

Regulatory Impact Statement

Vulnerable Children's Bill: Additional amendments to legislation to assist children in care (Family Court appeal process for home for life caregivers)

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: Additional amendments to legislation to assist children in care (Family Court appeal process for home for life caregivers)*.

The Cabinet paper proposes legislative changes to the Children, Young Persons, and Their Families Act 1989 (CYPF Act).

This RIS provides an analysis of options to amend the CYPF Act, to 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.

The analysis undertaken is within the parameters set out by Cabinet's agreed programme of work from the White Paper for Vulnerable Children (the White Paper) and based on best available evidence, noting that empirical evidence is limited. The proposals sit alongside a suite of interdependent policy and legislative reforms and do not require any further work before policy decisions can be implemented.

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.

Iona Holsted

Deputy Chief Executive, Ministry of Social Development

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Introduction

- 1 Volume II of the White Paper reiterates the importance Government places on having a high-performing child protection service in Child, Youth and Family. The White Paper identifies children in care and children requiring other statutory care and protection interventions as priority groups, and notes the need for legislative work to better support this vulnerable group of children.¹
- 2 This RIS accompanies the Cabinet paper, *Paper C – Vulnerable Children’s Bill: Additional amendments to legislation to assist children in care (Family Court appeal process for Home for Life caregivers)*. This Cabinet paper seeks approval to use the Vulnerable Children’s Bill to further amend the CYPF Act to establish an appeal process that will provide recourse to the Family Court for Home for Life caregivers who consider that the Chief Executive of MSD has wrongly or unreasonably declined to provide support under the new obligation agreed to by Cabinet [SOC Min (13) 7/7; CAB Min (13) 13/4 refers]. This would replace services orders, which would no longer be available to Home for Life caregivers, and supports an earlier decision to place an obligation on the Chief Executive of MSD to adequately support Home for Life caregivers.

Status quo and problem definition

- 3 Children and young people requiring Child, Youth and Family’s care and protection are New Zealand’s most vulnerable children. Nearly all have experienced trauma, separation and loss. Most have histories of abuse and neglect. They have often had unstable living arrangements, chaotic family lives and very poor parenting. They need dedicated and specialist support to recover and improve their chances of achieving positive life outcomes.
- 4 Some information on the notifications and cases that Child, Youth and Family deal with illustrates the issues.
 - The number of notifications to Child, Youth and Family for concerns for children and young people reached 152,800 in 2011/2012, up 112 per cent from 71,927 in 2006/2007, and are projected to increase by up to 10,000 in 2012/2013 financial year.
 - In 2011/2012 of the 21,525 substantiated findings of abuse and neglect, there were 12,114 cases of emotional abuse, 4,766 cases of neglect, 3,249 cases of physical abuse and 1,396 cases of sexual abuse.
 - 7,870 Care and Protection Family Group Conferences were held in 2011/2012, up from 6,267 in 2006/2007.
 - 88 per cent of children entering care have unmet health conditions, with 65 per cent having an emotional or behavioural problem and 41 per cent having mental health disorders.
- 5 The legislative change proposed within this paper is to help support these children when they leave care and achieve a Home for Life.

Relevant decisions that have already been taken

- 6 On 24 September 2012, Cabinet considered the White Paper and directed the Vulnerable Children’s Board to report back to the Ministerial Oversight Group by March 2013 on final policy proposals for inclusion in the Vulnerable Children’s Bill, including:

¹ For the purposes of this paper the use of the term “children” or the “child” also includes young people if not otherwise stated.

- new guardianship orders for Home for Life caregivers to increase the stability and security of a child's placement enabling the Family Court to direct which guardianship powers reside exclusively with the caregivers, and which are shared with the child's natural parents or other guardians [CAB Min (12) 34/9 refers].
- 7 Cabinet also 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].
- 8 On 22 April 2013, Cabinet agreed to specific care and protection legislation changes being included in the Vulnerable Children's Bill. One of the changes Cabinet agreed to was 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. Alongside this change, Cabinet also agreed to amend that 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
 - arises as a result of the child's care and protection needs or as a result of extraordinary health, education or developmental needs [SOC Min (13) 7/7; CAB Min (13) 13/4 refers].

Cause of the problem

- 9 Over the years a fairly widespread belief has developed among lawyers and the judiciary that Child, Youth and Family is not always forthcoming in providing support for caregivers. As a result, caregivers have often been advised by their legal representative to apply for a services order instead, under section 86 of the CYPF Act.
- 10 This has seen the numbers of services orders increase as the judiciary use this section of the CYPF Act as the first option in gaining support for caregivers. However, services orders are often made on a contingency basis rather than to address known needs. In addition, services orders are often used for costs that a normal parent would be expected to meet, for example, music lessons or clothing. This means that resources do not always go to meet the most serious needs of our most vulnerable children.
- 11 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. A key aim of Home for Life is that the child is able to live a 'normal' life without the stigma that can occur from ongoing Child, Youth and Family involvement.
- 12 From further consultation with the judiciary, we believe there is a significant risk that the proposed obligation to provide support may not be sufficient to give caregivers the confidence that Child, Youth and Family will provide support that is reasonable. This is because the proposal does not provide caregivers with mechanisms to bring the issue back to court if caregivers do not receive the support they expect from Child, Youth and Family.
- 13 Until there is confidence that Child, Youth and Family will provide reasonable support, judges may continue to use services orders as a first option so they can be assured that support will be provided. Further legislative change is needed to give caregivers, and the judiciary, the confidence to rely on the proposed obligation for the Chief Executive to provide support in the first instance, instead of seeking services orders in the court.
- 14 If we continue with the status quo, services orders will continue to be used which can be time-consuming, disruptive on Home for Life families and an inefficient use of resources.

Objectives

- 15 The overall objectives for these legislative changes are to improve the performance of child protection services. This requires ensuring that quality, stable, and timely permanency outcomes are achieved for vulnerable children subject to care and protection.

Regulatory impact analysis

- 16 The range of feasible options to achieve the objectives listed above are outlined in the tables below, along with the impacts of these options. Some options were discarded for not being likely to achieve the objectives before potential costs and all possible impacts were identified.

17 Three options were considered to amend care and protection legislation to assist children in care.

Option	Impacts/implications	Benefits	Issues/risks
<p>Option 1: establish an appeal process for Home for Life caregivers who consider that the Chief Executive of MSD has wrongly or unreasonably declined to provide requested support. <i>(preferred option)</i></p>	<p>This option would involve amending the CYPF Act to establish an appeal 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, and has attempted to resolve the matter through existing internal complaints process, to appeal that decision to the Family Court.</p> <p>This option would include the removal of access to services orders for Home for Life caregivers using the new guardianship orders under the CYPF Act or parenting and additional guardianship orders under the Care of Children Act 2004.</p> <p>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:</p> <ul style="list-style-type: none"> - cannot be met by existing sources of government support - is over and above what is reasonable to expect the caregiver to fund - arises as a result of the child's care and protection needs or as a result of extraordinary health, education or developmental needs 	<p>The main benefits of this new proposal are that it will help give caregivers the confidence that Child, Youth and Family will provide support that is reasonable, and ensure resources are used more effectively.</p> <p>The proposal will also:</p> <ul style="list-style-type: none"> - provide simpler and less intrusive mechanisms for caregivers and the children they care for to gain support after children leave care - replace services orders in most situations, which will assist caregivers and children to live a normal life with minimal intrusion by the State through the review process - reduce the workload of the Family Court through less applications for services orders - provide Child, Youth and Family with an opportunity to better exercise its responsibilities under the CYPF Act. It will encourage managers to give meaningful consideration to reasonable requests for support to avoid having their decision appealed 	<p>It is uncertain how supportive judges and lawyers for caregivers will be of the proposal given the parameters it puts around what support is reasonable to expect the Chief Executive to provide. However, this proposal does ensure reasonable support will be available and this will be the key message to communicate.</p> <p>We will continue to consult with the Principal Family Court Judge and the Ministry of Justice as we proceed.</p>

	<ul style="list-style-type: none"> · is unlikely to be provided otherwise · it is reasonable that the support be provided by the Chief Executive. <p>To ensure that the Chief Executive, and those with delegated authority, exercise consistent and reasonable decision-making, the legislation will provide for the Minister for Social Development to issue a direction regarding the appropriate considerations to be applied by the Chief Executive, and the sorts of costs which should be funded.</p>	<ul style="list-style-type: none"> · result in more streamlined, efficient and consistent decision-making around support for Home for Life caregivers. 	
<p>Option 2: clarifying the circumstances in which the Family Court can make services orders within the CYPF Act.</p>	<p>The CYPF Act would be amended to state that services orders could only be used to provide support for children who have achieved Home for Life where that support:</p> <ul style="list-style-type: none"> · arises as a result of the child's care and protection needs, or as a result of extraordinary health or developmental needs, and · cannot be met by existing sources of government support, and · is over and above what it is reasonable to expect the caregiver/parent to fund, given the caregiver/parent's circumstances, and · is unlikely to be provided otherwise, in the court's opinion, and · is reasonable to expect the Chief Executive to provide, and · has been refused by the Chief Executive. 	<p>The main benefit of this proposal is that it aligns the use of services orders with the obligations proposed for the Chief Executive of MSD for children in Home for Life.</p>	<p>As with Option 1, it is uncertain how supportive judges and lawyers for caregivers will be of the proposal given the parameters it puts around what is reasonable to expect the Chief Executive of MSD to provide.</p> <p>Also, as this option may not significantly reduce the number of services orders, it will not:</p> <ul style="list-style-type: none"> · address the disruption that the review process of services orders can cause for Home for Life families · provide caregivers and the judiciary with the assurance that they can rely on the obligation proposed for the Chief Executive to provide reasonable support · ensure that resources are most effectively used.

<p>Option 3: making services orders non-reviewable. (not recommended)</p>	<p>This option would involve amending the CYPF Act to make services orders non-reviewable. This would mean that Child, Youth and Family and the caregivers would not need to return to the Family Court annually (or every six months for children under seven) to review the services order.</p>	<p>Home for Life caregivers and vulnerable children would no longer be required to attend court or be involved in a review of any services orders they have had made.</p> <p>Would reduce volumes in the Family Court.</p>	<p>If services orders are used as the primary means of ensuring support for caregivers, there would be no process in place to address or identify these changes if the child's situation or needs changed.</p> <p>Regular reviews provide the flexibility to re-assess need if the child's situation or needs change, for example, the need for early childhood education will end once a child begins school, but different needs may be identified.</p>
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Other options considered

- 18 Non-legislative options were also considered but were not considered likely to sufficiently influence the making of services orders through the court.

Consultation

- 19 The Green Paper for Vulnerable Children (the Green Paper) was released in July 2011 for public consultation and 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 have informed the development of these options.
- 20 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 operational professionals 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.
- 21 Relevant government agencies are being consulted on the legislative proposals, including the agencies that make up the Vulnerable Children's Board. MSD is also consulting with the Children's Commissioner and the Principal Family Court Judge.
- 22 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

- 23 MSD has analysed each option, and weighed up the advantages and disadvantages, and recommend progressing the preferred option – establishing an appeal process in the Family Court for Home for Life caregivers who consider that the Chief Executive of MSD has wrongly or unreasonably refused to provide requested support.

Implementation

- 24 Implementation of the overall package to amend the CYPF Act will be phased following the passage of legislation. The Vulnerable Children's Bill is due to be approved for introduction to the House in August 2013.
- 25 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.
- 26 Operational guidelines and training will also be prepared within MSD to support the practice changes resulting from the amendment legislation.

Monitoring, evaluation and review

- 27 The purpose of monitoring and review activities for this proposal will be to support the ongoing improvement of care and protection services.
- 28 Assessing the impact of the overall package of care and protection legislative changes will be challenging. This is because they 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.