In Confidence

Office of the Minister for Children

Cabinet Social Wellbeing Committee

TAKING A CHILD AND WHĀNAU-CENTRED APPROACH TO SUBSEQUENT CHILDREN

Proposal

1 This paper seeks agreement to a partial repeal of the subsequent children provisions (the provisions) in the Oranga Tamariki Act 1989 (the Act) to take a more child and whānau-centred approach to subsequent children.

Executive Summary

2 The Act sets out how Oranga Tamariki–Ministry for Children (Oranga Tamariki) must respond when subsequent children come to its notice.[1] A subsequent child is any child whose older sibling is in care and there is no realistic prospect of that child returning to the parent; or any child whose parent has been convicted of the murder, manslaughter or infanticide of another child in their care.[2]

3 The provisions came into effect in 2016 to ensure greater oversight of the safety of subsequent children by requiring a parent to demonstrate that they will not inflict the same kind of harm to their subsequent child. The Family Court is required to have oversight of all decisions, including where Oranga Tamariki considers there are no care or protection concerns.

4 Last year, I directed officials to review these provisions in light of ongoing changes to how Oranga Tamariki works.[3] The review of **the provisions found that they are not ensuring greater oversight of the safety of subsequent children and may in fact be causing harm**, particularly for children where there is an older sibling in care. This is because:

4.1 The **provisions are confusing**, with a complex and often lengthy court process. A subsequent child will typically come to the attention of Oranga Tamariki when the mother is pregnant. At this point, the court has to confirm that the older sibling in care has no realistic prospect of returning to the parent, before it is possible to apply the provisions to the subsequent child. This sets up conditions for hostility between social workers and parents, family, and whānau. The hostility increases the risk of parents avoiding engagement with services for fear of having a child removed. It also means the older child is drawn into court proceedings when they may be settled and attached to their carers.

[1] The subsequent children provisions are set out in sections 14(1)(c) and 18A-18D of the Act and are provided as Appendix One.

[2] A social worker must apply for a determination from the Family Court that the older sibling has 'no realistic prospect of return.' Alternatively, a Family Group Conference can agree that there is 'no realistic prospect of return.' Making a determination does not prevent a parent from applying to have their children returned to their care.

[3] Cabinet agreed to a revised Oranga Tamariki Outcomes Framework in November 2019 [CAB-19-MIN-0559 refers].

4.2 **When the provisions are used, they negatively impact the wellbeing of children, their parents, family, and whānau.** This is because they presume risk, can encourage decisions based on historical circumstances, and shift the onus of proof to parents. For example, where a teen parent has had a child removed, they may grow and develop and be in a better position to care for a subsequent child some years later. However, the provisions still require the parent to demonstrate that they are unlikely to inflict the same kind of harm. This can be traumatic and brings up memories of their older child being removed, at a time where they are trying to demonstrate the positive progress they have made.

4.3 There is a **drop off in support and services available for parents, family, and whānau** who have had a child removed from their care, which may be **increasing the risk of harm for subsequent children**. This is because support is tied to a child being in the care of the family or whānau. There is also no pathway back for parents to having a meaningful relationship with their child.

5 In the majority of cases, the provisions are not keeping subsequent children safe, and Oranga Tamariki is using other care and protection processes where there are concerns for the safety of a subsequent child.[4]

6 There are a small number of cases where I believe the provisions are critical to ensuring the safety of subsequent children – these are cases where a parent has been convicted of the murder, manslaughter or infanticide of a child in their care. In these circumstances, the provisions are an important safeguard for the subsequent child. Presuming risk and expecting a parent to demonstrate that they are unlikely to inflict harm on a subsequent child is appropriate given the seriousness of these convictions.

7 Ensuring the safety and wellbeing of all subsequent children is my key concern. There are two key focuses — keeping children safe and out of care, and looking after those in care. I am proposing a comprehensive and differentiated package of changes to take a more child and whānau-centred approach to subsequent children. This includes:

7.1 partially repealing the provisions for the vast majority of subsequent children – with the provisions retained only for the small number of cases where the parent has a conviction relating to the murder, manslaughter or infanticide of a child in their care (18B(1)(a))

7.2 amend and strengthen operational policy and guidance focused on how Oranga Tamariki assesses and makes decisions when a subsequent child is involved, particularly in high-risk cases

7.3 monitoring and reporting on subsequent children cases against practice standards and baseline measures.

8 I am also proposing further work by Oranga Tamariki with their partners, on providing additional supports to parents, family, and whānau who have had a child permanently

[4] When the provisions were introduced in 2014, it was estimated that 450 subsequent children would come to the notice of Oranga Tamariki each year. Of the 61 applications made since 2016, the majority have been for children with an older sibling in care, s 9(2)(a) [redacted]

removed from their care, or where a parent has been convicted for the death of a child in their care. My expectation is that these additional supports would be best delivered by social partners (Māori organisations, hapū and iwi, as well as non-governmental organisations (NGOs)) and must be sensitive to the removal of a child. I want to enable parents to be the best parents they can be for their children. Additional supports could help parents, family, and whānau to address trauma, maintain and build relationships with children in care, and prevent risk of harm to future children. They could also shift Oranga Tamariki practice, encompassing a wider responsibility to focus on the whānau.

9 There are financial and/or legislative implications that need to be considered and I will report back to Cabinet in March 2021 on these potential changes. I will look to align the timing for implementation of additional supports for parents, family, and whānau with the partial repeal of the subsequent children provisions.

10 Additional supports comprise a range of options, and are not mutually exclusive. There are three potential ways this support could occur:

- implementing and co-ordinating support for parents, family and whānau through early intervention, including prototyping whānau planning approaches and piloting community-led responses to early intervention with iwi and Māori. This support would be available where a child has been permanently removed
- s 9(2)(f)(iv) [redacted]
- s 9(2)(f)(iv) [redacted]

Background

The subsequent children provisions provide a separate legislative care and protection pathway

11 The provisions in the Act set out a distinct response when a subsequent child comes to the notice of Oranga Tamariki. These provisions were introduced under Child Youth and Family, through the Children, Young Persons, and Their Families (Vulnerable Children) Amendment Act 2014, and came into effect in 2016.

12 The provisions were introduced because of concerns at the time about the safety and wellbeing of subsequent children. The provisions have two key features:

- they require the Family Court to oversee all decisions about whether a subsequent child needs care and protection (even where there are no care and protection concerns)
- they require parents to demonstrate that they are unlikely to inflict the kind of harm that they have on an earlier child.

13 It was originally estimated that 450 subsequent children would come to the notice of Oranga Tamariki each year. However, in practice the provisions are being applied in only a small number of cases. In the four years since the provisions took effect, only 61 applications have been made to the Family Court under the provisions. The majority of these applications concerned children with an older sibling in care. s 9(2)(a) [redacted]

14 In 2017 when Oranga Tamariki was established, significant changes were made to the Act. These changes strengthened the existing child and whānau-centred approach in legislation, to ensure that children and young people are at the centre of decision-making, while considering them in the context of their family, whānau, hapū, iwi, family groups, and broader networks and communities. This refreshed focus on a child and whānau-centred approach reflects the Oranga Tamariki Outcomes Framework, and the focus on keeping children safe and out of care, and looking after those in care.

Subsequent children, parents, family, and whānau have multiple and complex needs and tamariki Māori are overrepresented

15 Due to the low number of applications, officials used proxy data to better understand the broader population group of 'subsequent children'. This data identified that 975 younger siblings of children in a 'Home for Life' permanent care placement came to the notice of Oranga Tamariki during the 2018/19 financial year. 71 of the 975 children entered care due to parents having issues with alcohol and drug misuse, family violence, or mental illness. The majority of these children were Māori, and under two years of age.

Problem definition

In the majority of cases, the provisions are not providing greater oversight of the safety of subsequent children and can negatively impact wellbeing

16 Where a subsequent child has an older sibling in care, the provisions are not providing greater oversight of safety, as originally intended by the provisions.

17 The provisions are confusing and often require a lengthy court process. This is because the way the provisions are drafted has meant that Oranga Tamariki must first seek a determination from the Family Court that the older sibling in care has no realistic prospect of returning to the parent(s).

18 The provisions can have a negative impact on the wellbeing of children, parents, family, and whānau. Appendix Two provides scenarios to illustrate issues with the provisions. This is because the provisions:

18.1 **Presume risk:** the provisions are deterministic and can encourage decisions based on historical circumstances. Whānau want, and should have the opportunity, to demonstrate how they can care for and love their children, and to respond to concerns that may be held about their ability to care safely for a child.

18.2 **Place the onus of proof on parents:** shifting the onus of proof onto parents is unusual under New Zealand law and can be an added burden for parents who may be vulnerable themselves, and already face barriers engaging with Oranga Tamariki or Family Court processes. It is not inclusive of the role of whānau, hapū and iwi in decision-making.

18.3 **Have potential adverse impacts on siblings in care:** the provisions require a determination to be made that a child in care has no prospect of returning home. This may draw the previous child into contested proceedings and cause unintended trauma, because the proceedings may be disruptive to a placement where the child is settled and attached to their carers.[5] This is

[5] For example, the older sibling may need to be interviewed by the social worker about their views on whether they want to live with their parent(s) or not. The interview can be emotionally disruptive for a

reflected in the low number of applications that have been made under the provisions.

19 These problems are more pronounced for subsequent children where there is an older sibling in care. This is due to the broad range of children and whānau within this category of subsequent children, and it being difficult to generalise the level of risk. For example, a teen parent may grow and develop and be in a better position to care for subsequent children, a parent may reconnect with whānau, reducing risk to subsequent children, or a parent may have previously faced challenges as a result of a child's or their own disability. Where removal was due to domestic violence, subsequent children may face a reduced risk if the parent is no longer in an abusive relationship.[6]

20 In the majority of cases, the provisions are not ensuring greater oversight of the safety of subsequent children. Oranga Tamariki is using other care and protection processes where there are safety concerns, such as section 78 orders that may apply to any child.

21 These problems are not the same for cases where a parent has been convicted of the murder, manslaughter or infanticide of a child in their care. The provisions are more straightforward to apply for this category of children (they do not require a separate application to the Family Court for a determination on the care status of another child). I also believe it is more reasonable to presume risk and expect a parent to demonstrate that they are unlikely to inflict the same kind of harm on a subsequent child due to the seriousness of their conviction.

22 In all cases, safety and wellbeing of subsequent children is my key concern. There continues to be a need to carry out robust assessments of safety and wellbeing needs, using professional expertise as needed.

The safety and wellbeing of subsequent children is best delivered through better support to parents, family, and whānau after a child has been removed, or has died in their care

23 Domestic and international literature on recurrent care proceedings shows that the needs of subsequent children are not substantially different to those of other children at risk of harm. However, these children may face a high level of risk where there is a lack of support for parents who have had a child removed previously, including support to address the additional anxiety of having the previous child removed.

24 Currently, there is a gap in the Oranga Tamariki system in the support offered to parents and whānau after a child has been removed from their care and where there is no goal of returning a child to the parent(s). This is when current engagement and support from Oranga Tamariki, and other services drops away. The gap in support after a child is removed or dies can create barriers to providing the right support by:

24.1 **A risk of compounding trauma:** without support, trauma and issues that led to child removal can be compounded and raise risk for future children.

24.2 **Adverse outcomes for children already in care:** parents, family, and whānau can find it difficult to 'navigate the system' and build a meaningful relationship with a child in care. This can adversely impact the child in care.

settled placement as it has already occurred when permanency orders were previously made, which could be years earlier.

[6] In these situations, the older child may not necessarily return home, even if there are no care or protection concerns for the subsequent child. This is because the older child may be settled in their whānau or non-kin placement, attached to their carers, or because another change to the child's care arrangements could be disruptive.

Support is needed to help parents be the best parents they can be in these situations.

24.3 **Missed opportunities to work closely with social sector partners:** working alongside Māori organisations, hapū and iwi, as well as NGOs to provide support to parents who have had a child permanently removed provides for collaborative approaches, and better outcomes for children and whānau.

25 These barriers were echoed by whānau who want support to be available both before and after a child is removed, and for Oranga Tamariki to focus on the wellbeing and resilience of their whole whānau.[7] Whānau said that they need:

25.1 clear information about their situation, before and after a child is removed from their care

25.2 to be given the opportunity to demonstrate how they care for and love their children, and to respond to concerns that others had raised with Oranga Tamariki

25.3 to be seen, respected, heard and "not written off" from the outset.

A comprehensive and differentiated approach to safety and wellbeing is needed that implements a child and whānau-centred approach and aligns to 7AA commitments

26 Ensuring the safety and wellbeing of subsequent children requires a package of changes. These changes should better respond to care and protection concerns for parents, family and whānau who have had a child removed from their care permanently. They should address how Oranga Tamariki assesses and responds to the risk to these children, how Oranga Tamariki monitors and reports on its practice relating to these children, and how it is working to support parents, family, and whānau to reduce risk to future children. The package of changes should also have a differentiated response for parents(s) who have been convicted for the death of a child in their care.

27 These changes should also address the significant over-representation of tamariki Māori who have been subject to declarations under the provisions and align with the child and whānau-centred approach reflected in Oranga Tamariki Outcomes Framework.[8] I also expect the changes to reduce disparities for tamariki Māori within the Oranga Tamariki system (section 7AA(2)(a)), to have regard to mana tamaiti (tamariki), whakapapa, and the whanaungatanga responsibilities of whānau, hapū and iwi (section 7AA(2)(b)).

Proposals

Proposals for a partial repeal of subsequent children provisions and to implement a more child and whānau-centred approach

28 I propose changes to subsequent children legislation, policy and practice to ensure the safety and wellbeing of subsequent children coming to Oranga Tamariki notice.

29 The proposed changes set out in the following table are a comprehensive and differentiated package of legislative and non-regulatory proposals to reflect the

[7] Oranga Tamariki engaged with seven whānau about their experiences of a child being removed from their care and having a subsequent child. This was over the course of the last eight months and was facilitated by two Māori organisations.

[8] The new end goal that Cabinet agreed in November 2019 is that *Tamariki Māori are thriving under the protection of their whānau, hapū and iwi.*

different levels of risk that the two categories of subsequent children face. Appendix two sets out different scenarios and the impacts of these proposals.

Area	Proposal where a previous child has been removed permanently	Proposal where a parent has been convicted for the death of a child in their care
Legislation	Repeal the provisions as they apply to children who have a sibling in care, and where it has been determined that there is no realistic prospect of return home for that sibling (18B(1)(b)).	Retain the provisions for a small category of subsequent children where a parent has a serious conviction relating to the murder, manslaughter or infanticide of a child in care (18B(1)(a)).
Operational policy and guidance	Amend and strengthen operational policy and guidance focusing on how Oranga Tamariki assesses and makes decisions when a subsequent child comes to their notice.[9] This will support more robust assessments of the safety and wellbeing of subsequent children, and more consistent practice and oversight. It will be developed with iwi and Māori organisations and will cover: • when to seek input from a psychologist, a cultural expert, or professionals who may have been working with whānau prior to the subsequent child coming to our notice • critically reviewing assessments of historic events to ensure a focus on the circumstances surrounding an event, not just the event itself • how to ensure the involvement of whānau, hapū and iwi in the assessment and decision-making process, and account for appropriate tikanga.	Oranga Tamariki will also amend and strengthen operational policy and guidance for this category of subsequent children, where the provisions would remain. This would be tailored to these cases where there is a high risk.
Monitoring and reporting	Monitoring and reporting, specific to subsequent children, that supports greater accountability and transparency of Oranga Tamariki practice, and the establishment of baseline data for review and evaluation. Oranga Tamariki will: • monitor and report on whether its responses to cases of subsequent children meet practice standards, through its quality assurance system • report on outcomes for subsequent children as part of routine reporting.	

Further work is needed on providing potential additional supports to parents, family, and whānau

30 I am also proposing further work is undertaken on providing additional supports to parents, family, and whānau who have had a child permanently removed from their care, or where a parent has been convicted for the death of a child in their care. Additional supports comprise a range of options and are not mutually exclusive.

31 There are three potential ways this support could occur:

- implementing and co-ordinating support for subsequent children, parents, family, and whānau through early intervention, including prototyping whānau planning approaches and piloting community-led responses to early intervention with iwi

[9] This would complement existing practice guidance relating to working with whānau Māori, Pacific peoples, and disabled children and parents.

and Māori. This support would be available where a child has been permanently removed

- s 9(2)(f)(iv) [redacted]
- s 9(2)(f)(iv) [redacted]

32 These additional supports have the potential to make a significant difference in the lives of parents, family, and whānau, and their current or future children. I believe this support would be best delivered by or alongside social partners (Māori organisations, hapū and iwi, as well as NGOs), and must be sensitive to the removal of a child. As part of further work on additional supports, Oranga Tamariki will undertake wider engagement with iwi and Māori organisations.

33 Monitoring and reporting arrangements would provide for the establishment of baseline data for subsequent children and review the effectiveness of proposals on an ongoing basis. Oranga Tamariki will also draw on its existing monitoring and evaluation processes to ensure additional supports are working.

34 There are some financial and legislative implications that need to be worked through. s 9(2)(f)(iv) [redacted]

35 I am proposing to report back to Cabinet in March 2021 with proposals for a package of support for parents, family, and whānau who have had a child permanently removed from their care, or where a parent has been convicted of the death of a child in their care. I will look to align the timing for implementation of additional supports for parents, family, and whānau with the partial repeal of the subsequent children provisions.

36 Alongside these supports, the Oranga Tamariki intensive intervention function may also provide support to parents, family, and whānau, where a subsequent child is in care and the plan is to return and remain at home. This function is yet to be rolled out nationally.

These proposals represent a more thorough and comprehensive approach to subsequent children

37 These proposals are expected to result in a comprehensive and systematic approach to subsequent children's safety and wellbeing. The package of proposals recognises the different levels of risk that exist among the two current categories of subsequent children.

38 The proposals will help ensure that Oranga Tamariki has robust operational policy and guidance for using statutory powers in relation to subsequent children. They will

s 9(2)(f)(iv) [redacted]

support and build on recent work by the agency to review practice guidance to address issues and concerns raised in the Hawke's Bay Practice Review. This Review found that who the provisions apply to was not well understood, particularly in cases where a previous child is in care. This finding was also reflected in feedback from social workers who were engaged with as part of the policy work. Partially repealing the provisions addresses this issue. The proposals improve accountability and transparency of Oranga Tamariki practice, and support the focus of Oranga Tamariki on keeping children safe and out of care, and looking after those in care.

39 Potential changes to additional supports for parents, family, and whānau who have had a child permanently removed from their care, or where a parent has been convicted for the death of a child in their care, recognises that the safety and wellbeing of the child is intricately linked to the wellbeing of their whānau. By addressing the gap in support, the risk of harm for subsequent children remaining with their whānau will be reduced. The proposals also have the potential to link how additional support is provided to address the needs of subsequent children and their whānau with a more systemic approach to early intervention. Officials are currently exploring opportunities to prototype whānau planning approaches and pilot community-led responses to early intervention with iwi and Māori.

Financial Implications

40 There are potential financial implications of providing additional supports to parents, family, and whānau who have had a child permanently removed from their care, or where a parent has been convicted for the death of a child in their care. s 9(2)(f)(iv) [redacted] When I report back to Cabinet on additional supports in March 2021, I will set out options for responding to any financial implications.

Legislative Implications

41 Legislative change is needed to implement the proposal. s 9(2)(f)(iv) [redacted]

42 There may also be legislative implications s 9(2)(f)(iv) [redacted] When I report back to Cabinet on additional supports in March 2021, I will provide further advice on whether legislative changes may be needed to support an increased role of Oranga Tamariki in these situations.

Regulatory Impact Analysis

43 Regulatory Impact Analysis (RIA) requirements apply. A RIA has been prepared and is attached. The quality assurance panel considers that the RIA meets Cabinet's quality assurance criteria.

Treaty of Waitangi Implications

44 The Treaty of Waitangi is a partnership between Māori and the Crown. Officials have assessed the proposals in this paper against each article of the Treaty:

44.1 *Kāwanatanga/government:* these proposals will support the Crown to carry out legislative responsibilities in a way that reflects the Treaty partnership. This is because the proposals are focused on shifting practice and requires the Crown to better protect the interests and wellbeing of tamariki and rangatahi Māori, and their whānau when carrying out its responsibilities.

44.2 *Rangatiratanga/chieftainship:* the proposals seek to support the right of whānau, hapu and iwi to make decisions concerning tamariki and rangatahi. This is because the proposals provide for social work practice that is more responsive to the needs of tamariki Māori, and whānau, and the potential for programmes and services that are whānau-led and seek to reduce the risk of future children requiring care or protection.

44.3 *Ōritetanga/equity:* the proposal to partially repeal the provisions will address the overrepresentation of tamariki Māori within applications to the Family Court for subsequent children with an older sibling in care. Partial repeal may also address possible unconscious bias that the provisions may cause. The proposals will help to ensure progress and positive change for whānau is actively assessed and recognised.

Population Implications

45 The table in Appendix Three outlines implications for four population groups: Māori, Pacific peoples, disabled people, and women.

Human Rights

46 The proposals in this paper would give effect to New Zealand's commitments under the United Nations Convention on the Rights of the Child, and the United Nations Convention on the Rights of Persons with Disabilities.[11]

Consultation

47 This paper was prepared by Oranga Tamariki. The following agencies were consulted: the Ministries of Social Development, Health, Education, Justice and Youth Development; the Ministry for Pacific Peoples; the Ministry for Women; Te Puni Kōkiri; Department of Corrections; the Office of Disability Issues; the Treasury; the Child Wellbeing Unit and Child Poverty Unit, and Parliamentary Counsel Office. The Department of Prime Minister and Cabinet has been informed.

48 The policy proposal was informed by targeted stakeholder consultation. This engagement was with a technical expert advisory group made up of members with experience working with whānau, the Oranga Tamariki Māori Design Group, and a small number of whānau and social work practitioners. The Office of the Children's Commissioner and the Principal Family Court Judge were also consulted. The consultation supported repeal of the provisions and increasing the support available to parents, family, and whānau who have had children removed from their care.

Communications

49 This Cabinet paper will be followed by public communications.

Proactive Release

50 I propose to proactively release this paper, subject to redaction as appropriate under the Official Information Act 1982.

[11] Under the United Nations Convention on the Rights of the Child, proposals align to articles 3, 20 and 27. Under the United Nations Convention on the Rights of Persons with Disabilities, proposals align to articles 7 and 23(2)(3)(4) and (5).

Recommendations

The Minister for Children recommends that the Committee:

1 **note** that subsequent children provisions (sections 14(1)(c) and 18A-18D of the Oranga Tamariki Act 1989) set out how Oranga Tamariki responds to care and protection concerns when a subsequent child comes to the notice of the agency

2 **note** that in the majority of cases, subsequent children provisions are not ensuring greater oversight of the safety of subsequent children and can adversely impact the wellbeing of children, parents, family, and whānau

3 **note** that there are a small number of cases where a parent has a conviction relating to the murder, manslaughter or infanticide of a child in their care, where legislative safeguards are needed and it is reasonable to make a presumption about the risk of harm to a child due to the serious nature of the convictions

4 **note** that I am proposing a comprehensive and differentiated package of proposals to improve the safety and wellbeing of subsequent children, their parents, family, and whānau

Partial repeal of subsequent children provisions

5 **agree** to seek repeal of subsequent children provisions as they apply to subsequent children where a parent has had the care of a previous child or young person removed, and it has been determined that there is no realistic prospect of return to the parent(s) – section 18B(1)(b) of the Oranga Tamariki Act 1989

6 **note** that subsequent children provisions would be retained as they apply to subsequent children where a parent has conviction relating to the murder, manslaughter or infanticide of a child in their care – section 18B(1)(a) of the Oranga Tamariki Act 1989

7 **invite** the Minister for Children to issue drafting instructions to the Parliamentary Counsel Office to implement the proposal set out in recommendation five

Operational policy and guidance

8 **note** that there is a need to ensure the safety and wellbeing needs of subsequent children that come to the attention of Oranga Tamariki, including through implementing robust assessment processes

9 **note** that Oranga Tamariki will amend and strengthen operational policy and practice guidance to ensure good practice is followed when a child with a sibling in care or a child of a parent convicted of the death of a child in their care comes to the notice of Oranga Tamariki

Monitoring and reporting

10 **note** that Oranga Tamariki will monitor and report on its management of cases which involve a child with a sibling in permanent care or a child of a parent convicted for the death of a child in their care, and the outcomes for these children

Further work required on additional supports to parents, family, and whānau

11 **note** that to reduce the risk of harm to possible future children there is a need to focus on preventative approaches that support parents, family, and whānau who have had a child permanently removed from their care, or where a parent has been convicted for the death of a child in their care

12 **note** that there are three potential ways to provide this additional support:

12.1 implementing and co-ordinating support for subsequent children, parents, family, and whānau through early intervention, including prototyping whānau

planning approaches and piloting community-led responses to early intervention with iwi and Māori. This support would be available where a child has been permanently removed

12.2 s 9(2)(f)(iv) [redacted]

12.3 s 9(2)(f)(iv) [redacted]

13 **direct** the Minister for Children to report back to Cabinet by March 2021 on proposals described in paragraph 12 to implement additional supports for parents, family, and whānau who have had a child permanently removed from their care or where a parent has been convicted for the death of a child in their care

14 **note** that Oranga Tamariki will ensure that the implementation of proposals and additional supports is coordinated to best support the safety and wellbeing of subsequent children.

Authorised for lodgement

Hon Tracey Martin

Minister for Children

Appendix One: Subsequent Children Provisions in the Oranga Tamariki Act 1989

Section 14(1)(c) of the Oranga Tamariki Act 1989

14 Definition of child or young person in need of care or protection

(1) A child or young person is in need of care or protection if—

(c) the child is a subsequent child of a parent to whom section 18A applies and the parent has not demonstrated to the satisfaction of the chief executive (under section 18A) or the court (under section 18A(4)(a) or 18C) that the parent meets the requirements of section 18A(3)

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 care or protection order because the subsequent child is in need of care or protection on the ground in section 14(1)(c); 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 for a care or protection order.

(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, but a family group conference must be held before a care or protection order (other than an interim order) is made.

(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 care or protection order because the child was in need of care or protection on the ground in section 14(1)(c), 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 (as it read before the commencement of section 42 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017) or decided on an application made under section 68, or a family group conference has agreed, that the child is in need of care or protection on a specified ground; 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.

(4) In subsection (2)(a), **specified ground** means—

(a) the ground set out in section 14(1)(a) and (b), as they read before the commencement of section 17 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017; or

(b) in the case of a decision made on or after the commencement of section 17 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017,—

(i) the ground set out in section 14(1)(a), in the circumstances set out in section 14AA(1)(a) and (2)(a):

(ii) the ground set out in section 14(1)(b), in the circumstances set out in section 14AA(2)(a).

18C Confirmation of decision not to apply for care or protection order

(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 care or protection order.

(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 care or protection order; 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 care or protection order made by the chief executive on the ground in section 14(1)(c); 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).

Appendix Two: Scenarios illustrating impact of proposed subsequent children changes

Scenario 1: Marlene is a young parent with previous children removed. A Family Group Conference agrees there is no realistic prospect of her children returning home

Marlene was 18 years old when her two children were taken into care due to drug and alcohol misuse, and domestic violence. Since then, Marlene has made good progress – she goes to rehabilitation, moves to where she has whānau support, and is in a healthy relationship with a new partner. A Family Group Conference (FGC) is held to review the children's care arrangements. The children are settled and attached to their caregiver. The FGC, including Marlene, agrees that there is no realistic prospect of them returning to Marlene's care. This is no reflection on Marlene's progress. It was a difficult decision, but Marlene wanted her children to have a sense of permanency. Not long after, Marlene becomes pregnant with a new child.

Current process:	Changes:
• **Subsequent children provisions apply** – this is due to the agreement at the FGC that there is no realistic prospect of Marlene's earlier children returning home. • A social worker becomes aware of Marlene's new baby daughter and **must** carry out an assessment of Marlene's situation, focusing on whether Marlene has demonstrated that she will not inflict the same harm on the new baby. • **Marlene is able to demonstrate this, but the social worker must make an application to the Family Court** to confirm that there are no care or protection concerns. Returning to Court is traumatic for Marlene, and brings up memories of her children's removal. Marlene fears that the judge will not recognise her progress.	• **Subsequent children provisions no longer apply** • A social worker becomes aware of Marlene's new baby daughter and **may carry out an assessment of safety and wellbeing, if there are care and protection concerns.** A robust assessment takes into account any change in circumstances, and involves Marlene's parents and whānau, and the Māori provider who has worked with Marlene. • **The social worker can choose not to take further action if there are no care or protection concerns** now that Marlene's circumstances have changed. • Oranga Tamariki connects Marlene to **potential additional supports**, [redacted] s 9(2)(f)(iv)

Scenario 2: Jessi has a child removed after ongoing issues with drugs and alcohol – there is no determination that the child has no realistic prospect of return home

Jessi has had ongoing issues with homelessness, drugs and alcohol. Troy is removed from her care soon after birth. She is not in the right space to make changes that could allow Troy to return to her. Two years later, issues are continuing, and Jessi now has a second child on the way with a new partner, who has similar struggles to Jessi.

Current process:	Changes:
• A social worker becomes aware of the unborn baby during pregnancy **and must carry out an assessment of safety and wellbeing.** This assessment focuses on whether issues which led to Troy's removal are still present, and concludes that the baby will face care and protection concerns. • **Subsequent children provisions apply,** but the Family Court first has to determine that Troy has no prospect of returning home, before it can consider the social worker's assessment for the unborn child. • The Family Court declares that the child requires care or protection, and a FGC is held to decide what to do. • The FGC agrees that the child will be placed with a family member.	• Subsequent children provisions no longer apply. • A social worker becomes aware of the unborn baby during pregnancy and **may carry out an assessment of safety and wellbeing, if there are care and protection concerns**. This considers whether there has been a **change in circumstances**, and involves input from whānau and providers who may be supporting Jessi and her unborn child. • When the baby is born, there are still concerns about the safety and wellbeing of the child, and **the social worker convenes an FGC, and the child is placed with a family member.** • If Jessi is ready to accept help, **Oranga Tamariki connects her to services**, [redacted] s 9(2)(f)(iv)

Scenario 3: Krystal and Ben have children removed due to an abusive relationship, and no further children

Krystal and Ben's relationship can be highly volatile, often fuelled by drugs and alcohol. Their two children Jono and Mya are removed from their care. Initially an FGC plan has a goal of returning Jono and Mya, but Krystal and Ben cannot sustain changes and the two children move to a permanent placement with a caregiver.

Current process:	Changes:
• Engagement and **support from Oranga Tamariki drops away** once there is no goal of returning Jono and Mya to their parents' care. • Krystal and Ben have limited ongoing access to Jono and Mya.	• When Krystal and/or Ben are ready to accept help, **there are potential services available tailored to parents** who have had children permanently removed from their care, [redacted] s 9(2)(f)(iv)

Scenario 4: Tony has a manslaughter conviction, and has a child with a new partner

Tony has a manslaughter conviction for the death of a child in his care. His other child is taken into care at the time. He receives a prison sentence of six years, and accesses rehabilitative support during his time in prison. After starting a new relationship following his release, Tony has a child, Georgia, with his new partner.

Current process:	Changes:
• **Subsequent children provisions apply** due to Tony's conviction • A social worker **must** carry out an assessment of Tony and his partner's situation, and focus on whether Tony has **demonstrated that he will not inflict the same harm** on Georgia. • The social worker **must** make an application to the Family Court, either for a declaration that the child requires care or protection, or for confirmation that there are no care or protection concerns.	• **Subsequent children provisions continue to apply** due to Tony's conviction. • A social worker **must** carry out an assessment of Tony and his partner's situation, and focus on whether Tony has **demonstrated that he will not inflict the same harm** on Georgia. • The social worker **must** make an application to the Family Court whether or not there are care or protection concerns. • While Tony was in prison, [redacted] s 9(2)(f)(iv)

Appendix Three: Population impacts

Population group	How the proposal may affect this group
Māori	Tamariki Māori are over-represented in the subsequent children cohort. The proposals in this paper are aimed at supporting approaches which recognise mana and reduce disparities for tamariki Māori. Operational policy and practice guidance would support greater involvement of cultural experts, such as a representative of an iwi or Māori organisation, when subsequent children come to Oranga Tamariki notice. Potential ways of providing additional supports could help parents and whānau who have had a child removed from their care, or where a parent has been convicted for the death of a child in their care. The proposals support an approach that reflects section 7AA of the Oranga Tamariki Act and Treaty commitments.
Pacific peoples	Pacific children comprise the second largest group within the subsequent children cohort. The proposals in this paper are aimed at supporting approaches that reduce disparities for Pacific children. Operational policy and practice guidance would support greater involvement of cultural experts, such as a representative from a Pasifika social service organisation, when subsequent children come to Oranga Tamariki notice. Potential ways of providing additional supports could help parents, family, and whānau who have had a child removed from their care, or where a parent has been convicted for the death of a child in their care.
Women	The proposals address issues with existing provisions that are more likely to impact women, particularly at times when they may be vulnerable, for example, before, during, or after childbirth. In particular, existing provisions do not allow for women to be recognised as victims in their own right — where a child has been removed due to domestic violence, the provisions may still apply to subsequent children, even where the mother is no longer in an abusive relationship. They also do not recognise progress, for example where a teen mother has a child removed, the mother may grow and develop and be in a better position to care for a subsequent child. The proposals outlined in this paper seek to respond to these issues.
Disabled people	A number of subsequent children who entered care during the 2018/19 financial year (not via the section 18A-D pathway) were in the care of a parent identified as having an intellectual disability, impaired learning, developmental delay, or cognition issues. This reflects the wide range of situations in which the provisions may apply, and the need to ensure responses meet the needs of subsequent children, and their parents, and reflect a child and whānau-centred approach. The proposal to repeal the provisions for most subsequent children, and potential additional supports, may support parents with disabilities to have the best relationship with their children. The proposals align with New Zealand's obligations as a signatory to the United Nations Conventions on the Rights of Persons with Disabilities.