

Regulatory Impact Statement

Vulnerable Children's Bill: Ensuring the safety of subsequent children

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Social Development (MSD). It accompanies the Cabinet paper *Vulnerable Children's Bill: Ensuring the safety of subsequent children*.

The Cabinet paper proposes legislative change to the Children, Young Persons, and Their Families Act 1989 (CYP&F Act) as part of a new approach for ensuring the safety of subsequent children of adults who have previously had a child permanently removed from, or die in, their care due to abuse or neglect (subsequent children).

This RIS provides an analysis of options to minimise the potentially significant risk 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.

The analysis undertaken is within the parameters set out by Cabinet's agreed programme of work from the White Paper for Vulnerable Children and is based on best available evidence, noting that empirical evidence on the long-term safety of subsequent children who remain in the care of their parents is limited. The options sit alongside a suite of interdependent policy and legislative reforms.

The preferred policy options outlined in this statement will not impose significant additional costs on businesses; impair private property rights, market competition, or the incentives on businesses to innovate and invest; or override fundamental common law principles.

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Introduction

- 1 On 24 September 2012, Cabinet agreed to a programme of reforms to be introduced through the White Paper for Vulnerable Children (the White Paper), and that this signal the Government's intention to introduce a Vulnerable Children's Bill to provide for a number of legislative changes to reduce the extent of child abuse and neglect in New Zealand [CAB Min (12) 34/9 refers]. In October 2012 the Children's Action Plan was released and set out a programme of work across agencies to deliver on the reforms required by the White Paper.
- 2 The proposal in this paper was included in the White Paper as a possible condition of new Child Harm Prevention Orders (CHPOs). The proposal also complements plans to extend and systematise arrangements for tracking high-risk adults.
- 3 This Regulatory Impact Statement (RIS) accompanies the Cabinet paper *Vulnerable Children's Bill: Ensuring the safety of subsequent children*. This Cabinet paper seeks approval to use the Vulnerable Children's Bill to amend the CYP&F Act to establish a new approach for ensuring the safety of subsequent children of adults who have previously had a child permanently removed from, or die in, their care due to serious abuse or neglect.

Status quo and problem definition

- 4 At present, in every case where Child, Youth and Family is notified that an adult who has previously had a child removed is expecting a child, Child, Youth and Family undertakes an assessment of risk to the child. This is the same statutory process that applies as for any child about whom a notification is made. Where Child, Youth and Family forms the view that a child should be removed, this may be done by way of consent, a Family Group Conference (FGC) plan and, where necessary, an order of the court.
- 5 Where Child, Youth and Family undertake a risk assessment and determine that they consider the subsequent child is safe to remain with the parent, there is no external oversight or monitoring of this decision.
- 6 Evidence shows that past behaviour is often a good predictor of future behaviour, and that being born into the care of an adult who has previously had a child permanently removed from, or die in, their care due to abuse or neglect, is a significant indicator of risk for a subsequent child. Parents who have a child removed are likely to suffer intense feelings of loss, and may go on to have a 'replacement child' who may also be at risk.¹
- 7 Limited aggregate data is available on the number of subsequent children. A literature review published in 2012 by the Families Commission on the safety of subsequent children² considered data provided by Child, Youth and Family on children in care who had a first out-of-home placement sometime in the period between 2004 and 2010 (4,180 children). Of these children, 1,895 (45 per cent) also had siblings who had previously been removed from their parents/caregivers by Child, Youth and Family.
- 8 Based on this review, Child, Youth and Family estimates that, each year, there are around 300 subsequent children who come to the notice of Child, Youth and Family and are subsequently removed from their parent's care. Child, Youth and Family estimate

¹ Kerslake Hendricks, A and Stevens, K (2012) 'Safety of Subsequent Children: International literature review.' Families Commission.

² Ibid.

that possibly as many as a further 150 subsequent children come to their notice each year but remain in the custody of their parents.

- 9 There is very little research available on the long-term safety of subsequent children who remain in the care of their parents and how these children fare compared with subsequent children who have been transferred out of the custody of the parents.
- 10 Recent developments have, however, raised concern about the safety of subsequent children:
 - In September 2009, a 22 month old child died of a non-accidental injury. Child, Youth and Family had no prior knowledge of this child; however, they had previously removed two of her older siblings from their parents' care.
 - In November 2009, an Independent Experts' Forum on Child Abuse reported concerns about children of families "who come to official notice, but whose management or monitoring subsequently ceases". The forum raised the notion of an 'always open' file, to alert professionals to risks for subsequent children.
- 11 Since then, steps have been taken to improve systems that identify, and protect, children born into families where abuse or neglect has already occurred. This includes the following:
 - In February 2010, Child, Youth and Family made changes to its practice, and introduced a new requirement to its Engagement and Safety Policy (Care and Protection). Child, Youth and Family now regularly undertakes safety assessments when a report of concern has been received for a child whose parents/caregivers have previously had a child removed from their care due to safety concerns.
 - The Child Protection Alert System uses the health sector's existing Medical Warning System to place an alert on a child's file after concerns about the child have been reported to Child, Youth and Family. This system operates within hospital settings in five District Health Boards (DHBs). The system alert notes that child protection concerns have been identified and the relevant DHB should be contacted for further information. It enables hospital staff to assess the relevance of the historical information in the context of the child's presenting concerns and the current living situation.
- 12 Further change is needed to ensure the safety of these subsequent children. If we continue with the status quo, the risk of abuse or neglect to children born to adults who have previously had a child removed may not be adequately assessed.

Relevant decisions that have already been taken

- 13 On 24 September 2012, Cabinet considered the White Paper and directed the Vulnerable Children's Board (VCB) to report back to the Ministerial Oversight Group by March 2013 on final policy proposals for inclusion in the Vulnerable Children's Bill.
- 14 The options in this paper were considered by the Ministerial Oversight Group (MOG) at their meeting on 12 June 2013. MOG agreed to recommend Option 2 to Cabinet for consideration.
- 15 The proposal in this paper was included in the White Paper as a possible condition of new Child Harm Prevention Orders (CHPOs). The proposal also complements plans to extend and systematise arrangements for tracking high-risk adults.

Child Harm Prevention Orders

- 16 On 22 April 2013, Cabinet agreed to introduce CHPOs, which can apply restrictions on where an individual can work and live, and who they can associate with. Conditions of orders can include, among other things:
- that the person cannot live, work or associate with any children/any specific class of children, or can do so only under specified conditions
 - that the person must advise a specified agency (eg Police or Child, Youth and Family) or his or her current address, the identity of other residents at that address who are likely to have any contact with children, his or her employment and any change of address or employment
 - that other specified persons (eg family members, new partners, present or future employers) or agencies (eg schools or early childhood centres) be notified of the existence of the order
 - that the person be prohibited from being present, or loitering, in specified areas frequented by the child or children who are at risk (eg playgrounds, swimming pools and parks)
 - that the person be prohibited from changing his or her name, or be required to advise of any change of name
 - any other condition that the court considers is required for the mitigation of the risk posed.
- 17 The proposal in this paper is intended to apply to a larger group of individuals than CHPOs. For a CHPO to be imposed, an individual must have been convicted of, or found on the balance of probabilities to have committed, a specified serious offence against children (for example, murder, manslaughter or ill treatment or neglect of a child), and pose a high risk of committing further offences against children. CHPOs will be available to a small group of individuals who pose a high risk to children in a range of situations. Any adult who is not within the scope of the new onus, but who is the subject of a CHPO, could be brought within the operation of the new onus as one of the conditions of the order.

Monitoring and tracking high-risk adults

- 18 Cabinet has also agreed to extend and systematise arrangements for tracking high-risk adults who present a significant and ongoing risk to the safety of a child or children [CAB Min (12) 34/9 refers].
- 19 The tracking of high-risk adults in the Children's Action Plan is expected to provide a solid basis for the proposal set out in this paper, by helping to identify parents who have previously had a child removed in a more systematic and early fashion. For example, an amended version of the Child Protection Alert System used within the health sector, in combination with new information sharing processes, could be used to ensure that midwives are better able to identify if a parent of an unborn child has previously had a child removed from, or die in, their care, and to then ensure contact is made with Child, Youth and Family as soon as possible.

Objectives

- 20 The overall objective for this change is to help ensure the safety of these subsequent children. The proposal would be given effect in legislation through the introduction of a new ground for a child being in need of care or protection. The inclusion of this new provision in the CYP&F Act would provide a specific direction to matters that must be given appropriate consideration where a parent has previously had a child permanently removed from, or die in, their care due to abuse or neglect.

Regulatory impact analysis

- 21 The range of feasible options to achieve the objectives listed above is outlined in the table below, along with the impacts of these options. Some options were dropped as they were not likely to achieve the objectives before potential costs and all possible impacts were identified.

Ensuring the safety of subsequent children of adults who have previously had a child permanently removed from, or die in, their care due to abuse or neglect

22 Five options were considered to ensure the safety of subsequent children of adults who have previously had a child permanently removed from, or die in, their care due to abuse or neglect.

Option	Impacts/implications	Benefits	Issues/risks
<p>Option 1: Onus in legislation on the adult to demonstrate to Child, Youth and Family they are safe to parent the subsequent child.</p>	<p>If Child, Youth and Family assess that the parent has demonstrated they are safe to parent, high-level regional sign-off within Child, Youth and Family would be required for that decision.</p> <p>Where Child, Youth and Family assess a parent has demonstrated their safety, a new legislative provision would require the Office of the Children’s Commissioner (OCC) to review social worker practice in each case, and alert Child, Youth and family to any safety concerns.</p> <p>Additionally, new, retrievable data recording would be established to document outcomes for cases where Child, Youth and Family assess parents as safe to parent the subsequent child.</p> <p>There may be resource implications for the additional data recording, reporting and monitoring option.</p> <div data-bbox="465 1098 1043 1273" style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>Section 9(2)(f)(iv) OIA</p> </div>	<p>Builds on current practice, as Child, Youth and Family currently assess subsequent children where they are notified that an adult who has previously had a child removed is expecting a child.</p> <p>Avoids an increased workload for the Family Court by not requiring a court decision in every situation.</p> <p>Improves oversight of Child, Youth and Family decision-making, and could lead to more robust decisions.</p>	<p>Heightened risk of pregnant women avoiding engaging with services to avoid detection.</p>
<p>Option 2: Onus in legislation on the adult to demonstrate to the</p>	<p>Where Child, Youth and Family assesses that the adult has demonstrated their safety to parent, Child, Youth and Family would be</p>	<p>May signal what changes must be demonstrated for Child, Youth and Family and the Court to be satisfied</p>	<p>Risk of delays due to a potentially lengthy Court process, which could</p>

Option	Impacts/implications	Benefits	Issues/risks
<p>Family Court they are safe to parent the subsequent child, with Family Court oversight of every case.</p>	<p>required to make an application to the Family Court for a review of that decision.</p> <p>Where Child, Youth and Family assesses the parent has not demonstrated their safety to parent, Child, Youth and Family would be required to apply for a declaration that the child is in need of care or protection. As per existing processes, Child, Youth and Family would recommend appropriate orders to the Court to protect the child.</p> <p>It is estimated that this option would increase the volume of applications to the court by 150 each year.</p> <p>Section 9(2)(f)(iv) OIA</p>	<p>of the safety of a subsequent child.</p> <p>May provide impetus for a parent to proactively make appropriate parenting changes.</p> <p>Provide a clear signal to frontline workers in contact with a subsequent child to pay particular attention to their safety.</p> <p>Court oversight of Child, Youth and Family decision-making of subsequent children cases, providing a further safeguard for the child in light of the parent's history.</p> <p>Lawyer for child would be appointed in all cases, providing an independent person to advocate for the child's interests.</p>	<p>be detrimental to the child involved.</p> <p>Increase in hearing time for the Family Court, which may impact the Court's ability to deal with other urgent cases.</p> <p>Heightened risk of pregnant women avoiding engaging with services to avoid detection.</p>
<p>Option 3: Child, Youth and Family apply to the Family Court as soon as possible for a declaration that the child is in need of care and protection, and for a custody order in favour of the Chief Executive. The Family Court would determine whether the parent is safe to care for the child, or whether the declaration and custody order should be issued.</p>	<p>Legislation would require the Chief Executive of MSD to apply to the Family Court as soon as possible for declaration that the child is in need of care and protection, and a custody order in favour of the Chief Executive (pending determination of the application for declaration).</p> <p>The Family Court would determine whether the parent is safe to care for the child or whether the declaration and custody order should be issued.</p> <p>Increased number of cases brought before the court, resulting in additional costs for Child, Youth and Family making applications and Court costs (including lawyer for child).</p> <p>Section 9(2)(f)(iv) OIA</p>	<p>May provide a clear signal to parents that the child will be removed if they have not demonstrated they are safe to parent.</p> <p>Court oversight of Child, Youth and Family decision-making, providing a further safeguard for the child in light of the parent's history.</p> <p>Lawyer for the child would be appointed in court proceedings, providing an independent person to advocate for the child's interests in cases where Child, Youth and Family's recommendation is for the child to remain.</p>	<p>Could establish an adversarial process at the beginning of Child, Youth and Family engagement with the parent and family.</p> <p>Process is not in keeping with established social work and court practice.</p> <p>Risk of delays due to a potentially lengthy Court process, which could be detrimental to the child involved.</p> <p>Heightened risk of pregnant women avoiding engaging with services to avoid detection.</p>

Option	Impacts/implications	Benefits	Issues/risks
	Section 9(2)(f)(iv) OIA	May provide impetus for a parent to make appropriate parenting changes.	
<p>Option 4: Legislation to require Child, Youth and Family to remove every subsequent child from the care of their parent as soon as the child comes to their notice.</p>	<p>Child, Youth and Family would remove every subsequent child from the care of their parent as soon as the child comes to their notice, without being required to gain judicial authority.</p> <p>Only following removal could Child, Youth and Family or the parent could apply to the Family Court to have the child returned.</p> <p>Section 9(2)(f)(iv) OIA</p>	<p>May provide the strongest signal to parents that they would be required to demonstrate they are safe to parent in order to regain custody of any subsequent children.</p> <p>Child would be removed from the parent in every case, removing them from any potential risk of harm from the parent.</p>	<p>Would give Child, Youth and Family highly coercive powers not accompanied by the independent judicial oversight of a judicial authority. This would be inconsistent with provisions in the United Nations Convention on the Rights of the Child requiring a child only be separated from parents if determined by judicial authorities to be in the best interests of the child, and provisions of other international covenants.</p> <p>Would also directly contravene:</p> <ul style="list-style-type: none"> • key principles of natural justice • the right to be free of arbitrary interference in family life • the principle that the best interests of the child be the paramount consideration in care and protection proceedings. <p>Significantly heightens the risk of pregnant women avoiding engaging with services to avoid detection.</p> <p>Children could be removed from parents in the short term, even though it can subsequently be demonstrated that the parent is safe. Removal even in the short term can have negative consequences for parent/child attachment and healthy</p>

Option	Impacts/implications	Benefits	Issues/risks
			development (for example breastfeeding).
<p>Option 5: Improved flagging and tracking systems, particularly with the health sector – explored as part of the flagging and tracking workstream of the Children’s Action Plan</p> <p>(Non-legislative option)</p>	<p>Systems in place will be made more comprehensive, eg automatic flags in health data systems against the names of people with a previous child removed, and guidance issued that a notification should be made to Child, Youth and Family if a subsequent child is expected.</p> <p>Once Child, Youth and Family is aware of a subsequent child, legal action is taken to remove a child if the child is unsafe to remain.</p> <p>Cost of development and implementation of improved systems.</p>	<p>A generally effective means of ensuring a subsequent pregnancy comes to the attention of Child, Youth and Family, and should result in the identification of more women.</p> <p>Minimises intervention, consistent with the principle in the CYP&F Act that intervention into family life should be the minimum necessary to ensure a child’s safety and protection.</p> <p>Likely to be possible within the current legislative regime, particularly using an Authorised Information Sharing Agreement as introduced under the recent amendments to the Privacy Act 1993.</p>	<p>Even with a comprehensive flagging system, some people may avoid engaging with services to avoid detection.</p> <p>May still be difficult to detect if the parent with a previous child removed is the father.</p> <p>No external oversight of Child, Youth and Family’s risk assessment, if Child, Youth and Family considers that the child is safe to remain.</p> <p>Relies on the co-operation of health sector workers to notify Child, Youth and Family.</p>

Other options considered

- 23 Other non-legislative options were considered, but were assessed as being unlikely to provide the required oversight of cases involving the subsequent children of parents who have seriously abused, neglected or killed their child. Other options put forward were also not considered to provide the required signal to such parents of what changes are expected for authorities to be satisfied of the safety of a subsequent child, in order to provide further impetus for a parent to proactively make appropriate behavioural changes.

Retrospective effect

- 24 It is proposed that after the legislation is enacted, any subsequent child will be subject to the assessment, including where removal of a previous child occurred before the legislation came into force.
- 25 Options were considered that did not have retrospective effect, but these were considered to not adequately ensure the safety of children who had siblings removed prior to the legislation coming into force.

Consultation

- 26 The Green Paper for Vulnerable Children (the Green Paper) was released in July 2011 for public consultation. Close to 10,000 submissions were received from a diverse range of people and organisations. Submissions on the Green Paper informed the development of the White Paper and the development of these options.
- 27 In addition to this, cross-agency steering and working groups comprised of relevant agencies, were established for the development of the White Paper. Non-government practice and frontline workers from the education, health, social services and justice sectors were consulted as part of the development of the White Paper. An external reference group was consulted throughout the policy development process, and service design workshops were held to test and develop the early response system.
- 28 Relevant government agencies continue to be consulted on the legislative proposals, including the agencies that make up the Vulnerable Children's Board. MSD has also consulted with the Children's Commissioner and the Principal Family Court Judge.
- 29 The public will have further opportunity to comment on the proposal at the Select Committee stage of the Vulnerable Children's Bill.

Conclusions and recommendations

- 30 The VCB recommended all options be put before Ministers for consideration.

Implementation

- 31 Implementation of the proposal will be achieved through the Vulnerable Children's Bill. This Bill will amend the CYP&F Act. The Bill is due to be approved for introduction to the House later this year.
- 32 The proposed change is likely to take effect as soon as the legislation comes into force. This will be worked through during the drafting of the legislation and final advice provided when approval to introduce the Bill is sought from Cabinet.
- 33 Operational guidelines and training will also be prepared within MSD to support the practice changes resulting from the amendment legislation.

Monitoring, evaluation and review

- 34 The purpose of monitoring and review activities for this proposal will be to support the ongoing improvement of assessment and decision-making around the care and

protection needs of subsequent children of parents who have seriously abused, neglected or killed their child.

- 35 Assessing the impact of the proposal will be challenging. This is because it will be rolled out as part of a wider reform package to support vulnerable children. Taking this into account, MSD will assess the implementation and outcomes of these White Paper initiatives as part of the Children's Action Plan monitoring and review programme for White Paper reforms.