in this paper.

Disability perspective

41 Although the focus of the White Paper was not on children with disabilities, disabled children who require attention under the CYPF Act will come within the definition of vulnerable children in the White Paper.

Publicity

42 Public announcements about the introduction of the Vulnerable Children's Bill will be co-ordinated by the Office of the Minister for Social Development.

Recommendations

43 It is recommended that Cabinet:

- 1 **note** that Cabinet agreed that the White Paper for Vulnerable Children signal the Government's intention to introduce a Vulnerable Children's Bill to provide for a number of legislative changes to address child abuse and neglect in New Zealand [CAB Min (12) 34/9 refers]
- 2 **note** that on 22 April 2013, Cabinet agreed to the introduction of new guardianship provisions to provide increased security for children who leave out-of-home care to live permanently with Home for Life caregivers [CAB Min (13) 13/4 refers]
- 3 **note** that on 22 April 2013, Cabinet also agreed to amend the Children, Young Persons, and Their Families Act 1989 and place an obligation on the Chief Executive of the Ministry of Social Development to provide support to Home for Life caregivers that:
 - 3.1 cannot be met by existing sources of government support
 - 3.2 is over and above what it is reasonable to expect the caregiver to fund, and
 - 3.3 arises as a result of the child's care and protection needs or as a result of extraordinary health, education or developmental needs [CAB Min (13) 13/4 refers]
- 4 **agree** to amend the Children, Young Persons, and Their Families Act 1989 to include, in addition to the criteria noted in recommendation 3, the criteria that the financial support:
 - 4.1 is unlikely to be provided otherwise
 - 4.2 is reasonable to be provided by the Chief Executive
- 5 **agree** to establish an appeal process in the Family Court for Home for Life caregivers who consider that the Chief Executive of the Ministry of Social Development has wrongly or unreasonably declined to provide support under the obligation referred to in

recommendations 3 and 4, where timely resolution using internal complaints mechanisms has been unsuccessful

- 6 **agree** that services orders will no longer be available for Home for Life caregivers who are granted the new guardianship orders under the Children, Young Persons, and Their Families Act 1989 or parenting and additional guardianship orders under the Care of Children Act 2004
- 7 **agree** that the Chief Executive of the Ministry of Social Development must comply with any general or specific directions given to the Chief Executive in writing by the Minister for Social Development and published in the Gazette in the exercise of the decision as to whether to provide support



- 9 **invite** the Minister for Social Development to issue drafting instructions to the Parliamentary Counsel Office to draft sections for inclusion in the Vulnerable Children's Bill, to give effect to the decisions in the recommendations in this paper
- 10 **authorise** the Minister for Social Development to make any minor technical and administrative changes required to finalise draft legislation giving effect to the proposals in this paper, in keeping with the overall policy aims of the proposals, in consultation with other Ministers as appropriate
- 11 **note** that any substantive policy decisions required to finalise draft legislation for inclusion in the Vulnerable Children's Bill will be submitted to Cabinet for decisions.

Hon Paula Bennett
Chair, Ministerial Oversight Group

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Annex One - Children, Young Persons, and Their Families Act 1989

Section 86 Services orders

- (1) Where the court makes a declaration under section 67 in relation to a child or young person, it may —
- (a) make an order directing the Chief Executive or any other person or organisation named in the order to provide such services and assistance as may be specified in the order for such period and on such terms and conditions as may be specified to a parent or guardian or other person having the care of the child or young person:
 - (b) make an order directing the Chief Executive or any other person or organisation named in the order to provide such services and assistance as may be specified in the order for such period and on such terms and conditions as may be specified to the child or young person.
- (2) The court shall not make an order under subsection (1) unless the Chief Executive (where the order is to be directed to the Chief Executive) or the person or organisation that would be required to provide services and assistance pursuant to the order (in any other case)—
- (a) is given notice of the court's intention to consider making the order; and
 - (b) is given an opportunity to appear and be heard by the court before the order is made; and
 - (c) subject to subsection (3), consents to the making of the order.
- (3) An order directing the Chief Executive to provide services and assistance may be made under this section without the consent of the Chief Executive, but only if the court, after having regard to any reasons advanced on behalf of the Chief Executive as to why the order should not be made, is satisfied —
- (a) that requiring the Chief Executive to provide those services and assistance is not clearly impracticable; and
 - (b) that the child or young person in respect of whom the court proposes to make an order under this section is in the care of a person or organisation clearly consistently with the principles set out in sections 5, 6, and 13.