

Chair  
Cabinet

## **VULNERABLE CHILDREN'S BILL: OVERVIEW PAPER**

### **Proposal**

- 1 This paper provides an overview of two Cabinet papers seeking agreement on final policy proposals for inclusion in the Vulnerable Children's Bill, to address child abuse and neglect in New Zealand. These proposals will allow us to give effect to the reforms in the White Paper for Vulnerable Children, agreed to by Cabinet in September 2012 [CAB Min (12) 34/9 refers], by being clear about Government's expectations and driving the right behaviours to embed the reforms.
- 2 The papers are:
  - *Paper 1: Specific care and protection legislation changes*
  - *Paper 2: Revised proposal for Child Harm Prevention Orders.*
- 3 This paper provides an overview of the proposals and the key decisions I am seeking from Cabinet, as well as information on the planned legislative process. A further paper on safeguarding the children's workforce through mandatory safety checks was considered by the Cabinet Social Policy Committee (SOC) on 17 April 2013. SOC requested further work on the scope of the workforce that would be subject to mandatory safety checking, and this paper will be reconsidered by SOC on 8 May 2013.
- 4 I am also proposing that a further paper on governance and safeguarding the welfare of children will be considered by SOC on 15 May 2013. Any other legislative proposals required for the Vulnerable Children's Bill will also be submitted at this time.

### **Executive summary**

- 5 The Children's Action Plan (the Action Plan), which I released with the White Paper for Vulnerable Children (the White Paper), sets out what we need to do to improve outcomes for New Zealand's vulnerable children. An enormous amount of work under the Action Plan is already underway, and agencies are already much more focused on responding to the needs of vulnerable children, including:
  - we have established an interim National Director and two Children's Team demonstration sites (Rotorua and Whangarei) overseen by interim Regional Directors
  - a Vulnerable Children's Board (VCB), comprised of the Chief Executives of the major social sector agencies, has been formed and is meeting regularly
  - a draft outcomes framework for the Strategy for Children and Young People in Care has been developed
  - planning has commenced for procurement of a non-government organisation (NGO) provider for the Child Protect Line, and for the co-location of the interim Child Protect Line in the Grey Lynn Child, Youth and Family Contact Centre.

- 6 The Action Plan contains a number of actions that will together drive the change that we want for vulnerable children and stop the cycle of abuse and neglect. Because we need to be clear about our expectations, and to embed behavioural change, I propose a series of interrelated legislative proposals to underpin the Action Plan and achieve sustained change.
- 7 The changes that will form the basis for the Vulnerable Children's Bill are major and far-reaching, and represent the most significant legislative reforms to address child abuse and neglect since the passage of the Children, Young Persons, and Their Families Act 1989 (CYPF Act).
- 8 The proposals were broadly agreed by Cabinet in September 2012 [CAB Min (12) 34/9 refers]. A cross government programme of work has been progressed by agencies to finalise the proposals. On 27 March 2013, the Ministerial Oversight Group (MOG) confirmed the papers and the proposals were ready to proceed to SOC. MOG requested further work on a paper on governance and safeguarding the welfare of children, which will be considered by SOC on 15 May 2013.

### **Paper 1: Specific care and protection legislation changes**

- 9 We need to strengthen our commitment to children whose lives have already been damaged by abuse and neglect through amendments to the CYPF Act.
- 10 The CYPF Act is the basis for Child, Youth and Family's role and needs to enable and drive the most effective interventions with abused and neglected children. The Act needs to be amended to allow us to be able to do that and fully realise the goals of the White Paper.

### **Paper 2: Revised proposal for Child Harm Prevention Orders**

- 11 Our system needs to minimise the risk of future harm posed by those who have abused children in the past. There are currently significant gaps in our ability to limit the contact by high-risk adults with children.
- 12 More comprehensive tracking and monitoring can, and will, be implemented to allow for better identification of situations of risk to children, but legislation is needed to provide the coercion needed to restrict some adults from engaging in the contact which places children at risk in the first place. I propose allowing for civil orders to be made against those who pose a high risk of abusing or neglecting children in the future, whether or not they have been convicted in the criminal courts.

### **Other changes proposed for the Vulnerable Children's Bill**

- 13 A further paper on safeguarding the children's workforce through mandatory safety checks was considered by SOC on 17 April 2013. Following discussion, SOC requested further work on the scope of the workforce subject to mandatory safety checking. This work is currently being undertaken, and this paper will be reconsidered by SOC on 8 May 2013.
- 14 In addition to the changes proposed here, work on legislative requirements with regard to agencies' responsibilities for vulnerable children is underway. Further proposals in this area will be critical to making sure government and the wider social sector as a whole are working together for vulnerable children. The potential significance of these changes means we need to take the time to get the detail right.

- 15 I will be submitting proposals on governance and safeguarding the welfare of children to SOC on 15 May 2013, along with any further changes required as part of the legislation programme for the Action Plan.

### **Legislative process**

- 16 I propose that the Bill is prepared for introduction in July 2013. The Bill has a Category 5 priority (must be referred to a Select Committee in 2013) on the 2013 Legislation Programme.
- 17 It is anticipated that this Bill will be an omnibus bill, which will introduce new legislation and amend existing legislation. A new act is likely to be required for Child Harm Prevention Orders. The other proposals will involve amendments to existing legislation, in particular the CYPF Act.

### **Implementation**

- 18 All agencies represented on the VCB have been involved in developing the proposals, and ensuring that they can be implemented effectively alongside other, non-legislative, changes in the Action Plan. Agencies are continuing to work together on the detail of the implementation as part of the cross-agency programme of work to give effect to the Action Plan.

### **Background**

#### **The White Paper and the Children's Action Plan**

- 19 In September 2012, Cabinet agreed that the White Paper signal the Government's intention to introduce a Vulnerable Children's Bill (the Bill) to provide for a number of legislative changes to address child abuse and neglect in New Zealand [CAB Min (12) 34/9 refers].
- 20 The White Paper set out what the Government will do to protect vulnerable children who are at risk of maltreatment or who have been maltreated. It took a comprehensive approach by looking at what government can do better to:
- prevent vulnerability
  - identify vulnerable children (including reporting and assessment, and improved processes for sharing information among professionals)
  - respond to children at risk of maltreatment
  - provide high-performing child protection services
  - manage high-risk adults.
- 21 Cabinet agreed:
- to strengthen parental obligations in relation to Family Group Conference (FGC) and court processes, and new guardianship orders for Home for Life caregivers to increase the stability and security of a child's placement
  - in principle, to introduce a requirement for safety checks for people in the children's workforce, including volunteers who have control of, or work alone with, children
  - in principle, to the development of legislative proposals to introduce civil orders to be made against those who pose a high risk of abusing or neglecting children in the future, whether or not they have been convicted in the criminal courts

- to require agencies and staff working with children to adopt the principle of safeguarding children's welfare and interests in their policies and practice and to introduce legislation requiring agencies working with children to be required to have child protection policies in place covering the identification and reporting of child abuse and neglect. The White Paper, Volume II, notes that the safeguarding principle will be set out in legislation.
- 22 Cabinet agreed that the White Paper signal the Government's intention to introduce a Bill to amend the CYPF Act and other relevant legislation to provide for:
- the responsibilities of agencies and professionals across the sector in relation to vulnerable children, such as the obligation to have child protection protocols, and to undertake mandatory safety checks on staff, and the general principle of the child's welfare and interests being of paramount consideration
  - the provisions needed to give effect to processes for the establishment of the National Children's Director and Regional Children's Directors, and Local Children's Teams, as well as governance and accountability arrangements for vulnerable children
  - consequential amendments to enact the intent of the White Paper.
- 23 Cabinet also noted that provisions authorising information sharing between agencies, tracking of high-risk adults, and civil orders may also need to be included in the Bill.
- 24 The White Paper set a clear action plan to improve outcomes for vulnerable children. The Action Plan is a clear way forward for ensuring that vulnerable children are identified and that responsible adults and agencies work together to respond to their needs. First steps in the implementation of the Action Plan have been establishing the two demonstration sites (Rotorua and Whangarei) and the VCB.
- 25 Achieving the goals of the Action Plan requires the right structures, principles and accountabilities to drive the right behaviours from the numerous agencies and individuals working with children. In some cases, it is obvious what needs to be done to create or enable changed ways of working, and local and national agencies are making this happen. For some issues, the demonstration sites will provide evidence about what change will require a more formal approach before consistent success is possible.
- 26 The White Paper also covered what needs to be done to make these reforms happen, including changes needed to help ensure the children's workforce is safe and has the right knowledge and skills; and the governance and accountability arrangements and legislation needed to make the reforms happen.

## **Overview of the Vulnerable Children's Bill proposals**

- 27 The Action Plan contains a number of actions that will together drive the change that we want for vulnerable children and stop the cycle of abuse and neglect. Because we need to be clear about our expectations, and to embed behavioural change, I propose a series of interrelated legislative proposals to underpin the Action Plan and achieve sustained change.
- 28 The changes that will form the basis for the Vulnerable Children's Bill are major and far-reaching, and represent the most significant legislative reforms to address child abuse and neglect since the passage of the CYPF Act.
- 29 At this meeting, I am submitting two Cabinet papers containing proposals for the Bill including:
- *Paper 1: Specific care and protection legislation changes*

- *Paper 2: Revised proposal for Child Harm Prevention Orders.*

30 An overview of the content of these papers and the key decisions sought is provided below.

***Paper 1: Specific care and protection legislation changes***

- 31 Children<sup>1</sup> who come to the attention of Child, Youth and Family are our most vulnerable children and having child protection policy, legislation and practice that puts the needs of these children at the heart of what we do is one of my highest priorities. Our obligation and commitment to achieving real change for these children was set out in the White Paper.
- 32 The CYPF Act is the basis for Child, Youth and Family's role and needs to enable and drive the most effective interventions with abused and neglected children. The Act needs amendment to allow us to be able to do that and fully realise the goals of the White Paper. The practice changes happening under the Action Plan will also make a large part of the difference, but alone they will not get us there.
- 33 In September 2012, Cabinet agreed to the development and implementation of a multi-agency strategy to ensure that children and young people in State care get the services and support that they need across government sectors [CAB Min (12) 34/9 refers].
- 34 On 27 March 2013, the MOG met and agreed to amendments to the CYPF Act to provide the detail of Cabinet's decisions and also propose several additional changes to give effect to the aspirations of the White Paper.
- 35 Accordingly, the Cabinet paper, *Paper 1: Specific care and protection legislation changes*, seeks approval for legislation changes to the CYPF Act, which will help improve child protection services and ensure that our most vulnerable children gain the dedicated and specialist support needed to recover and get the best from life. These changes include:
- strengthening parental obligations and timeframes in relation to Care and Protection FGCs and court processes, allowing the appointment of external FGC co-ordinators, and making other technical amendments to the FGC process
  - new special guardianship provisions that will provide increased security for children who leave out-of-home care to live permanently with Home for Life caregivers
  - clarifying the intention in the CYPF Act that children and young persons be protected from harm, their rights upheld, and their welfare promoted
  - supporting young people aged 17 years to 20 years leaving state care to live independently
  - changes to ensure proper consideration is given to supporting a disabled child in the home environment before considering out-of-home care arrangements.
- 36 This paper also proposes to support the operation of Children's Teams, as part of measures to implement the Action Plan, by confirming the use of existing legal frameworks for information sharing.
- 37 Work is also being done on options for ensuring the safety of subsequent children where a person has had a previous child removed, or die in their care. Final proposals may be included in the proposals to be considered by SOC on 15 May 2013.

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<sup>1</sup> For the purposes of this paper, the use of the term "children" or "child" also includes young people if not otherwise stated.

## ***Paper 2: Revised proposal for Child Harm Prevention Orders***

- 38 The White Paper set out our commitment to get tougher on child abusers in order to better protect our children from future harm. There are significant gaps in the mix of interventions available to limit the risks posed by adults who have already offended against children. Action cannot always be taken to address the risk they pose – including where a sentence has ended or where the offending has not been proven to the criminal standard.
- 39 More comprehensive tracking and monitoring can, and will, be implemented to allow for better identification of situations of risk to children, but only legislation can provide the coercion needed to restrict some adults from engaging in the contact which places children at risk in the first place.
- 40 In September 2012, Cabinet agreed, in principle, to the development of legislative proposals to introduce civil orders to be made against those who pose a high risk of abusing or neglecting children in the future, whether or not they have been convicted in the criminal courts.
- 41 These orders are to be called Child Harm Prevention Orders. Cabinet also directed further work to ensure the proposal is limited to those who pose a high risk to children in the future.
- 42 The proposals presented in the Cabinet paper, *Paper 2: Revised proposal for Child Harm Prevention Orders*, and agreed to by the MOG on 27 March 2013, are in line with this direction from Cabinet. The proposals include:
- specifying that a Child Harm Prevention Order will be available where a person has been convicted of, or found on the balance of probabilities to have committed, a specified offence against a child or children *and* the court is satisfied that person poses a high risk of serious harm to a child or children in the future
  - specifying statutory factors the court will be required to take into account in determining whether or not the high-risk threshold is met
  - that only the Commissioner of Police, Chief Executive of the Department of Corrections and the Chief Executive of the Ministry of Social Development are able to apply for a Child Harm Prevention Order
  - the development of a risk assessment measure
  - conditions that an order may contain
  - establishing a register of Child Harm Prevention Orders
  - that only active Child Harm Prevention Orders be included as part of any Police vetting undertaken for employment purposes.

## ***Further proposals***

### ***Safeguarding the children's workforce through mandatory safety checks***

- 43 In the White Paper we signalled we would introduce legislation to remove the grey areas in current legislation and get this right. In September 2012, Cabinet agreed (in principle) to introduce a requirement for safety checks for people in the children's workforce, including volunteers who have control of, or work alone with, children [CAB Min (12) 34/9 refers].
- 44 A paper on safeguarding the children's workforce through mandatory safety checks was considered by SOC on 17 April 2013. SOC requested further work on the scope of the

workforce subject to mandatory safety checking, and this paper will be reconsidered by SOC on 8 May 2013.

- 45 Further work is also required to agree which agency will be responsible for administering the new Act, and on the potential permanent restriction from the workforce for people who have committed certain offences. This will be submitted for SOC consideration on 15 May 2013.

#### *Governance and safeguarding the welfare of children*

- 46 As noted above, work on further advice on possible legislative requirements with regard to agencies' responsibilities for vulnerable children is being finalised to give effect to Cabinet's previous decisions [CAB Min (12) 34/9 refers]. This will:

- outline the most effective way to implement Cabinet's decision requiring agencies working with children to have child protection policies
- identify the most effective way to implement Cabinet's previous decision requiring the adoption of a safeguarding principle
- outline proposals for agencies working collectively to improve outcomes for vulnerable children – Cabinet agreed that the Vulnerable Children's Bill would provide for any provisions needed to give effect to governance and accountability arrangements.

- 47 Proposals were discussed by MOG on 27 March, who requested further work be done on the proposals. Proposals will be submitted to SOC for consideration on 15 May 2013.

- 48 At this time, proposals will also be submitted for any other changes required as part of the legislation programme, such as the agency that will be responsible for administering the new Act for the mandatory safety check regime.

#### **Timeline**

- 49 I propose that the Bill is prepared for introduction in July 2013. The Bill has a Category 5 priority (must be referred to a Select Committee in 2013) on the 2013 Legislation Programme.

- 50 It is intended that the Bill and legislation paper will be finalised for Cabinet Legislation Committee consideration on 11 July 2013. The Bill will then be tabled in the House.

- 51 The indicative legislative timetable proposed in the legislative bid is:

- requested introduction date: July 2013
- date of report back from Select Committee: March 2014
- requested enactment date: April 2014.

#### **Implications of the proposals in the attached papers**

- 52 The following sections of this overview paper draw together the financial, consultation, human rights, legislative, gender and disability impacts for the attached papers.

#### **Implementation**

- 53 All agencies represented on the VCB have been involved in developing the proposals, and ensuring that they can be implemented effectively alongside other, non-legislative changes in the Action Plan. Agencies are continuing to work together on the detail of the implementation as part of the cross-agency programme of work to give effect to the Action Plan.

54 Specific detail relevant to the implementation of the proposals is outlined in the attached papers.

### **Consultation**

55 This overview paper was prepared by the Ministry of Social Development. The Ministries of Justice and Education have been consulted and their views incorporated in the paper.

56 The New Zealand Police, Ministry of Social Development (including Child, Youth and Family), Ministries of Education, Health, and Justice, Te Puni Kōkiri, the Department of Corrections, the State Services Commission, the Treasury, the Crown Law Office, the Ministry of Pacific Island Affairs, the Ministry of Women's Affairs, and the Ministry of Business, Innovation and Employment have been consulted during the preparation of the two Cabinet papers.

57 The Department of the Prime Minister and Cabinet has been informed of the papers.

64 The Privacy Commissioner has also highlighted risks around possible harm to innocent adults through the introduction of the Child Harm Prevention Orders.

### **Regulatory impact and compliance cost statement**

65 The Regulatory Impact Analysis requirements apply to the proposals in this paper and Regulatory Impact Statements have been prepared for each of the papers.

### **Gender implications**

66 The proposals in *Paper 2: Revised proposal for Child Harm Prevention Orders*, will almost exclusively impact on male offenders as they make up the significant majority of people who pose a high risk of committing further offences. Female children are more likely to be protected by the orders as they make up a higher percentage of victims who experience child sexual assault.

### **Disability perspective**

67 Children with disabilities have a higher rate of child abuse and neglect than children without disabilities and have the potential to benefit from these proposed changes.

### **Publicity**

68 Subject to the agreement of Cabinet, I propose to issue a press release advising that work is beginning on drafting the Bill containing the proposals to which Cabinet has agreed.

### **Recommendations**

69 It is recommended that the Committee:

- 1 **note** in September 2012, 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** on 27 March 2013, the Ministerial Oversight Group (MOG) confirmed that the following papers and the proposals they contain were ready to proceed to the Cabinet Social Policy Committee (SOC):
  - *Paper 1: Specific care and protection legislation changes*
  - *Paper 2: Revised proposal for Child Harm Prevention Orders*
- 3 **note** that the MOG requested further work on a paper on governance and safeguarding the welfare of children, which it is intended will be considered by SOC on 15 May 2013

- 4 **note** that on 17 April 2013 SOC considered a further paper on safeguarding the children's workforce through mandatory safety checks, and requested further work on the paper, which will be reconsidered by SOC on 8 May 2013
- 5 **invite** the Minister for Social Development to submit proposals regarding governance and safeguarding the welfare of children, and other changes required as part of the legislation programme, to SOC for its meeting on 15 May 2013

*Legislative changes*

- 6 **note** that the changes in the papers will require amendments to existing legislation and will require new legislation to support the new policies for Child Harm Prevention Orders
- 7 **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 *Papers 1 and 2*
- 8 **authorise** the Minister for Social Development to make the minor technical and administrative changes required to finalise draft legislation giving effect to the proposals in the two papers, in keeping with the overall policy aims of the proposals, in consultation with other Ministers as appropriate
- 9 **note** that any substantive policy changes sought to be included in the Vulnerable Children's Bill will be submitted to Cabinet for decisions.

Hon Paula Bennett  
**Chairperson, Ministerial Oversight Group**

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