ORANGA TAMARIKI
Ministry for Children

Report

Date: 13 December 2019 **Security Level:** Medium

To: Hon Tracey Martin, Minister for Children **File reference:** REP-OT/19/12/375

Findings from phase one of the subsequent children policy work

Purpose of the report

1 This report:

- provides you with findings from phase one of the subsequent children policy work
- seeks your agreement to phase two of the work - developing options for reform of the provisions.

Executive summary

2 In September 2019, you agreed to officials undertaking further work on the subsequent children provisions (the provisions) over two phases [REP-OT/19/221 refers]. For phase one of this work, we have analysed the issues with the current legislation, policy and practice for subsequent children. We have identified next steps to develop options for reform as part of phase two of this work.

3 The provisions are set out in sections 18A to 18D of the Oranga Tamariki Act 1989 (the Act). Appendix One sets out the provisions in full. The provisions define a subsequent child as any child in, or likely to be in, the care of an individual who has had a previous child placed into permanent care, or has a conviction related to the death of a previous child (murder, manslaughter, or infanticide).

4 Our key findings from phase one of the subsequent children policy work are that:

- the needs of subsequent children are not substantively different to those of other children at risk of harm. However, subsequent children may face a high level of risk where there is a lack of support for parents whose children have been removed permanently, or who have a conviction related to the death of a previous child
- aspects of the provisions do not align with a child and whānau-centred approach and may not be supporting the best outcomes for tamariki Māori in the context of our section 7AA obligations because they:
  - pre-determine that subsequent children are at risk of harm
  - shift the usual onus of proof from Oranga Tamariki–Ministry for Children (Oranga Tamariki) onto the parent
  - have some unintended consequences that are not in the best interests of some children, or work against some of the outcomes sought by Oranga Tamariki
- data shows that use of the provisions is low, and we are using different legislative provisions where there is an imminent risk of harm to the safety of a subsequent child. This includes a high number of applications for section 78 orders, which reflects what social workers have told us.

5 Our initial view is that the provisions are not helping to ensure the safety and wellbeing of subsequent children in the way they were originally intended. We recommend considering options to reform the separate statutory pathway for this group of children. These options include considering legislative, policy and practice changes. Options for legislative change could include repealing the provisions, reforming the provisions (eg the definition of subsequent parent), or amending the process.

6 While the provisions are not achieving their original policy intent, we recognise that children who are within the scope of these provisions may be exposed to serious risk of harm. For example, children with a parent who was convicted for murdering a previous child still require robust responses that reflect the high risk they may face to ensure their safety and wellbeing. Subject to your agreement, while developing options for reform we will consider:

- the need to ensure the safety and wellbeing of subsequent children, including whether there are groups of children and whānau who require different approaches, such as specific types of risk assessment and decision-making processes
- the support needs of parents and whānau whose children have been permanently removed, or who have a conviction related to the death of a previous child, with a view to reducing the risk of harm for any future children they may have. This is a gap in the current system of child protection and in service provision for whānau.

7 We propose establishing an advisory group to work with us as we develop options for reform. The group could include members of the Oranga Tamariki Māori Design Group (MDG), representatives from strategic partners, the Office of the Children's Commissioner, and the Principal Family Court Judge. If you agree, we will approach individuals to determine their interest in being involved.

8 We will report to you in May 2020 with advice on options for reform of the provisions. Cabinet decisions on amendments will be required by July 2020 s 9(2)(f)(iv) [redacted]

Recommended actions

It is recommended that you:

1 **note** that you agreed to officials undertaking further work on the subsequent children provisions in September 2019 [REP-OT/19/221 refers], with work split into two phases:

1.1 problem definition work, with advice to you in late 2019

1.2 develop options for reform with advice to you in the new year

2 **note** the key findings from phase one are:

2.1 the needs of subsequent children are similar to those of other children at risk of harm. However, subsequent children may face a higher level of risk where there is a lack of support for parents whose children have been removed permanently, or who have a conviction related to the death of a previous child

2.2 aspects of the provisions do not align with a child and whānau-centred approach, are not achieving their original policy intent, and may not be supporting the best outcomes for tamariki Māori in the context of our section 7AA obligations

2.3 data and practice show that we are using other care and protection grounds when there is an imminent risk of harm to a subsequent child

3 **note** that our initial view is the current legislative provisions are not helping ensure the safety and wellbeing of subsequent children, and we recommend considering options to reform the separate statutory pathway for this group of children

4 **agree** to phase two of the review, which will focus on developing options to reform subsequent children legislation, policy, and practice

Agree / Disagree

5 **agree** that officials will develop options for reform with the following considerations in mind:

5.1 the need to continue to ensure the safety and wellbeing of children at high risk of harm, including whether there are groups of children and whānau who require different approaches, eg specific types of risk assessment and decision-making processes

5.2 the support needs of parents and whānau whose children have been permanently removed, or who have a conviction related to the death of a previous child, with a view to reducing the risk of harm for any future children they may have

Agree / Disagree

6 **agree** for officials to seek advice and input from members of the Oranga Tamariki Māori Design Group, representatives from strategic partners, the Office of the Children's Commissioner, and the Principal Family Court Judge to develop legislative, policy and practice changes for subsequent children, as defined by the current sections 18A – 18D of the Oranga Tamariki Act 1989

Agree / Disagree

7 **note** that we will report back to you with options for reform of the subsequent children legislative provisions, policy and practice in May 2020

8 **note** that Cabinet decisions on amendments will be required by July 2020 to meet timing requirements s 9(2)(f)(iv) .

Maria Kirkland
Acting General Manager, Policy

Date

Hon Tracey Martin
Minister for Children

Date

You agreed to Oranga Tamariki undertaking further work to assess the subsequent children provisions

9 On 12 September 2019, you agreed to Oranga Tamariki undertaking further work on the policy settings and practice for subsequent children and their whānau, including any legislative amendments required to give effect to those settings [REP-OT/19/221 refers].

10 You agreed the objectives of this work would be:

- to better understand the needs and circumstances of children and whānau who fall within the provisions
- to better understand how the provisions have operated since they were implemented, including an understanding of current practice (through decisions made by both the Family Court and Oranga Tamariki)
- to consider how the provisions align with a child and whānau-centred approach, section 7AA of the Act, and the Oranga Tamariki outcomes framework
- to identify options for reform that ensure subsequent children and their whānau receive the most appropriate support to promote their safety and wellbeing.

11 This work was split into two phases:

- phase one: problem definition work, with advice to you in late 2019
- phase two: develop options for reform with advice to you in the new year.

12 Since September, we have analysed the issues with the current legislation, policy and practice for subsequent children. This has included undertaking:

- a review of local and international literature on the needs and circumstances of subsequent children and their parents, and the approaches and interventions that work well
- an assessment of the provisions against the purposes and principles of Act, a child and whānau-centred approach, and section 7AA of the Act
- analysis of data of the use of the provisions
- engagement with whānau, the Oranga Tamariki Māori Design Group, and frontline social workers.

Two key features distinguish the provisions from other care and protection pathways

13 The original provisions were developed in response to concerns about the lack of oversight of cases involving the subsequent children of parents who had killed, seriously abused or neglected their children.

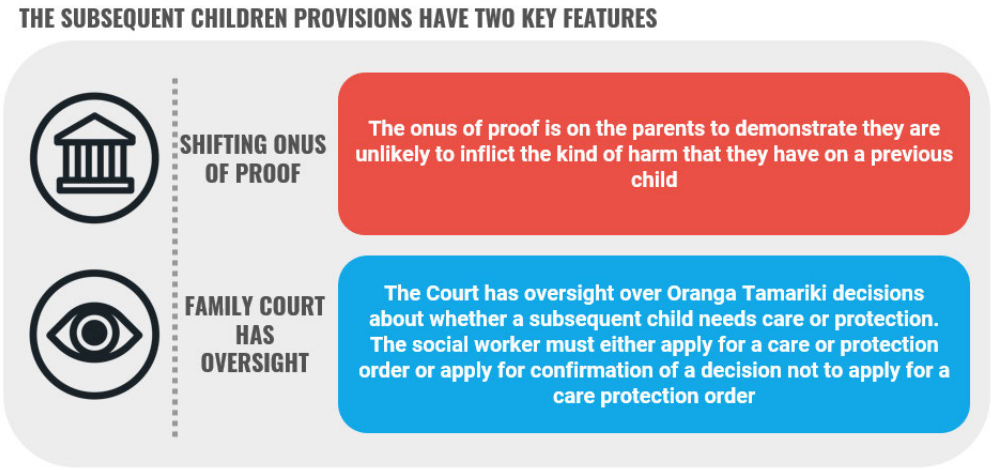
14 Section 18B defines a subsequent child as any child who is, or is likely to be, in the care or custody of a person who has:

- had a child removed from their care as a result of safety issues (and a relevant court order made), and either a Family Group Conference has agreed, or the Family Court has determined, that there is no realistic possibility that the child or young person will be returned to the person's care; or
- been convicted under the Crimes Act 1961 of the murder, infanticide, or manslaughter of a child or young person that was in their care or custody.

15 Section 14(1)(c) establishes that a child is in need of care or protection if:

- they are a subsequent child of a parent to whom section 18B applies, and
- the parent has not demonstrated to the satisfaction of the chief executive or the court that they are unlikely to inflict on the subsequent child the kind of harm that led to the parent being so described (section 18A(7)).

16 The provisions establish an automatic response when a subsequent child comes to the notice of Oranga Tamariki.



17 In general, Oranga Tamariki is required to show that a child is at risk of harm in order to apply for a care or protection order. Shifting the onus of proof and establishing Family Court oversight creates different care and protection practice for subsequent children.

Children involved in multiple care proceedings have similar needs to other children at risk of harm, but parents need more support after children are taken into care

18 We have assessed local and international literature on the needs of, and interventions and approaches that work well for children, their parents, families and whānau.[1] The international research focuses on families subject to recurrent care proceedings.[2]

19 The literature lacks information related to the needs of 'subsequent children' as defined by our legislation. In particular, there is no research on the needs of children with parents who have convictions related to the death of a previous child.

20 New South Wales, Australia (NSW) is the only jurisdiction identified as having legislation similar to the provisions. The NSW provisions are set out in section 106A of their Children and Young Persons (Care and Protection) Act 1998. Section 106A defines subsequent children more broadly than the New Zealand provisions and does not require Court oversight over assessments of subsequent children who are deemed to be safe.[3]

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[1] This included one piece of research on the needs of Māori children and their whānau.

[2] Recurrent care proceedings involve parents who experience repeated court appearances for care and protection reasons and often involve repeated removal of children.

[3] In cases of child removal, the NSW provisions can apply simply where a child has not been returned to their parents. The New Zealand provisions require a determination that there is no realistic possibility of return to apply. In cases involving the death of a child, the NSW provisions apply to parents who were named by the police or coroner as someone who may have been involved in causing a reviewable death of a child or young person. The similar New Zealand provisions apply where an individual has a conviction for the murder, manslaughter, or death of a child who was *in their care*.

21 The literature on recurrent care proceedings assesses the needs and circumstances of these parents and children, without looking specifically at safety risk. It does not suggest the needs of parents and children involved in repeat care proceedings are different to those of other families that care and protection agencies work with.

22 However, the challenges parents face are likely to be more complicated if they have not received support to address the issues that led to previous children being removed. Where parents have had children removed from their care, or have convictions related to the death of a previous child, they require skilled, tailored and sensitive support in order to:

- ensure children in permanent care can maintain the best possible relationship with their parents
- engage these parents in services that may address issues that led to child removal (including mental health, substance misuse and safety in relation to family violence), or that led to the death of a previous child
- manage the trauma, grief and loss of child associated with removal or the death of a child
- prevent grief from compounding the issues that led to child removal or death
- ensure possible future children have the best chance of remaining with their parents.[4]

23 The literature also highlighted that:

- fear of removal is a key barrier to seeking support and engaging with services for women pregnant with a subsequent child
- whole-of-family approaches and cross-sector collaboration are important to ensure that multiple, complex risks and needs can be addressed and managed
- indigenous leadership and working in partnership to achieve solutions is important.[5]

24 Although the literature does not clearly identify needs unique to subsequent children, it does indicate that, without support, subsequent children may be born into environments where there is a high risk to their safety.

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[4] Broadhurst, K., Mason, M. C., Bedston, S., Alrouh, B., Morriss, L., McQuarrie, M. T., Kershaw, M. S. (2017). Vulnerable birth mothers and recurrent care proceedings. University of Lancaster. United Kingdom.

McCracken, K., Fitzsimons, A., Priest, S., Bracewell, K., Tochia, K., Parry, W., & Stanley, N. (2017). Evaluation of Pause Research Report. United Kingdom.

Stone, G. (Not yet published). Evaluation of subsequent parent trial. The Ripple Research Collective. New Zealand.

[5] Everitt, L.; Homer, C., Fenwick, J. (2017). Working with vulnerable pregnant women who are at risk of having their babies removed by the Child Protection Agency in New South Wales. Child Abuse Review. Australia.

Wall-Wieler, E., Roos, L. L., Brownell, M., Nickel, N. C., Chateau, D., & Nixon, K. (2018). Postpartum Depression and Anxiety Among Mothers Whose Child was Placed in Care of Child Protection Services at Birth: A Retrospective Cohort Study Using Linkable Administrative Data. Maternal and Child Health Journal. Canada.

Bedston, S., Philip, G., Youansamouth, L., Clifton, J., Broadhurst, K., Brandon, M., & Hu, Y. (2019). Linked lives: Gender, family relations and recurrent care proceedings in England. Children and Youth Services Review. United Kingdom.

Frederico, M.; Jackson, A.; Dwyer, J. (2014). Child protection and cross-sector practice: An analysis of child death reviews to inform practice when multiple parental risk-factors are present. Child Abuse Review. Australia.

Del Valle, J. F., & Bravo, A. (2013). Current trends, figures and challenges in out of home child care: An international comparative analysis. Psychosocial Intervention. Spain.

Children and whānau who have had involvement with the Oranga Tamariki system emphasise the need for the right support at the right time

25 Insights from children and whānau are important to understand what is needed in the period after children are taken into care.

26 While not specific to subsequent children, the November 2019 *'What Makes a Good Life? Follow-up report'* interviewed children and young people in non-kin care, and noted that:

- children and young people want support for their family and whānau to take care of them, and specific support for family members (for example mum receiving counselling)
- children and young people state that their parents' upbringing can sometimes lead to problems but feel that their parents are not supported to deal with those problems
- being separated from family is one of the things that can get in the way of a good life.

27 We also met with three whānau Māori to talk about their experiences of Oranga Tamariki bringing their children into care. These were not parents of subsequent children. This was facilitated by the Ohomairangi Trust in Auckland, which has run a trial funded by Oranga Tamariki for parents with children in care.[6] Whānau told us that they need:

- clear information about their situation, before and after a child is removed from their care
- to be given the opportunity to demonstrate how they care for and love their children, and to respond to concerns that others have raised with Oranga Tamariki
- to be seen, respected, heard and "not written off" from the outset
- effective and tailored programmes or support that address their needs, before and after a child is removed from their care.

Aspects of the provisions do not align with a child or whānau-centred approach or the new direction of Oranga Tamariki

28 Section 4A of the Act sets out that the paramount consideration in care and protection matters for Oranga Tamariki is the wellbeing and best interests of the child or young person.

29 Other principles of the Act recognise that:

- the primary responsibility for caring for and nurturing the wellbeing and development of the child or young person lies with their family, whānau, hapū, iwi and family group (section 5(1)(c)(i))
- the effect of any decision on the child's relationship with their family, whānau, hapū, iwi and family group should be considered (section 5(1)(c)(ii))
- wherever possible a child or young person's family, whānau, hapū, iwi and family group should participate in decisions and regard should be had to their views (section 5(1)(c)(v)).

30 Changes were made to the Act in 2017 to underpin the development of the new Oranga Tamariki operating model. These changes are now in force, and include amended purposes, principles and duties to:

- ensure children are at the centre of decision-making, while considering them within the context of their families, whānau, hapū, iwi and family groups, and broader networks and communities. This included introducing the concepts of mana tamaiti (tamariki),

[6] The subsequent parent trial was established for parents of subsequent children, and focuses on providing support to parents to ensure that possible future children can remain in their care. To ensure greater participation, the initial eligibility criteria for the trial was broadened to parents who do not fit the section 18B criteria.

whakapapa and whanaungatanga, to provide a clearer articulation of giving effect to a child-centred approach, particularly for Māori children

- emphasise the need to strengthen and support the child or young person's family, whānau, hapu, iwi and family group to enable them to care for any child of that family or whānau, as well as the child at risk of harm (section 13(2)(b)(i)(A))
- support a more preventative approach. In particular, providing early assistance to families, whānau, hapū, iwi and family groups to care for and meet the needs of their children, including where there is a risk of a child needing to be removed from home
- improve outcomes for Māori children including that the policies, practices, and services must have regard to mana tamaiti (tamariki), whakapapa of Māori children and young persons and the whanaungatanga responsibilities of their whānau, hapū, and iwi (section 7AA of the Act).

31 The need to respond appropriately to protect children at risk of harm continues to be a core element of the statutory framework under which Oranga Tamariki operates.

32 In this context, we have considered the subsequent children provisions against the changes to principles and duties in the Act, our outcomes framework, and a child and whānau-centred approach. In particular, there are three aspects of the subsequent children provisions that do not align with the direction the Government has set for Oranga Tamariki. The provisions:

- pre-determine risk
- shift the onus of proof on to the parents
- have had unintended consequences that are not in the child's best interests.

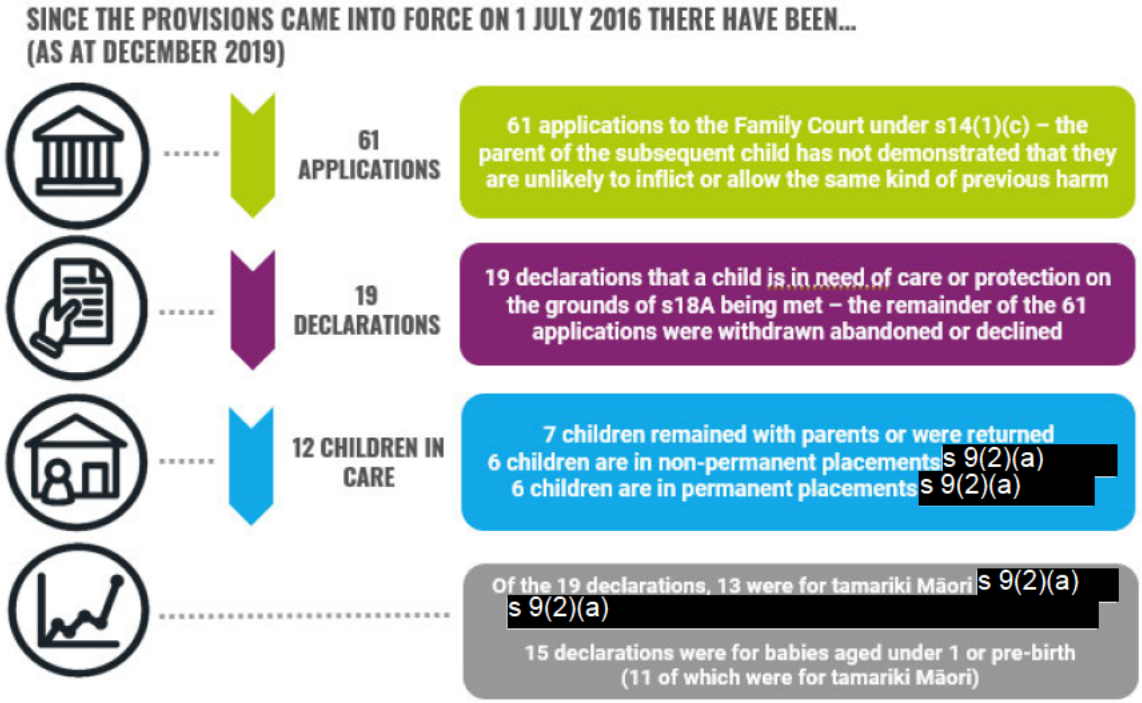
33 Table One assesses these aspects of the provisions, along with policy and practice issues.

Table One: assessment of aspects of the provisions

Aspect	Assessment
The provisions are **based on a pre-determination** that a particular category of children are automatically at risk of harm, and set out an automatic response when a subsequent child comes to the notice of Oranga Tamariki.	• An automatic response is not consistent with a child and whānau-centred approach that bases responses on the individual circumstances of the child, their parents and whānau. A child-centred approach is supported by amendments to the principles of the Act. These include the principle in section 5(1)(b) that the wellbeing of the child must be at the centre of decision-making, sections 5(b) and 5(c) that recognise the place of children within the familial, cultural and community contexts, section 5(b)(iv) that emphasises the importance of mana tamaiti (tamariki), whakapapa and whanaungatanga, and section 5(1)(vi) that sets out that a holistic approach should be taken that sees the child as a whole. • An automatic response for the diverse range of parents within scope of the provisions is deterministic. It does not reflect that needs or risks for parents can change, or that challenges that led to child removal may be a point in time.
The provisions require parents to demonstrate that they are unlikely to inflict on a subsequent child the kind of harm that led to the previous child being removed or dying. This **shifts the usual onus of proof** from Oranga Tamariki onto the parent.	• The onus on parents to demonstrate safety does not align well with the intention to mandate assistance, from an early stage, to support and strengthen families to care for their children. For example, the section 13(2)(e) principle sets out that assistance and support should be provided to assist families, whānau, hapū and iwi, and family groups where there is a risk that a child may be removed from their care, and in other circumstances where the child is likely to be in need of care or protection. • Shifting the usual burden of proof from the State is an usual example in New Zealand law. Parents may already face barriers engaging with Oranga Tamariki or Family Court processes, and lack access to advocacy support.
The legislative provisions have had **unintended consequences** that are not in the best interests of some children or are working against achieving some of the outcomes sought by Oranga Tamariki.	• An automatic response may be disproportionate to the individual situation and result in unnecessary intervention in a family's life (eg situations where parents have already demonstrated progress to social workers, or where there are only minor concerns). This may not be in the best interests of the child. An automatic response and shifting the onus to parents can create an adversarial relationship with parents. • An adversarial relationship can make it difficult to secure the type of engagement that will achieve our early and intensive intervention objectives. The mana tamaiti objectives underpin our high aspirations for tamariki Māori, with our end goal being that tamariki Māori are thriving under the protection of whānau, hapū and iwi. This will be achieved, in part, by working with whānau to prevent entry into care. An automatic response undermines these objectives, which are important for meeting obligations under Section 7AA of the Act.
Issues with policy and practice settings for the provisions	
Lack of support for parents whose children have been removed, including limited access to advocacy services, and not considering the trauma they have experienced. **Parents may not be informed** about the consequences of the provisions on future children who may be born.	• An amended principle is set out in section 13(2)(b)(i)(A) of the Act: early support services to improve the safety and wellbeing of children and young people at risk of harm should also strengthen and support their family, whānau, hapū, iwi and family group to care for any future child. Currently the support provided to parents does not explicitly include support to better enable them to care for future children.

Data and practice show that while we are working with parents and children who fall within the scope of these provisions, we rarely use the provisions

34 The original intent of the provisions was to ensure greater oversight over the safety of subsequent children. It was estimated that 450 subsequent children would come to the notice of Oranga Tamariki each year.[7] In three and a half years, only 61 applications have been made to the Family Court. The majority of these applications were abandoned, withdrawn or declined, generally because other care and protection pathways were used, or parents did not meet section 18B criteria. Based on feedback from social workers on the complexity of using the provisions (identified in paragraph 40), this is likely to be a reason why other care and protections pathways are being used.



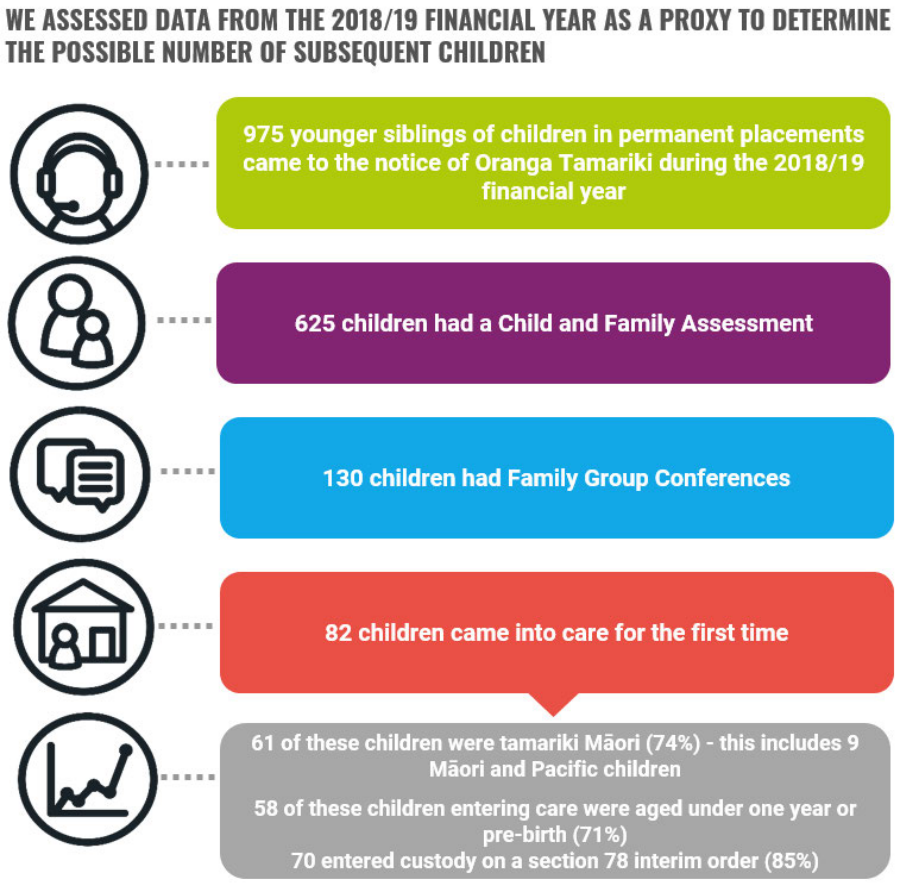
35 The data shows that even in rare instances these provisions were used to seek a declaration that a child is in need of care or protection, some children still remained with or returned to their parents, and the majority of children brought into care were placed with whānau.

36 There have been six applications to the Family Court for confirmation of an Oranga Tamariki assessment that a subsequent child is not in need of care or protection. All six children remained in the care of their parents.

[7] Ministry of Social Development. (2013). Initial briefing to the Social Services Committee on the Vulnerable Children's Bill.

We are using different legislative provisions to respond to an imminent risk of harm to the safety of a subsequent child

37 This analysis identified all children and young people who have achieved a 'Home for Life' placement as a proxy for achieving a permanent care placement. Note this will not capture all instances of a child permanently being removed into care and may also include some instances that may not match the definition of a subsequent child. To examine the extent of children and parents who *could* fall under the definition of subsequent children, we have assessed data of younger siblings of children in permanent placements.[8] This has been used as a proxy to show how many subsequent children (with siblings in permanent placements), come to our attention.



38 This data shows that Māori are disproportionately represented, we are relying heavily on section 78 orders where there is an imminent risk of harm to these children, and the majority of these children are aged under one year or pre-birth.[9]

39 We have not undertaken an analysis of the reasons these 82 children entered care, which could be wide-ranging. We will undertake further analysis of these reasons as part of phase two of the work.

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[8] This analysis identified all children and young people who have achieved a 'Home for Life' placement as a proxy for achieving a permanent care placement. Note this will not capture all instances of a child permanently being removed into care and may also include some instances that may not match the definition of a subsequent child.

[9] Following a section 78 order, a usual care and protection process would have been followed.

Social workers have told us that the provisions are complex, but that there are benefits to requiring a robust assessment for some high-risk parents

40 We have spoken to a small number of practitioners who have used the provisions. They told us that the provisions:

- are complex and require a significant amount of legal advice about their use
- involve a lengthy Family Court process
- adversely impact on the social worker's relationship with whānau
- are difficult to operationalise, and do not require other agencies or professionals to bring subsequent children to our notice.

41 Social workers did highlight the benefit of requiring a robust assessment for high-risk cases (eg where a parent has a conviction for manslaughter or murder of a previous child). To be robust, this assessment should involve other professional input, such as psychologists.

We identified links to some findings from the Hawkes Bay Practice Review

42 Anecdotally, we have heard that the provisions may have created an over-reliance on historical factors when assessing a situation for a subsequent child (whether their parents meet the criteria under the Act or not).

43 This reflects findings in the Hawkes Bay Practice Review. One of the system-wide recommendations is to provide additional professional development and guidance for social workers on how to assess the significance of historical concerns against up-to-date information. The Review also identified the need to ensure better understanding of individuals to whom the subsequent children provisions apply.

44 In developing this report, we have not found definitive evidence that the subsequent provisions have impacted on wider social work practice. However, Oranga Tamariki has previously acknowledged that introducing the provisions in 2016 may have led to an increase in the use of section 78 orders, due to an increased sensitivity to the vulnerability of new-born babies.[10]

We discussed the provisions with the Oranga Tamariki Māori Design Group to seek their views

45 MDG told us that the provisions are in direct conflict with section 7AA of the Act and the practical commitment to the principles of the Treaty of Waitangi. MDG advised that there is a high level of interest in their communities about the provisions in the context of the Hawkes Bay Practice Review, and the other independent reviews currently underway. This is also reflected in several of the claims presented to the Waitangi Tribunal as part of its urgent inquiry into Oranga Tamariki policies and practices.

46 In particular, MDG consider that the provisions:

- do not enable wider whānau, hapū and iwi participation
- create a barrier to engagement with services for fear of children being removed
- sit on top of already strong, coercive state powers
- set whānau up for failure
- do not reflect that whānau need advocacy and support
- can result in non-kin care placements

[10] Oranga Tamariki information release. (2019). Babies and children entering Oranga Tamariki care.

- can impact on attachment between a child and their whānau (due to the lengthy Family Court process and lack of access)
- do not recognise that there are options to improve situations (eg drug and alcohol rehabilitation, counselling support, family support, Whānau Ora Navigation, housing options, early intervention)
- overlook the need for a comprehensive and effective whānau-centred approach, which addresses the range of issues that can impact upon a family at any one time: poor mental health, addiction, poverty and hardship, and disconnection from whānau.

Phase two of the work will involve developing options for reform of the provisions

47 Our phase one problem definition work identifies that the need of subsequent children are similar to those of other children at risk of harm, but their parents require skilled, sensitive and tailored support. Aspects of the provisions do not align with a child and whānau-centred approach, and may not be supporting the best outcomes for tamariki Māori in the context of our section 7AA obligations. Data and practice also show that we are using other care and protection grounds when there is an imminent risk of harm to a subsequent child.

48 Our initial view is that the current legislative provisions are not helping ensure the safety and wellbeing of subsequent children, and that we should consider options to reform the separate statutory pathway for this group of children. Options for legislative change could include repealing the provisions, reforming the provisions (eg the definition of subsequent parent), or amending the process.

49 Options for reforming the provisions, policy and practice will ensure subsequent children receive the most appropriate support to ensure their safety and wellbeing, in line with the Oranga Tamariki outcomes framework and obligations under the Act.

Phase one identified the lack of support for parents when their children are removed, including those who meet the subsequent children criteria

50 The evidence and what we heard from young people and whānau show there is more the system could be doing to support parents after children are taken into care, prior to possible future children being born. This is a gap in the system and in our operating model, where parents lose support from a range of services when the plan for the child becomes permanency.

51 Effective support could help to achieve the following objectives.

- **Help these parents to maintain connection with and play a role in the lives of their children removed from their care** – in line with the principles in the Act, including the welfare and best interests of the child and recognising and respecting a child's sense of belonging, whakapapa and the whanaungatanga responsibilities of their family, whānau, hapū, iwi (s 5(1)(c)(iii).
- **Help prevent any future children requiring State care** – in line with the outcomes framework and purposes of the Act, including that we assist families and whānau to prevent their children from suffering harm, abuse, neglect, ill treatment, or deprivation (s 4(1)(c)).
- **Strengthen and support families** - giving them the best opportunity to provide loving care and nurture the wellbeing and development of their children eg (s 13(2)(b)).

Developing options for reform will ensure the safety and wellbeing of subsequent children and the support that parents and whānau require

52 Options will be developed with the following considerations in mind:

- the need to continue to ensure the safety and wellbeing of children at high risk of harm, including whether there are groups of children and whānau who require different practice approaches, such as specific types of risk assessment and decision-making
- the support needs of parents and whānau whose children have been permanently removed, or who have a conviction related to the death of a previous child in their care, with a view to reducing the risk of harm for any future children they may have.

53 Developing options for reform of the provisions will also include:

- further engagement with whānau to understand their experiences of having multiple children taken into care, and the support they required in this process. Some members of MDG have offered to potentially facilitate engagement through their links to the community. We will also draw on research undertaken by Ngāti Kahungunu with whānau on their experiences of Oranga Tamariki
- engaging further with social workers to get their views on practice approaches to ensure the safety and wellbeing of subsequent children
- targeted consultation with stakeholders.

54 We recommend seeking advice and input from members of MDG, representatives from strategic partners, the Office of the Children's Commissioner, and the Principal Family Court Judge to develop options for reform. Subject to your agreement, we will approach individuals to determine their interest in being involved in this work.

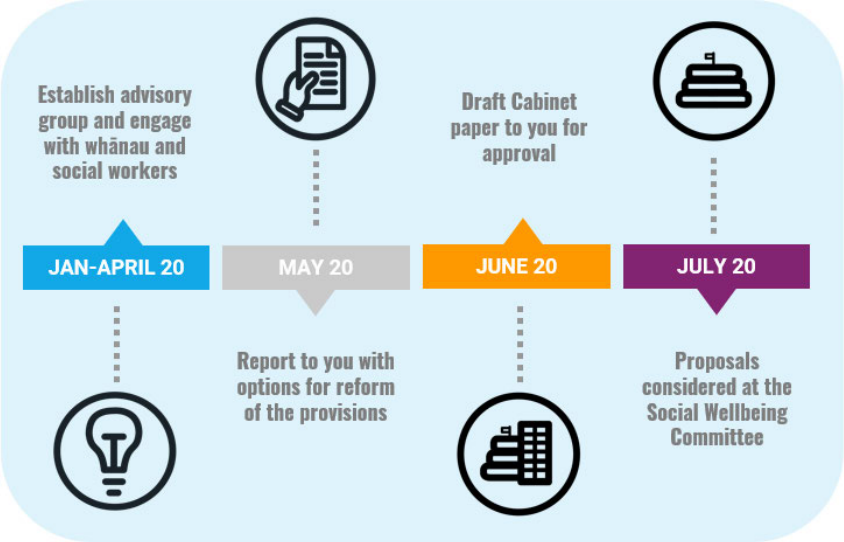
55 As part of this option development, the following links will be considered:

- the development of the Oranga Tamariki intensive intervention function
- the Government's response to the Family Court review, as part of our engagement with the Ministry of Justice
- the National Strategy and Action Plan to prevent and reduce family violence and sexual violence
- the Oranga Tamariki Action Plan
- any recommendations made as part of the reviews underway into Oranga Tamariki (including the Ombudsman, the Office of the Children's Commissioner and the Waitangi Tribunal urgent inquiry).

56 These links reflect that subsequent children and their whānau are impacted by systemic issues that are broader than the provisions alone. While we develop options for reform we will consider these systemic issues, as they relate to legislation, policy and practice for subsequent children.

We will report back to you by May 2020

57 We propose the timeframes below for completing phase two.



58 With your agreement, we will establish a group to seek advice and input on developing options for reform, ahead of Oranga Tamariki providing you with advice for phase two. We will report back to you in May 2020.

59 Cabinet decisions on amendments will be required by July 2020 to meet timing requirements for inclusion in a proposed Oranga Tamariki Amendment Bill. You have submitted a bid for this Bill, but it has not been confirmed on the legislation programme. s 9(2)(f)(iv) [redacted]

Appendix One: Sections 18A to 18D of the Oranga Tamariki Act 1989

18A Assessment of parent of subsequent child

(1) This section applies to a person who—

(a) is a person described in section 18B; and

(b) is the parent of a subsequent child; and

(c) has, or is likely to have, the care or custody of the subsequent child; and

(d) is not a person to whom subsection (7) applies.

(2) If the chief executive believes on reasonable grounds that a person is a person to whom this section applies, the chief executive must, after informing the person (where practicable) that the person is to be assessed under this section, assess whether the person meets the requirements of subsection (3) in respect of the subsequent child.

(3) A person meets the requirements of this subsection if,—

(a) in a case where the parent's own act or omission led to the parent being a person described in section 18B, the parent is unlikely to inflict on the subsequent child the kind of harm that led to the parent being so described; or

(b) in any other case, the parent is unlikely to allow the kind of harm that led to the parent being a person described in section 18B to be inflicted on the subsequent child.

(4) Following the assessment,—

(a) if subsection (5) applies, the chief executive must apply for a declaration under section 67 that the subsequent child is in need of care or protection on the ground in section 14(1)(ba); or

(b) in any other case, the chief executive must decide not to apply as described in paragraph (a), and must instead apply under section 18C for confirmation of the decision not to apply under section 67.

(5) The chief executive must apply as described in subsection (4)(a) if the chief executive is not satisfied that the person, following assessment under this section, has demonstrated that the person meets the requirements of subsection (3).

(6) No family group conference need be held before any application referred to in subsection (4) is made to the court, and nothing in section 70 applies.

(7) This subsection applies to the parent of a subsequent child if, since the parent last became a person described in section 18B,—

(a) the parent has been assessed under this section in relation to a subsequent child and, following that assessment,—

(i) the court has confirmed, under section 18C, a decision made under subsection (4)(b); or

(ii) the chief executive applied for a declaration under section 67 that the child was in need of care or protection on the ground in section 14(1)(ba), but the application was refused on the ground that the court was satisfied that the parent had demonstrated that the parent met the requirements of subsection (3); or

(b) the parent was, before this section came into force, subject to an investigation carried out by a social worker under section 17 in relation to a child who would, at that time, have fallen within the definition of a subsequent child, and—

(i) the social worker did not at that time form the belief that the child was in need of care or protection on a ground in section 14(1)(a) or (b) (as in force at that time); or

(ii) a family group conference was held, the parent addressed the concerns raised to the satisfaction of the chief executive, and the parent subsequently maintained care of the child.

18B Person described in this section

(1) A person described in this section is a person—

(a) who has been convicted under the Crimes Act 1961 of the murder, manslaughter, or infanticide of a child or young person who was in the person's care or custody at the time of the child's or young person's death; or

(b) who has had the care of a child or young person removed from that person on the basis described in subsection (2)(a) and (b) and, in accordance with subsection (2)(c), there is no realistic prospect that the child or young person will be returned to the person's care.

(2) Subsection (1)(b) applies, in relation to a child or young person removed from the care of a person, if—

(a) the court has declared under section 67, or a family group conference has agreed, that the child or young person is in need of care or protection on a ground in section 14(1)(a) or (b); and

(b) the court has made an order under section 101 (not being an order to which section 102 applies) or 110 of this Act, or under section 48 of the Care of Children Act 2004; and

(c) the court has determined (whether at the time of the order referred to in paragraph (b) or subsequently), or, as the case requires, the family group conference has agreed, that there is no realistic possibility that the child or young person will be returned to the person's care.

(3) If a person is a person described in this section on more than 1 of the grounds listed in subsection (1), the references in section 18A(3) to the kind of harm that led a person to being a person described in this section is taken to be a reference to any or all of those kinds of harm.

18C Confirmation of decision not to apply for declaration under section 67

(1) An application under this section for confirmation of a decision under section 18A(4)(b) relating to the parent of a subsequent child must include—

(a) information showing that the person is a person to whom section 18A applies; and

(b) an affidavit by the person making the application setting out the circumstances of the application and the reasons for the person's belief that the parent meets the requirements of section 18A(3).

(2) The application must be served in accordance with section 152(1) as if it were an application for a declaration under section 67.

(3) When considering the application, the court may (but need not) give any person an opportunity to be heard on the application and, if it does, may appoint a barrister or solicitor (under section 159) to represent the subsequent child.

(4) After considering the application, the court may,—

(a) if subsection (5) applies, confirm the chief executive's decision under section 18A(4)(b) not to apply for a declaration under section 67; or

(b) decline to confirm the chief executive's decision under section 18A(4)(b), in which case section 18D applies; or

(c) dismiss the application on the ground that it does not relate to a person to whom section 18A applies; or

(d) adjourn the hearing and require the chief executive to—

(i) provide such information as the court specifies, within the period specified by the court; or

(ii) reconsider all or any aspect of the assessment and report to the court within a period specified by the court.

(5) The court may confirm the decision of the chief executive under section 18A(4)(b) only if it is satisfied, on the basis of the written material before it (and, if the court has heard any person under subsection (3), any other material heard), that the parent in respect of whom the application is made has demonstrated that the parent meets the requirements of section 18A(3).

(6) Except as provided in this section, nothing in Part 3 applies in respect of an application for, or a decision of a court on, confirmation of a decision made under section 18A(4)(b).

18D Court declining to confirm decision

If, under section 18C(4)(b), the court declines to confirm the chief executive's decision under section 18A(4)(b), the court must give written reasons for its decision, and the application for confirmation—

(a) must be treated as an application for a declaration under section 67 on the ground in section 14(1)(ba); and

(b) must be served and heard in accordance with Part 3 and the rules of court, except that, although section 70 does not apply, if a family group conference is convened pursuant to section 72(3), the chief executive (or the chief executive's representative) is entitled to attend the conference as if the chief executive were entitled to do so under section 22(1)(a) to (h).