

Chair
Cabinet

VULNERABLE CHILDREN'S BILL: OVERVIEW PAPER

Proposal

- 1 This paper provides an overview of five Cabinet papers that contain the second and final set of detailed legislative proposals for inclusion in the Vulnerable Children's Bill. These proposals will allow us to give effect to reforms in the White Paper for Vulnerable Children (the White Paper), agreed to by Cabinet in September 2012 [CAB Min (12) 34/9 refers].
- 2 These proposals were considered by the Cabinet Social Committee (SOC) on 26 June 2013, and some of the papers have subsequently been amended to reflect SOC's decisions. The papers are:
 - *Paper A – Vulnerable Children's Bill: Joint accountability and shared responsibility*
 - *Paper B – Vulnerable Children's Bill: Standard safety checks for the children's workforce*
 - *Paper C – Vulnerable Children's Bill: Additional amendments to legislation to assist children in care (Family Court appeal process for Home for Life caregivers)*
 - *Paper D – Vulnerable Children's Bill: Ensuring the safety of subsequent children*
 - *Paper E – Vulnerable Children's Bill: Preparing children in care for the future.*
- 3 This paper outlines the background and rationale for the proposals, and summarises the next steps.

Executive summary

- 4 The level of abuse of our children in New Zealand is unacceptable. Despite all of the reports, strategies and initiatives over the years, we have not fundamentally changed things for our most vulnerable children and this is not good enough.
- 5 On 24 September 2012, Cabinet considered the White Paper for Vulnerable Children (the White Paper), and agreed to a series of actions and measures to fundamentally change how the government responds to, and protects, vulnerable children [CAB Min (12) 34/9 refers]. The White Paper and Children's Action Plan provide a clear way forward for preventing and responding to child abuse and neglect. In April 2013, Cabinet agreed to the first set of proposals for inclusion in the Vulnerable Children's Bill, which included proposals to keep children safe from adults who may cause harm to them, and to better support children who have been significantly maltreated [SOC Min (13) 7/9; SOC Min (13) 7/7 refers].
- 6 In this paper, I am recommending a second and final set of proposals for inclusion in the Vulnerable Children's Bill. These proposals have been developed by the Vulnerable Children's Board and agreed by the Ministerial Oversight Group on 12 June 2013. They were also considered by SOC on 26 June 2013, and three of the papers (Papers B, C and E) for consideration at this Cabinet meeting have been submitted with amendments to reflect SOC's decisions.

- 7 This set of interrelated legislative changes will give effect to reforms in the White Paper by:
- reinforcing the need for shared responsibility, and co-ordinated and collaborative action across the government social services sector to better protect vulnerable children
 - ensuring children are safe with those that work with them through a new standard safety check requirement for the children's workforce
 - enhancing the response to children who have already been abused and neglected to increase the chances of better long term outcomes
 - ensuring the safety of children of adults who have previously had a child permanently removed from, or die in, their care due to abuse or neglect
 - ensuring transition out of care is well managed and supported.
- 8 Together, these proposals will provide a signal of Government's expectations about roles and responsibilities for protecting and responding to vulnerable children, and ensure that changes initiated through the White Paper endure over time.

Background

- 9 On 24 September 2012, Cabinet considered the White Paper and agreed to a series of actions and measures to fundamentally change how the government responds to, and protects, vulnerable children [CAB Min (12) 34/9 refers]. The White Paper and Children's Action Plan provide a clear way forward for preventing and responding to child abuse and neglect.
- 10 Cabinet agreed that the White Paper signal the government's intention to introduce a Vulnerable Children's Bill to amend the Children, Young Persons, and Their Families Act 1989 (CYPF Act) and other relevant legislation to provide for a number of legislative changes to give effect to the White Paper.
- 11 A significant amount of work under the Children's Action Plan has already happened, and agencies are already much more focused on responding to the needs of vulnerable children:
- The Rotorua demonstration site commenced testing of the service from 1 July 2013.
 - A draft of vetting and screening guidelines outlining best practice guidance for the children's workforce has been developed.
 - The first part of the public awareness initiative has been completed. This includes the development of tips and guidance material for parents, families, neighbours and communities about what they should be concerned about, warning signals and where to go for help.
 - A National Director has been established to drive the Children's Action Plan work programme and promote the changes in the Children's Action Plan.
 - Two interim Regional Directors have been appointed to oversee the implementation of the demonstration sites in Rotorua and Whangarei.
 - A Vulnerable Children's Board (VCB), comprising the Chief Executives of the major social sector agencies, has been formed and is meeting regularly. The VCB has provided leadership and guidance for all the legislative proposals to date.
- 12 In April 2013, Cabinet agreed to the first set of proposals for inclusion in the Vulnerable Children's Bill. This included proposals to keep children safe from adults who may cause harm to them, and proposals to better support children who have been significantly maltreated.

- 13 Cabinet agreed to:
- proposals around the operation of new Child Harm Prevention Orders designed to protect children from adults who pose a high risk of abusing or neglecting children in the future [SOC Min (13) 7/9 refers]
 - care and protection legislative proposals to improve child protection services and address some of the key elements of the Strategy for Children in Care [SOC Min (13) 7/7 refers], including the introduction of new guardianship provisions to provide increased security to children who leave out-of-home care to live permanently with Home for Life caregivers.
- 14 Cabinet also:
- invited the Minister for Social Development to submit a revised paper to SOC on safeguarding the children's workforce through mandatory safety checks [SOC Min (13) 7/8 refers]
 - invited the Minister for Social Development to submit proposals relating to safeguarding children and collaboration (joint working), and other changes required as part of the legislation programme [SOC Min (13) 7/6 refers] (these proposals are covered in the Joint accountability and shared responsibility paper).
- 15 I am now proposing a series of further legislative changes to give effect to the reforms in the White Paper and achieve sustained change. These changes will form the basis of the Vulnerable Children's Bill. They are far-reaching, and represent the most significant legislative reforms to address child abuse and neglect since the passage of the CYPF Act.
- 16 This is my top legislative priority in the Social Development portfolio. Enacting these changes in legislation is critical to delivering our Better Public Services Supporting Vulnerable Children Result Four "Reduce the number of assaults on children".

Consideration by Cabinet Social Policy Committee (SOC)

- 17 The papers were considered by SOC on 26 June 2013. SOC agreed to recommend to Cabinet the recommendations contained in the overview paper, Paper A, and Paper D. Papers A and D have been referred to Cabinet without any changes.
- 18 Paper B (Standard safety checks for the children's workforce) contains two proposed options for the scope of the safety checks. SOC agreed to recommend to Cabinet that the scope of the new safety check regime be a tightly focused legislative regime entailing:
- a legislative requirement focused on paid members of the workforce employed by central and local government organisations and their contracted services (applying to central government immediately and phasing in local government at a later date by Order in Council)
 - an elective framework to encourage and assist organisations in the business and voluntary sectors, not subject to the requirement, to undertake more consistent safety checks.
- 19 SOC also agreed that the VCB conduct a review of the new safety check regime two years after the date on which the legislative requirement takes effect for the core workforce [SOC Min (13) 13/7 refers].
- 20 SOC invited the Minister for Social Development to submit a new paper to Cabinet on additional legislation to support children in care, revised in light of the discussion [SOC Min (13) 13/8 refers].

- 21 The following Cabinet papers have been submitted with amendments to reflect SOC's decisions:
- *Paper B – Vulnerable Children's Bill: Standard safety checks for the children's workforce* (resubmitted with amendments to reflect SOC's decision on a requirement for a review of the safety check regime)
 - *Paper C – Vulnerable Children's Bill: Additional amendments to legislation to assist children in care (Family Court appeal process for Home for Life caregivers)* (resubmitted without KiwiSaver proposal)
 - *Paper E – Vulnerable Children's Bill: Preparing children in care for the future* (new paper outlining how we can financially prepare children in care for the future through the KiwiSaver programme).

Comment

Overview of papers

Paper A – Joint accountability and shared responsibility

- 22 Addressing child vulnerability in New Zealand will take a sustained effort across government agencies, working in partnership with families and communities. I propose introducing legislation to create a durable and visible commitment to collective government action to improve the wellbeing of vulnerable children. A high level aspirational purpose, combined with specific requirements to hold Chief Executives jointly accountable for delivering on the Government's priorities, will help to achieve the child-centred and sustained action needed.
- 23 To support better identification and reporting of child abuse and neglect, the Vulnerable Children's Bill will also implement our decision to require agencies working with children to have child protection policies in place [CAB Min (12) 34/9 refers].

Paper B – Standard safety checks for the children's workforce

- 24 Although many organisations have checks in place to ensure that unsuitable people do not work with children, there is no consistent approach and there are a number of gaps. We need a rigorous approach to the vetting and screening of the children's workforce to help assess whether people pose a risk to children, and provide a way of preventing known abusers from working with them.
- 25 Two options for the scope of the legislative regime were proposed:
- Option 1 focused the requirements on paid employees within the Government sector and the services they contract, and provides guidance for all other organisations to encourage sound practices in safety checking. The success of this option would be reviewed two years after the legislation takes effect. (This option is recommended by SOC)
 - Option 2 is initially as per Option 1, but could be extended, if and when desired, to employees and/or volunteers in other sectors (business or voluntary).
- 26 I also propose a workforce restriction (a list of disqualifying offences) that will prevent known child abusers and other serious offenders from having control of, or working alone with, children. This goes further than proposals in the White Paper and makes a statement about the level of integrity considered necessary in the children's workforce.

Paper C – Additional amendments to legislation to assist children in care (Family Court appeal process for Home for Life caregivers)

- 27 Building on the care and protection changes agreed by Cabinet in April, I am proposing to introduce 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 the support they need. This should result in more streamlined, efficient and consistent decision-making around support for Home for Life caregivers, which will help to ensure the success of the programme.

Paper D – Ensuring the safety of subsequent children

- 28 There are potentially significant risks of harm to children who are born into the care of parents who have previously had children permanently removed from, or die in, their care due to abuse or neglect.
- 29 I propose that where any such adult is expecting, or is already caring for, a subsequent child, an onus would be imposed on that adult to demonstrate they are safe to parent. Upon receiving a notification of a subsequent child, Child, Youth and Family assesses whether the parent has demonstrated they are safe to parent, and applies to the Family Court for either a declaration that the child is in need of care and protection, or a review of a decision that the parent has demonstrated their safety.
- 30 I expect that these new processes will provide greater rigour, oversight and transparency around care and protection decision-making, and will shift the onus onto parents to show that they are safe to parent those children.

Paper E – Preparing children in care for the future

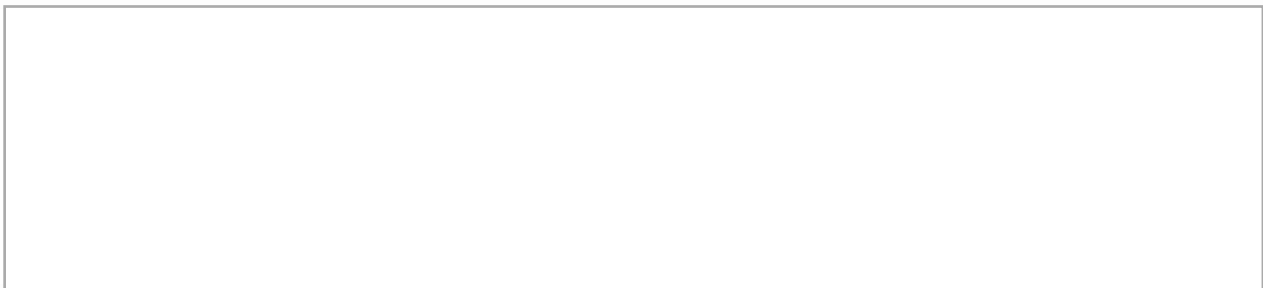
- 31 One component of the Children's Action Plan is the development and implementation of the new Strategy for Children and Young People in Care. Many young people who have been in long-term care move into adult life without adequate preparation or support. A key aspect of the Care Strategy is ensuring that when children transition out of care, this is well planned and supported.
- 32 As part of the work, I asked officials to consider other ways of helping children who leave care to get a good and fair start to their independence, including ways to give them a head-start with their savings, encourage an early understanding of the importance of saving for the future, and assist with financial security in later life. I am proposing that this be done through the KiwiSaver programme. To ensure children in care all participate in KiwiSaver, I propose that the KiwiSaver Act 2006 be amended to provide the Chief Executive of MSD (and contracted social service providers) with the authority to solely enrol a child or young person in KiwiSaver, without the need for the consent of other guardians.

Timeline

- 33 The Vulnerable Children's Bill has a Category 5 priority (must be referred to a Select Committee in 2013) on the 2013 Legislation Programme.
- 34 It is intended that the Bill and legislation paper will be finalised for Cabinet Legislation Committee consideration on 22 August 2013. The Bill will then be tabled in the House.
- 35 It is expected that the legislation will be enacted in 2014.

Consultation

- 36 The proposals in the papers were developed by the VCB agencies, which comprise the Ministries of Justice, Health, Education and Social Development, the New Zealand Police, the Ministry of Business, Innovation and Employment, and Te Puni Kōkiri.
- 37 Other agencies consulted on some or all of the proposals included in this suite include: the Treasury, the Ministry of Pacific Island Affairs, the State Services Commission, the Department of Corrections, the Department of Internal Affairs, the Ministry of Women's Affairs and Inland Revenue. The Principal Family Court Judge and the Children's Commissioner have been consulted on some proposals.
- 38 The Department of the Prime Minister and Cabinet has been informed of these proposals.
- 39 Details of the specific consultation undertaken, and any issues raised, are contained in the respective papers.



Financial implications

- 41 Information on the financial implications of proposals is included in each paper.

Human rights implications

- 42 Information on the human rights implications of proposals is included in each paper. Compliance with the New Zealand Bill of Rights Act 1990 and New Zealand's international obligations will be assessed more comprehensively once the Vulnerable Children's Bill is drafted.

Legislative implications

- 43 The proposals in the papers will be included in the Vulnerable Children's Bill, which is proposed for introduction in August 2013.
- 44 It is proposed that all legislation changes required to give effect to the proposals in the suite of papers will be binding on the Crown for the following reasons:
- *Paper A: Joint accountability and shared responsibility.* These provisions would place obligations on the Crown, and should therefore be binding on the Crown.
 - *Paper B: Standard safety checks for the children's workforce.* These provisions would place obligations on the Crown, and should therefore be binding on the Crown.
 - *Paper C: Additional amendments to legislation to assist children in care (Family Court appeal process for Home for Life caregivers).* These proposals will require amendments to the CYPF Act. That Act binds the Crown and no change is proposed.

- *Paper D: Ensuring the safety of subsequent children.* These proposals will require amendments to the CYPF Act. That Act binds the Crown and no change is proposed.
- *Paper E: Preparing children in care for the future.* The legislative proposal in this paper will require amendments to the KiwiSaver Act 2006. That Act binds the Crown and no change is proposed.

45 It is also proposed that legislative changes agreed by Cabinet in April will be binding on the Crown:

- The proposal for new Child Harm Prevention Orders will require legislation that sets out new powers for the Crown. The resulting legislation should therefore bind the Crown.
- The proposed amendments to care and protection legislation will require amendments to the CYPF Act. That Act binds the Crown and no change is proposed.

Legislative approach

46 In line with Cabinet decisions last year, it is proposed that the majority of the White Paper legislative reforms are given effect through amendments to the CYPF Act. In September 2012, Cabinet agreed that the White Paper signal the Government's intention to introduce a Vulnerable Children's Bill to amend the Children, Young Persons, and The Families Act (the CYPF Act) and other relevant legislation to provide for reforms such as child protection policies, safety checks and the provisions needed to give effect to governance and accountability [CAB Min (12) 34/9].

47 In addition, Cabinet noted that other legislative changes will be needed, including legislation that would allow orders to be made against those who pose a substantial risk of abusing or neglecting children, and other amendments to existing legislation [CAB Min (12) 34/9]. It is, therefore, proposed that Child Harm Prevention Orders will be introduced via a new Act.

48 Amendments to other Acts will also be needed to give effect to, for example, the KiwiSaver for children in care reforms, and child protection policies.

49 Amendments to the CYPF Act will cover the following reforms:

- the joint working obligation on Chief Executives
- the child protection policies requirement
- the care and protection changes, including the subsequent children provisions
- the introduction of standard safety checks.

50 Legislative design and drafting questions are the special responsibility of Parliamentary Counsel Office (PCO). PCO is of the view that:

- the standard safety checks provisions do not fit within the CYPF Act and should be contained in a new Act. This is because placing the provisions in the CYPF Act would significantly alter the scope of the CYPF Act which relates to care and protection of particular children and young persons; it does not cover obligations on employers and the duties of employees, which are central to the standard safety checks reforms
- the joint working and child protection policies provisions do not fit properly in the CYPF Act because these provisions go well beyond that Act and relate to vulnerable children's wellbeing generally and to wide cross-agency duties. PCO therefore recommends they be placed in a new Act. This is mainly because a new Act is where most people would expect to find them.

- 51 Overall PCO's view is that provisions on standard safety checks, and joint working and child protection policies, would most appropriately be placed together in one new Act. Together they would make a coherent whole dealing with new multi-agency obligations in respect of vulnerable children.

Regulatory impact and compliance cost statement

- 52 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

- 53 Information on gender implications of proposals is included in each paper.

Disability perspective

- 54 Children with disabilities are more likely to experience child abuse and neglect than children without disabilities, and have the potential to benefit from these proposed changes.

Publicity

- 55 Public announcements about the introduction of the Vulnerable Children's Bill will be co-ordinated by the Office of the Minister for Social Development, Chair of the Ministerial Oversight Group.

Recommendations

- 56 It is recommended that Cabinet:
- 1 **note** that on 24 September 2012, Cabinet considered the White Paper for Vulnerable Children (the White Paper) and agreed that 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]
 - 2 **note** that in April 2013, the Cabinet Social Policy Committee (SOC) considered the first set of legislative proposals for inclusion in the Vulnerable Children's Bill and:
 - 2.1 agreed to proposals around the operation of new Child Harm Prevention Orders designed to protect children from adults who pose a high risk of abusing or neglecting children in the future [SOC Min (13) 7/9 refers]
 - 2.2 agreed to care and protection legislative proposals to improve child protection services and address some of the key elements of the Strategy for Children in Care [SOC Min (13) 7/7 refers]
 - 2.3 invited the Minister for Social Development submit a revised paper to SOC on safeguarding the children's workforce through mandatory safety checks [SOC Min (13) 7/8 refers]
 - 2.4 invited the Minister for Social Development to submit proposals relating to safeguarding children and collaboration, and other changes required as part of the legislation programme [SOC Min (13) 7/6 refers]

- 3 **note** that the second set of Cabinet papers, as listed below, are provided for consideration:
 - 3.1 Paper A – Vulnerable Children's Bill: Joint accountability and shared responsibility
 - 3.2 Paper B – Vulnerable Children's Bill: Standard safety checks for the children's workforce
 - 3.3 Paper C – Vulnerable Children's Bill: Additional amendments to legislation to assist children in care (Family Court appeal process for Home for Life caregivers)
 - 3.4 Paper D – Vulnerable Children's Bill: Ensuring the safety of subsequent children
 - 3.5 Paper E – Vulnerable Children's Bill: Preparing children in care for the future
- 4 **note** that the proposals included in these papers were considered and agreed by the Ministerial Oversight Group on 12 June 2013
- 5 **agree** that, prior to introduction, officials may consult externally on aspects of the draft Vulnerable Children's Bill, subject to my approval, in consultation with the Attorney-General
- 6 **note** that it is intended that the Bill and legislation paper will be finalised for Cabinet Legislation Committee consideration on 22 August 2013, and that the Bill will then be tabled in the House
- 7 **agree** that all legislation changes required to give effect to the proposals in the Vulnerable Children's Bill will be binding on the Crown
- 8 **agree** that:
 - 8.1 legislative proposals for joint working, child protection policies, care and protection changes (including subsequent children), and standard safety checks be given effect through amendments to the CYPF Act, as well as amendments to other Acts if required
 - 8.2 Child Harm Prevention Orders be introduced through a new Act
- 9 **note** that PCO is of the view that:
 - 9.1 the standard safety checks provisions do not fit within the CYPF Act and should be contained in a new Act. This is because placing the provisions in the CYPF Act would significantly alter the scope of the CYPF Act which relates to care and protection of particular children and young persons; it does not cover obligations on employers and the duties of employees, which are central to the standard safety checks reforms
 - 9.2 the joint working and child protection policies provisions do not fit properly in the CYPF Act because these provisions go well beyond that Act and relate to vulnerable children's wellbeing generally and to wide cross-agency duties. PCO therefore recommends they be placed in a new Act. This is mainly because a new Act is where most people would expect to find them

9.3 provisions on standard safety checks, and joint working and child protection policies, would most appropriately be placed together in one new Act. Together they would make a coherent whole dealing with new multi-agency obligations in respect of vulnerable children.

Hon Paula Bennett
Chair, Ministerial Oversight Group

_____ / _____ / _____