

Departmental Disclosure Statement

Vulnerable Children Bill
2013 No 150

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Social Development (on behalf of the Vulnerable Children's Board).

The Ministry of Social Development (on behalf of the Vulnerable Children's Board) certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

21 August 2013

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Part One: General Policy Statement

This Bill is an omnibus Bill that is introduced under Standing Order 260(a) (dealing with an interrelated topic regarded as implementing a single broad policy). It will result in two new principal Acts: the Vulnerable Children Act and the Child Harm Prevention Orders Act. It also amends the Children, Young Persons, and Their Families Act 1989 (the CYPF Act) and the KiwiSaver Act 2006 (the KiwiSaver Act).

The Bill forms part of a series of measures to protect and improve the wellbeing of vulnerable children (children who are at significant risk of harm to their wellbeing now and into the future as a consequence of the environment in which they are being raised and, in some cases, due to their own complex needs). These reforms were proposed in the White Paper for Vulnerable Children (the White Paper) and the Children's Action Plan released in October 2012. The changes will also support the Government's Better Public Services programme in the key result area of reducing the number of assaults on children.

The objectives of this Bill are to:

- reinforce the need for shared responsibility, and co-ordinated and collaborative action across the government social services sector to better protect vulnerable children; and
- help ensure children are safe with those that work with them; and
- minimise the risk of future harm posed by those who have abused children in the past, including ensuring the safety of children of adults who have previously had a child or young person permanently removed from their care due to abuse or neglect or where the adult has been convicted of the murder, manslaughter, or infanticide of a child or young person in his or her care; and
- enhance the response to children who have already been abused or neglected to increase their chances of better long-term outcomes.

Key changes in the Bill include the following:

- requiring prescribed Chief Executives to work together to produce and report progress on implementing a cross-sector agency plan (the vulnerable children's plan), which sets out how agencies will collectively achieve the Government's priorities for vulnerable children
- requiring prescribed State services to have policies in place containing provisions on the identification and reporting of child abuse and neglect, and to ensure that their funded and contracted services also have such policies in place
- new standard safety checks for employees in the government and government-funded children's workforce, and a restriction on the employment of persons with disqualifying convictions
- allowing for new civil orders (Child Harm Prevention Orders) to be made against those who pose a high risk of abusing or neglecting children in the future
- new special guardianship provisions to provide increased security for children entering 'Home for Life' placements
- a requirement to consider requests for support from young people leaving State care to live independently, and provide that support in certain circumstances
- rebalancing the care and protection principles to ensure that the principles are as child-centred and as clear as possible

- reinvigorating and refocusing the family group conference so that its processes support the best possible outcomes for children and young people in need of care and protection
- changing family group conference plans and Court reports and plans to give parents more clarity on the changes they need to make to meet their child's care and protection needs
- placing an onus on a parent of a subsequent child to demonstrate he or she is safe to parent, if a child or young person in the parent's care was permanently removed due to abuse or neglect or the parent has been convicted of the murder, manslaughter, or infanticide of a child or young person in the parent's care
- enabling a guardian appointed under the CYPF Act to enrol children and young persons into KiwiSaver, and make decisions relating to a KiwiSaver account, without needing to obtain the consent of other guardians.

Context

The White Paper and Children's Action Plan set out what the Government will do to protect vulnerable children who are at risk of maltreatment or who have been maltreated. It took a comprehensive approach by looking at what government can do better to:

- prevent vulnerability; and
- identify vulnerable children (including reporting and assessment, and improved processes for sharing information among professionals); and
- respond to children at risk of maltreatment; and
- provide high-performing child protection services; and
- manage high-risk adults.

A significant amount of work under the Children's Action Plan is happening alongside the legislative changes proposed in this Bill to prevent and respond to child abuse and neglect. These non-legislative changes include the following:

- a public awareness initiative aimed at informing parents, families, neighbours and communities about what they should be concerned about, warning signals, and where to go for help
- new cross-agency community-based Children's Teams that will deliver a joined-up response to children who do not require immediate intervention from Child, Youth and Family, but whose circumstances make them at risk of abuse or neglect in the future
- new Regional Director roles, who will oversee the implementation of the Children's Teams in their areas, and a National Children's Director to drive the Children's Action Plan work programme and promote the changes in the Children's Action Plan
- the establishment of a Vulnerable Children's Board (VCB), comprising the Chief Executives of the major social sector agencies, which will be accountable for delivering the reforms
- a comprehensive children's workforce action plan that will include the promotion of core competencies for the children's workforce and best practice vetting and screening approaches

- a Child, Youth and Family Strategy for Children and Young People in Care (the Strategy for Children in Care) that introduces measures to improve the long-term outcomes of children in care
- a more comprehensive and systematic approach to the tracking and flagging of high-risk adults so situations of risk to children can be responded to more quickly and consistently.

The Children's Action Plan is a long-term plan recognising that implementing and seeing results will take sustained action over a number of years. The reforms in this Bill are intended to help embed these reforms to enable sustained change.

Government priorities for vulnerable children and the vulnerable children's plan

The Bill introduces a new obligation on specified Chief Executives to collectively develop, and report progress against, a vulnerable children's plan. The Bill sets out how the Chief Executives will work together to achieve the Government's priorities for improving the wellbeing of vulnerable children.

Addressing child vulnerability in New Zealand will take a sustained effort across government agencies, working in partnership with parents, caregivers, families, whānau, iwi and communities. It is the responsibility of parents and caregivers to raise and protect their children, supported by families, whānau, iwi and communities. Government needs to step in where parents, families and whānau are unable or unwilling, to care for or protect, their children. This provision creates a durable and visible commitment to collective government action in order to improve the wellbeing of vulnerable children.

The provision applies to the Chief Executives of agencies with the main service delivery levers or statutory functions that impact on vulnerable children and their families. Chief Executives will be held accountable for meeting these requirements via the existing public sector performance management arrangements.

Child protection policies

To help encourage accurate reporting of suspected maltreatment and to provide clarity about identifying and responding to children who are being maltreated, the Bill introduces a requirement that prescribed State services, district health boards, boards of trustees of State and State-integrated schools and sponsors of partnership schools kura hourua adopt child protection policies containing provisions on the identification and reporting of child abuse and neglect. It will also place an obligation on these agencies to ensure that any relevant contracts or funding arrangements include the requirement to adopt child protection policies.

Children's worker safety checking

Gaps in vetting and screening provide opportunities for unsafe people to work with children, and can mean that child abuse can occur more easily in some settings. The new requirements for standard safety checks included in this Bill provide for consistent and rigorous vetting and screening of employees within the State sector and organisations funded by Government. They are designed to balance the need to protect children from the threats posed by a small number of high-risk individuals with the need to ensure that safe and competent individuals are not discouraged from entering the workforce.

The legislation sets out an enabling regime with specific operational detail to be included in regulations and guidance. In this way, the requirements will be made proportionate to the level of risk and will be able to be applied flexibly. It will also enable the requirements to be adjusted over time. The regulations and guidance will be developed in consultation with the sector.

Workforce restriction

This Bill also contains a permanent workforce restriction to prevent people with serious convictions from working in relevant roles within the core children's workforce. This is designed to support the integrity of the children's workforce and send a clear signal that people who have committed certain offences should be prevented from working with children.

The list of convictions that would mean an individual was restricted is provided in the Bill. These are serious convictions and this list has purposely been drawn relatively tightly as it is intended to act as a minimum bar. The intention behind this restriction is not to imply that individuals without these specific convictions are necessarily safe to work with children. Employers will still need to make these decisions carefully, based on the information sourced during a safety check.

The Bill also includes provision for individuals to be exempted from the restriction as it is recognised that there may be a small number of cases where a permanent workforce restriction is not justified.

Child Harm Prevention Orders

The Bill provides for the creation of new Child Harm Prevention Orders (CHPOs), which allow for the imposition of terms that restrict individuals subject to the orders from being in contact with children. Conditions can include not being able to live with or work with children. CHPOs are designed to mitigate the risk presented by some adults who pose a high risk of harm to those children. They are not intended as punishment for previous offences committed by the individuals subject to them.

A Court may impose a CHPO where:

- a person has been convicted of, or found on the balance of probabilities to have committed, one or more of the qualifying offences against a child or children listed in the Schedule 2; and
- the Court is satisfied that the person poses a high risk of committing further offences that will cause serious harm to a child or children.

To assist in determining whether an adult poses a high risk, a new risk assessment measure is to be developed, and the legislation will not come into force until that measure is available.

Proceedings for a CHPO start with an application to the High Court or District Court, both acting in their civil jurisdictions. They are independent of criminal proceedings, and do not require that any charge has been laid against the person for the qualifying offence upon which the application is based.

There are adults in New Zealand who pose a high risk of offending against children despite various non-coercive and coercive interventions currently in place to address that risk. CHPOs seek to better mitigate that risk.

CHPOs focus on the adult who a court is satisfied committed the harm and encompasses offending that is wider than 'in home' offending. The orders also covers adults who have not been convicted of offending. Where a person has probably harmed a child or children, and he or she is thought to pose a high risk of causing serious harm in the future, a Court will be able to take action against the person to mitigate that risk. The orders will be imposed only if there is no alternative means of reducing the risk to children that would be equally effective and less intrusive. CHPOs seek to provide protection to a wide range of children and are less restrictive than other risk-based regimes that have a criminal conviction threshold.

Current civil mechanisms are limited in their scope. Some of them mitigate harm by disrupting the child's life, rather than focusing on the adult who poses the risk or has committed the harm. To the extent that mechanisms focus on the adult, they either depend upon a criminal conviction or focus only on 'in home' offending against named children. CHPOs seek to minimise all occasions where a child may come across a person who presents a high risk of causing serious harm.

Amendments to the CYPF Act

The White Paper reiterated the importance that the Government places on having a high-performing child protection service in Child, Youth and Family. It identified children in care or requiring other statutory interventions as priority groups, and the need for legislation to better support these children and ensure they are at the heart of decision-making.

Clarifying the care and protection principles

The Bill makes amendments to the care and protection principles to ensure that the principles are as child-centred and as clear as possible for practitioners who are required to balance competing considerations, whilst making sure that all decisions are in the best interests of the particular child. The Bill makes amendments to the care and protection principles to emphasise that the child's welfare and interests must always be the first and paramount consideration.

Family Group Conferences (FGCs) and Court plans and reports

The FGC is the key decision-making and planning mechanism for children and young people in need of care or protection, so it is essential that its processes support the best possible outcomes for these vulnerable children and young people. The changes in this Bill for FGCs will reinvigorate and refocus the FGC. These changes will require any FGC plan to contain information on the services and assistance needed, who will provide them, and the responsibilities and personal objectives of the child and their parent. FGC plans for children in out-of-home care will need to identify the behavioural changes parents need to make, and whether there is a realistic possibility of the child returning home, and of the timeframes for parents to make identified changes and for the child's objectives to be achieved.

Changes to Court reports and plans will be aligned with changes being made to FGC plans and increase the focus on meeting the child's needs.

Special guardianship

The Bill introduces a new type of guardianship for children leaving State care that provides an alternate and more secure mechanism than is available through the Care of Children Act 2004 for the new guardians to provide long-term, safe and stable care. It can be tailored to meet the child's situation by allowing guardianship rights to be shared between the special guardians and the child's parents, or vested solely in the special guardians.

Support for children who leave State care to live with special guardians is provided through a new obligation on the Chief Executive to provide support in a range of specific circumstances, accompanied by an appeal process that enables the Family Court to determine if the Chief Executive has unreasonably declined to provide support and order that it be provided. This replaces the option of using a Services order to secure support, and addresses concerns identified in the White Paper about the stress caused by the ongoing reviews of Services orders.

Achieving independence

Young people who leave State care but are unable to live with family or committed caregivers are particularly vulnerable. The Bill provides increased assistance to these young people.

Ensuring the safety of subsequent children

Research cited in the White Paper suggests parents who have previously had a child permanently removed from their care due to abuse or neglect are likely to pose a risk to subsequent children.

This Bill will amend the CYPF Act to introduce a new ground for a child being in need of care or protection, where the child's parent has previously had a child or young person permanently removed from their care due to abuse or neglect or the parent has been convicted of murder, manslaughter, or infanticide of a child or young person in the parent's care. The new ground will provide that any subsequent child is in need of care or protection, unless the parent has demonstrated they are safe to parent.

The new processes are expected to provide greater rigour, Court oversight and transparency around care and protection decision-making, further enhancing the safety of subsequent children. The proposal may also provide impetus for a parent to proactively make behavioural changes.

KiwiSaver

The White Paper and the Strategy for Children in Care identified the importance of improving long-term outcomes of children in State care and improving their transitions out of care. Improving their long-term financial outcomes is part of this focus and KiwiSaver offers a means to assist in achieving this outcome.

As children under 16 years of age currently require the consent of all guardians to open a KiwiSaver account, this Bill amends the KiwiSaver Act and CYPF Act so that a guardian appointed under the CYPF Act can enrol the child in a KiwiSaver scheme, and make decisions in relation to the scheme, without needing to obtain the consent of other guardians.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<ul style="list-style-type: none"> • The Green Paper for Vulnerable Children (27 July 2011) – accessible at http://www.childrensactionplan.govt.nz/green-paper • The White Paper for Vulnerable Children (11 October 2012) – accessible at http://www.childrensactionplan.govt.nz/the-white-paper (also see list of references in the Bibliography) • The Children's Action Plan (11 October 2012) – accessible at http://www.childrensactionplan.govt.nz/children-s-action-plan • Ministerial Inquiry into the Employment of a Convicted Sex Offender in the Education Sector (15 June 2012) – accessible at http://www.beehive.govt.nz/release/government-acts-person-ministerial-inquiry-recommendations • Law Commission Issues Paper: <i>Alternative Pre-Trial and Trial Processes: Possible Reforms</i> (NZLC IP30, 2012) – accessible at http://www.lawcom.govt.nz/sites/default/files/publications/2012/02/alternative_trial_processes_nzlc_ip30_-1.pdf 	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>To inform the main policy decisions taken by the Government relating to the contents of this Bill, six regulatory impact statements (RISs) were produced:</p> <ul style="list-style-type: none"> • <i>Specific amendments to care and protection legislation</i> – produced by the Ministry of Social Development (MSD) – 19 August 2013, accessible at http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/index.html • <i>Child Harm Prevention Orders</i> – produced by the Ministry of Justice – 10 April 2013, accessible at http://www.justice.govt.nz/policy/regulatory-impact-statements • <i>Joint accountability and shared responsibility</i> – produced by MSD – 19 June 2013, accessible at http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/index.html • <i>Standard safety checks for the children's workforce</i> – produced by the Ministry of Education – 19 August 2013, accessible at http://www.minedu.govt.nz/theMinistry/PublicationsAndResources/RIS.aspx • <i>Additional amendments to legislation to assist children in care</i> – produced by MSD – 10 July 2013, accessible at http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/index.html • <i>Ensuring the safety of subsequent children</i> – produced by MSD – 19 June 2013, accessible at http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/index.html <p>These RISs are accessible at the links above, and can also be found and downloaded at http://www.treasury.govt.nz/publications/informationreleases/ris.</p> <p>A RIS was not required for the amendments to the KiwiSaver Act because the amendments were assessed as having no, or only a minor, impact on businesses, individuals or not-for-profit entities.</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	YES
<p>The RIS dated 10 April 2013 (<i>Child Harm Prevention Orders</i>) met the threshold for receiving an independent opinion on the quality of the RIS from the RIA Team based in the Treasury. Their opinion for Cabinet on that RIS is set out in full in Appendix One of this disclosure statement.</p> <p>The RIS dated 19 August 2013 (<i>Standard safety checks for the children's workforce</i>) met the threshold for receiving an independent opinion on quality of the RIS from the RIA Team based in the Treasury. Their opinion for Cabinet on that RIS is set out in full in Appendix One of this disclosure statement.</p> <p>The other RISs identified above did not meet the threshold for receiving an independent opinion on the quality of the RISs from the RIA Team based in the Treasury.</p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	YES
Further impact analysis on the amendments to the CYPF Act and the KiwiSaver Act proposals is provided in Appendix One.	

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	YES
<p>(a)</p> <p>Analysis on the size of the potential costs and benefits of the proposals is available in the relevant RISs (italicised below, accessible through links above):</p> <ul style="list-style-type: none"> • Vulnerable children's plan, and child protection policies – <i>Joint accountability and shared responsibility</i> (pages 17–18) • Children's worker safety checking – <i>Standard safety checks for the children's workforce</i> (pages 10–13) (further detail also provided in Appendix One) • Child Harm Prevention Orders – <i>Child Harm Prevention Orders</i> (pages 16–18) • Subsequent children – <i>Ensuring the safety of subsequent children</i> (pages six–nine) • CYPF Act amendments – <i>Specific care and protection legislation changes</i> (pages eight–13) <p>(b)</p> <p>Analysis on the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth is available in the RISs at the page references above.</p> <p>A RIS was not required for the proposal to amend the KiwiSaver Act as it is assessed as having no, or only minor, impact on businesses, individuals or not-for-profit entities.</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES

(a)

For the child protection policies, children's worker safety checking, and Child Harm Prevention Order proposals, the potential costs or benefits are likely to be impacted by the level of effective compliance or non-compliance with applicable obligations or standards. Further detail on the impact on compliance or these proposals is provided in Appendix One.

(b)

For the CHPOs and children's worker safety checking proposals, the potential costs or benefits are likely to be impacted by the nature and level of regulator effort put into encouraging or securing compliance. Further detail is provided in Appendix One.

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

During development of the proposals, the policy to be given effect by this Bill was assessed against New Zealand's international obligations.

The following Cabinet papers include sections addressing consistency with the United Nations Convention on the Rights of the Child (UNCROC).

- *Vulnerable Children's Bill: Joint accountability and shared responsibility* – accessible at <http://www.msd.govt.nz/documents/about-msd-and-our-work/work-programmes/policy-development/white-paper-vulnerable-children/legislation/paper-a-vulnerable-children-s-bill-joint-accountability-and-shared-responsibility.pdf>
- *Vulnerable Children's Bill: Additional amendments to legislation to assist children in care* – accessible at <http://www.msd.govt.nz/documents/about-msd-and-our-work/work-programmes/policy-development/white-paper-vulnerable-children/legislation/paper-c-vulnerable-children-s-bill-additional-amendments-to-legislation-to-assist-children-in-care-family-court-appeal-process-for-home-for-life-caregivers-.pdf>

The Cabinet paper, *Revised Proposal for Child Harm Prevention Orders*, also addresses that proposal's consistency with various international instruments – accessible at

<http://www.msd.govt.nz/documents/about-msd-and-our-work/work-programmes/policy-development/white-paper-vulnerable-children/legislation/vulnerable-children-s-bill-revised-proposal-for-child-harm-prevention-orders.pdf>

During policy development of the subsequent children proposals, the Ministry of Justice was consulted as to the proposal's consistency with New Zealand's international obligations, including UNCROC.

Crown Law have assessed the final proposals in the Bill against New Zealand's international obligations, in particular, consistency with UNCROC.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The proposals were developed following comprehensive public consultation on the Green Paper for Vulnerable Children (the Green Paper), which included submissions from Māori groups. A summary of submissions is available at <http://www.msd.govt.nz/about-msd-and-our-work/work-programmes/policy-development/green-paper-vulnerable-children/submissions/index.html>

Ngāpuhi Iwi Social Services was consulted on new special guardianship provisions and changes to FGCs and Court plans.

Officials will provide a list of iwi/Māori organisations for the select committee consultation process.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES
Advice provided to the Attorney-General by Crown Law is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights	

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES
<p>(a) The children's worker safety checking and CHPO provisions create offences. Further detail is provided in Appendix Two.</p> <p>(b) The subsequent children and special guardianship provisions amend the jurisdiction of the Family Court. Further detail is provided in Appendix Two.</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>The Ministry of Justice led the development of CHPOs.</p> <p>The Ministry of Justice was fully involved in the development of the provisions relating to safety checks for the children's workforce, subsequent children, special guardianship and in the appeal process for permanent caregivers.</p>	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
The children's worker safety checking and CHPO provisions relate to the collection and use of personal information. Further detail is provided in Appendix Two.	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
The Privacy Commissioner was consulted about the children's worker safety checking and CHPO provisions. Further detail on this consultation is provided in Appendix Two.	

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
See Appendix Two for detail on external consultation.	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>Assessment has occurred for the vulnerable children's plan, and the children's worker safety checking. Further detail is provided in Appendix Two.</p> <p>No further testing has occurred for the policy details.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	YES
See Appendix Three for detail on retrospective effects of the Bill.	

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	YES
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO
<p>(a)</p> <p><u>Children's worker safety checking</u></p> <p>Part 1 – Subpart 3 contains three strict liability offences: clauses 25(3), 26(4) and 27(2). All three clauses are, however, subject to the defence that all reasonable steps were taken to comply (clause 29).</p> <p>Further, the strict liability clauses were assessed against the Legislation Advisory Committee guidelines on the use of strict liability offences. It is considered that:</p> <ul style="list-style-type: none">the offences fit the category of public welfare regulatory offences, which are suitable for strict liability. It involves the protection of the public from those undertaking risk-creating activities by inadequately safety checking children's workers. It also involves the regulation of occupations or trades or activities in which citizens have a choice as to whether they involve themselvesthe threat of criminal liability will supply a motive for persons in these risk-generating activities to adopt precautions, which might otherwise not be taken, in order to ensure that children are adequately safeguardedthe defendants will be best placed to establish absence of fault because of matters peculiarly or primarily within their knowledge, namely, whether they have performed an adequate check.	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	YES
See Appendix Three for detail on civil or criminal immunity.	

Significant decision-making powers affecting individuals

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	YES
<p><u>Children's worker safety checking</u></p> <ul style="list-style-type: none"> • Clause 28 limits the rights of specified organisations to employ or engage an individual with a specified conviction in the core children's workforce. The list of specified convictions is provided for within the primary legislation. • Clauses 34 to 36 also provide that the Chief Executive of a key agency may grant, or revoke, an exemption to the workforce restriction. Clause 37 provides that a person whose application for an exemption has been declined, and a person whose exemption has been revoked, may appeal to the High Court against the decision. <p><u>Amendments to the CYPF Act – Special guardianship</u></p> <ul style="list-style-type: none"> • Clause 115 limits the ability of permanent caregivers to obtain a services order. This provides an alternative and more consistent method of obtaining support by placing an obligation on the Chief Executive of MSD to provide support (Clause 132) and an appeal process if a permanent caregiver believes this decision is unreasonable (Clause 133). • Clause 118 allows the Family Court to make an order appointing a person a special guardian and determine which if any guardianship rights are to be shared with existing guardians and which are to be held exclusively by the special guardian. Clause 105 limits existing guardian's rights to apply for variation or discharge of a special guardianship order. <p><u>KiwiSaver</u></p> <ul style="list-style-type: none"> • Clause 140 limits the rights of existing guardians to jointly make a decision to opt-in a child or young person into KiwiSaver. 	

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	YES
See Appendix Three for detail on these amendments.	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
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Children's worker safety checking

Clause 33 allows the Governor-General, by Order in Council, to make regulations prescribing the process for applying for, granting, and revoking exemptions to the workforce restriction. These regulations may not be inconsistent with the requirements set out in clauses 34 to 37.

Clause 33 also allows regulations prescribing the process and requirements for approving screening services, and the grounds on which any approval may be suspended or cancelled. Both these provisions cover operational detail that it is appropriate to set out in regulations.

Amendments to CYPF Act – Permanent caregivers

Clause 132 allows the Minister to give general or special directions to the Chief Executive in relation to discharging his obligation to provide support to permanent caregivers. This direction must be published in the Gazette, but is not a legislative instrument. It is a disallowable instrument for the purposes of the Legislation Act 2012.

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	YES
See Appendix Three for detail on other unusual provisions or features.	

Appendix One: Further Information Relating to Part Two

Independent opinion on RIS quality – question 2.3.1

Independent opinion on the quality of the RIS dated 10 April 2013 (*Child Harm Prevention Orders*) from the RIA Team based in the Treasury:

“The Regulatory Impact Analysis Team has reviewed the RIS prepared by the Ministry of Justice and associated supporting material, and considers that the information and analysis summarised in the RIS partially meets the quality assurance criteria.

The RIS could have more clearly defined the scope of the problem within the framework of existing regulatory and non-regulatory activity. In the options analysis, though the RIS sets out a range of possible options, the recommendation depends heavily on the extent to which the proposed risk mitigation features of the preferred option will outweigh its costs and risks. This depends in part on a risk assessment tool that is not yet developed, which makes the analysis less convincing.”

Independent opinion on the quality of the RIS dated 19 August 2013 (*Standard safety checks for the Children’s Workforce*) from the RIA Team based in the Treasury:

“The Regulatory Impact Analysis Team (RIAT) has reviewed the RIS prepared by the Ministry of Education and considers that the information and analysis summarised in the RIS meet the quality assurance criteria given that the options being considered only impact the state sector and organisations funded by those agencies to deliver services.”

Extent of impact analysis available – question 2.4 and 2.5(b)

Children’s worker safety checking

The Bill establishes a permanent workforce restriction to prevent people with serious convictions from working within the *core children’s workforce*. The restriction would apply to anyone applying for, or already in, a relevant role that holds a conviction on the list. It is limited to those providers that are also required to conduct a standard safety check.

As employment decisions are generally made by the employer, the number of people currently employed in core workforce roles who have disqualifying convictions is not known. However, it is anticipated that there will be a small number. For these individuals the workforce restriction may result in a substantial unavoidable loss of income if they are forced out of their current employment and unable to find another suitable post.

This impact was carefully considered as part of the policy development process and the pros and cons of applying such a restriction considered, as well as how the policy could be framed to achieve the benefits while minimising the costs to individuals.

Several options were considered for the list of convictions that would disqualify an individual. The proposed list of specified offences is tightly focussed on the most serious of offences, not a definitive list of offences that may be relevant to those making employment decisions. In addition, it is proposed that the Select Committee considering the Vulnerable Children Bill be invited to specifically consider the list of convictions.

The Bill also provides for an exemption process. This will enable individuals who are affected by the ban to have their risk to children considered on a case-by-case basis.

The requirement will be phased in for the existing workforce, one year after it is brought in for new entrants. This will enable employers and employees who are affected to take any necessary steps in good time by:

- applying for an exemption to the workforce restriction
- seeking alternative employment that is outside of the State sector core children's workforce
- modifying the individual's role so that it no longer meets the criteria of a core workforce role, for example, by providing supervision.

Amendments to the CYPF Act – special guardianship

Special guardianship

Child, Youth and Family do not anticipate that there will be any increase in costs with the proposal to introduce an appeal process for Home for Life caregivers, as this proposal is unlikely to generate increased demand. Rather, the proposal provides an alternative means of accessing support that is already provided.

Any implementation costs for Child, Youth and Family will be met from within baselines. There are likely to be savings in terms of court costs.

KiwiSaver

Impact on individuals

Children enrolled in KiwiSaver would be committed to a long-term investment scheme that requires compulsory contributions once an individual starts employment, until the age of 65 years. The situation is no different to other children enrolled in KiwiSaver by their parents, and ultimately reflects the nature of retirement savings schemes. A substantial number of parents do choose to enrol children under 18 years in KiwiSaver, as at 30 April 2013 over 329,000 children aged 0-17 years were enrolled in the scheme.

The minimum KiwiSaver contribution requirements could potentially cause hardship for some individuals, particularly those managing debt. However, this risk is mitigated by the ability to take contribution holidays of up to five years, once the individual has been a member for 12 months. Early contribution holidays (ie before 12 months of membership) are also available in circumstances of financial hardship. There are no financial compliance costs associated with contribution holidays and no limit to how many can be taken.

The impact on individuals from this proposal would consist of the need to apply for contributions holidays when they are unable to make minimum contributions to KiwiSaver, which we consider to be minor. The potential benefits of early enrolment in a retirement scheme would outweigh this minor impact (ie maximising the amount of savings available in retirement and potentially making home ownership more attainable).

Impact on businesses

One or more KiwiSaver scheme providers may have an increase in enrolments as a result of the amendment to the KiwiSaver Act. However, the estimated number of new enrolments due to the proposal is 2,322 in the first year, and 380 in subsequent years. These numbers are negligible in the context of the numbers enrolled in these schemes. In the year to 30 June 2012, over 210,000 people enrolled in KiwiSaver for the first time, with a total of over two million enrolled as at 30 April 2013.

Effect of compliance – question 2.6(a)

Child protection policies

Compliance costs will depend on what mechanisms organisations already have in place relevant to the new requirements and the additional measures considered necessary to meet the new requirements. These costs could relate to measures that organisations take to support the development and implementation of policies, such as training for staff and ensuring policies are followed. Complying with this requirement would be in line with good practice. Paragraph 60 of the RIS provides information on possible compliance costs. Non-compliance will mean the requirement is less likely to have the desired effect.

Benefits of child protection policies may be increased by other measures to support the requirement. Other Children's Action Plan initiatives, such as the Child Protect line, tools for frontline staff to help identify vulnerable children, and workforce development initiatives, will assist professionals in deciding when it would be appropriate to take action about a child, provide a clear route and process for taking action, and equip staff with the skills and knowledge to do so. It may become necessary to provide further clarity about what agencies should include in their policies and how they should give effect to them. Cabinet has agreed that it may, from time to time, direct that guidance or information be provided to support State services in giving effect to the requirement [CAB Min (13) 24/17 refers].

Children's worker safety checking

Compliance costs will depend on what mechanisms organisations already have in place relevant to the new requirements and the additional measures considered necessary to meet the new requirements. Paragraph 35 of the RIS provides information on possible compliance costs. Non-compliance will mean the requirement is less likely to have the desired effect.

Effect of compliance – question 2.6(b)

CHPOs

Compliance with terms of a CHPO is likely to be significantly impacted by the level of monitoring, and this in turn will dictate the extent to which the policy is successful in providing additional protection to children.

Funding will be required to undertake monitoring of the orders. See the Cabinet paper for further detail (accessible at <http://www.msd.govt.nz/documents/about-msd-and-our-work/work-programmes/policy-development/white-paper-vulnerable-children/legislation/vulnerable-children-s-bill-revised-proposal-for-child-harm-prevention-orders.pdf>)

Children's worker safety checking

The benefits of standard safety checks may be increased by the nature and level of regulatory effort put into encouraging compliance. It is intended that a cross-sector implementation plan will be developed, including some targeted training and support. The Bill also provides powers to key agencies to support the monitoring of compliance. Other Children's Action Plan initiatives, such as the vetting and screening best practice guidelines, the core competencies for the children's workforce and other workforce development initiatives will raise awareness and expertise of employers and employees in effective vetting and screening practices. Cabinet also has agreed that the Vulnerable Children's Board is to conduct a review of the new safety check regime two years after the date on which the legislative requirement takes effect for the core workforce [CAB Min (13) 26/20 refers].

No information is available as to the expected rates of compliance for these policies.

Appendix Two: Further Information Relating to Part Three

Offences, penalties and court jurisdictions – question 3.4

(a)

Children's worker safety checking

The Bill creates a number of offences in relation to safety checks for the children's workforce. In particular it provides that:

- Clause 25 – provides that it is an offence to employ a new children's worker without carrying out a safety check. Penalty: fine not exceeding \$10,000.
- Clause 26 – provides that it is an offence to continue to employ an existing children's worker without carrying out a safety check. Penalty: fine not exceeding \$10,000.
- Clause 27 – provides that it is an offence not to carry out periodic safety checks on each children's worker you employ every three years. Penalty: fine not exceeding \$10,000.
- Clause 28 – provides that it is an offence to knowingly, or being reckless as to whether, employ a restricted person in a core workforce role unless they have an exemption. Penalty: fine not exceeding \$50,000.
- Clause 28 – also provides that it is an offence not to immediately suspend a core children's worker if it is believed on reasonable grounds he/she is restricted from such a role. Penalty: fine not exceeding \$50,000.

It is a defence to the offences created by clauses 25 to 28 that all reasonable steps were taken to ensure a safety check was completed. A defence related to short term emergencies is provided to the offences created by clauses 25 to 27. The Bill provides that the Chief Executive of a key agency, other than the Ministry of Justice, may prosecute any offence specified in Part 1 – Subpart 3.

The Bill provides that the Chief Executive of a key agency may grant, or revoke, an exemption to the workforce restriction. A person whose application for an exemption has been declined, and a person whose exemption has been revoked, may appeal to the High Court against the decision.

The Bill provides that the Crown may be held criminally liable for the offences in Part 1 – Subpart 3. The Crown will be subject to fines for breach of the offence provisions in Part 1 – Subpart 3.

CHPOs

The Bill creates CHPOs: civil orders made by the High Court or a District Court. CHPOs will be imposed on individuals who are deemed to pose a high risk of abusing or neglecting children and who have either been convicted or proved on the balance of probabilities to have committed one of the qualifying offences. The orders will be reviewed annually by an independent Review Panel, which will likely be integrated with the proposed Public Protection Order Review Panel. They will also be reviewed by the Court at three-yearly intervals.

Clause 60 provides that breach of an order is an offence punishable by imprisonment for not more than two years.

(b)

Amendments to the CYPF Act – Ensuring the safety of subsequent children

Clause 106 amends the jurisdiction of the Family Court to provide that the Court will review Child, Youth and Family assessments where Child, Youth and Family conclude that a parent of a subsequent child has demonstrated their safety to parent.

Amendments to the CYPF Act – Special guardianship

The Bill creates an obligation on the Chief Executive of MSD to provide support within specific criteria after children leave State care. The Bill establishes an appeal process through the Family Court for permanent caregivers who consider the Chief Executive's decision is unreasonable. The Family Court can confirm, modify or reverse the Chief Executive's decision and this is binding.

Collection and use of personal information – question 3.5

Children's worker safety checking

The Bill provides for the following:

- Safety checks of applicants and employees involve the collection, sharing and consideration of personal information.
- Clause 31 – specifies the key elements that must be included in each safety check. These include confirmation of identity and consideration of specific information prescribed by regulations made under clause 30.
- Clause 35 – specifies that an application for an exemption must include certain personal information.

Clause 38A – provides that the Chief Executive of a key agency may require information about the safety checking of children's workers from a specified organisation for the purposes of monitoring compliance. This clause also provides that the Chief Executive may require a specified organisation to provide details of any safety checking of a named person and the person's work history only if they believe on reasonable grounds that the information required is necessary to prevent or lessen a serious threat to the safety of any child or children.

CHPOs

Clause 62 provides that the Court can direct the monitoring agency to inform any parties of the existence of CHPOs, if the Court deems that doing so is necessary for the safety of children.

Privacy Commissioner consultation – question 3.5.1

Children's worker safety checking

The Privacy Commissioner was consulted during the drafting of the safety check provisions of the Bill, and advice was sought on privacy concerns resulting from the policy proposed. As a result of this consultation the powers for key agencies to require specified organisations for the purposes of compliance were limited in relation to the provision of information that may include personal information. The Privacy Commissioner will also be consulted on the regulations and guidelines that will support these provisions, which will support effective and appropriate information sharing by employers, applicants and relevant agencies.

CHPOs

The Privacy Commissioner was consulted about CHPOs. This consultation involved meetings and email exchanges. The Privacy Commissioner emphasised the importance of the risk

assessment tool. The Ministry of Justice agrees that CHPOs should not be able to be implemented until a reliable risk assessment tool has been developed.

External consultation – question 3.6

Some external consultation was undertaken as part of the development of the proposals for inclusion in the Vulnerable Children Bill.

The Green Paper was released in July 2011 for public consultation, and close to 10,000 submissions were received from a diverse range of people and organisations. Submissions on the Green Paper informed the development of the White Paper and of the options considered in the development of the Vulnerable Children Bill. A summary of the submissions is accessible at <http://www.msd.govt.nz/about-msd-and-our-work/work-programmes/policy-development/green-paper-vulnerable-children/submissions/index.html>

Cross-agency steering and working groups comprising relevant agencies were established for the development of the White Paper. Non-government practice and operational professionals from the education, health, social services and justice sectors were also consulted. An external reference group was consulted throughout the policy development process, and service design workshops were held to test and develop the early response system.

Further consultation on the proposals will occur through the select committee stage of the Bill. Details of specific consultation undertaken on proposals are set out below.

Children's worker safety checking

The Office of the Children's Commissioner was consulted.

Issues and options related to vetting and screening have been discussed with a small number of organisations with a key interest. In addition, three workshops have been held to support the development of voluntary guidelines on vetting and screening the children's workforce. These were attended by a range of external stakeholders from across the education, health, social services and local government sector.

CHPOs

Independent psychologists and the Principal Family Court Judge were consulted, and the Office of the Children's Commissioner was informed.

Amendments to the CYPF Act

MSD has consulted the Children's Commissioner and the Principal Family Court Judge on these proposals.

Ngāpuhi Iwi Social Services and Open Home Foundation were consulted on new special guardianship provisions and changes to FGCs and Court plans, and Fostering Kids was consulted on new special guardianship provisions.

Other testing of proposals – question 3.7

Government priorities for vulnerable children and the vulnerable children's plan

Crown Law has been consulted on Part 1 – Subpart 1 relating to Government priorities for vulnerable children and vulnerable children's plan. The appropriate operational staff within agencies have also been consulted on the proposals.

Children's worker safety checking

Three workshops have been held to support the development of voluntary vetting and screening guidelines. These were attended by a range of external stakeholders from across the education, health, social services and local government sector. Feedback on the workability of the

proposed content of the guidelines will inform the development of the regulations, which contain the specific requirements and detail of processes.

Appendix Three: Further Information Relating to Part Four

Retrospective effect – question 4.3

Children’s worker safety checking

Part 1 – Subpart 3 establishes a permanent workforce restriction to prevent people with serious convictions from working within the core children’s workforce. The restriction would apply to anyone applying for, or already in, a relevant role that holds a conviction on the list. The restriction applies to individuals who already have a conviction for a restricted offence as well as those who are convicted after the date that the requirement is brought into force.

Options for applying the workforce restriction only to new applicants to the children’s workforce were considered. It was considered, however, that it was essential for the integrity of the workforce that the same standards were applied to existing members.

CHPOs

Clause 2 of Schedule 3 provides that the CHPO regime will apply to any person in respect of whom an application is made after the Act comes into force.

It will potentially apply to persons who have been convicted or acquitted before the Act comes into force. If an application based on a qualifying offence is made in respect of a person who was acquitted before the Act comes force, the evidence relating to that qualifying offence will need to be reheard. The Court must also be satisfied that the person poses a high risk of committing further offences that will cause serious harm to a child or children.

Amendments to the CYPF Act – Ensuring the safety of subsequent children

Part 3 – Subpart 1 provides that after legislation is enacted, any subsequent child will be subject to the provisions. This will include where removal of a previous child or conviction of the parent in respect of the death of a previous child occurred before the legislation came into force.

Options were considered that did not have retrospective effect, but these were considered to not adequately ensure the safety of children who had siblings removed prior to the legislation coming into force.

A decision about whether a subsequent child is in need of care or protection will be monitored by the Family Court.

Civil or criminal immunity – question 4.5

Government priorities for vulnerable children and vulnerable children’s plan

Clause 11(2) provides that the vulnerable children’s plan does not create any legal right enforceable in a Court of law.

Clause 20 also provides that the child protection policy does not to create any legal right enforceable in a Court of law.

The legislative provision requiring a vulnerable children’s plan is not intended to be the means by which specific Chief Executives are held accountable for fulfilling any new obligations. The usual public sector model will remain as the accountability mechanism by which Chief Executives are responsible to Ministers (who are responsible to Parliament and ultimately the public) about their agencies’ performance in implementing Government policies. Clause 13(1) sets out the accountability arrangements, with the responsible Minister accountable, both to Parliament and the executive and the Chief Executives accountable to the responsible Minister.

The requirement to publish the vulnerable children's plan and progress reports also provides transparency.

Child protection policies

The child protection policies provision is intended to ensure agencies have appropriate policies in place, and require these of contracted/funded providers. It is not intended that agencies be subjected to undue legal risk as a result of having policies in place. When departments fail to comply with the statutory duty, this could become a performance and employment matter for a Chief Executive, which is at the discretion of the State Services Commissioner to address. State services and DHBs are required to report in their Annual Reports on the extent to which they have implemented their child protection policies, and the compliance of schools will be monitored by the Education Review Office.

Powers to make delegated legislation – question 4.7

Government priorities for vulnerable children and vulnerable children's plan and child protection policies

Clauses 5(2) and 15(4) allow the Governor-General, by Order in Council, to amend the definitions of the terms "children's agencies" and "prescribed State service" to enable additional agencies and State services to be brought within the coverage of Part 1 – Subparts 1 and 2 of the Bill. Delegated legislation is the only mechanism which provides the ability to easily amend the list of organisations subject to the provisions to respond to changing circumstances. The delegated powers are limited by the requirements of the Bill relating to the types of organisations that may be added:

- "children's agencies" must be departments of State or instruments of the Crown responsible (alone, or with one or more other departments or instruments) for the administration of all or any of the provisions of an Act or Acts
- "prescribed State service" must be an instrument of the Crown in respect of the Government of New Zealand (whether departments, corporations, agencies, or other instruments) being instruments that are neither DHBs or schools.

The definition of children's services in clause 15 provides for services provided to adults living in households with children that may affect the wellbeing of those children to be defined by Order in Council, and for other services provided in respect of children to be added to the definition by Order in Council. An Order in Council is planned to coincide with the commencement of the provisions. Delegated legislation is the only mechanism available which provides the ability to easily amend the list of services subject to the provisions to respond to changing circumstances. The delegated powers are limited by the requirements of the Bill relating to the types of services that may be added.

Children's worker safety checking

Clause 32(1) allows the Governor-General, by Order in Council, to make regulations prescribing the requirements for safety checks. Clause 32(2) allows regulations to be made to prescribe different requirements, and exemptions and exceptions, for different classes of children's worker; and specified organisations or classes of specified organisations.

Clause 33 allows the Governor-General, by Order in Council, to make regulations prescribing any activities, in addition to those listed in Schedule 1, that are specified activities and declaring that a person, or a class of persons, is not a specified organisation.

These powers will enable the specific detail of the safety check requirements to be provided for in regulations so they can be kept up-to-date in response to changing needs and technologies. Providing powers to prescribe different requirements, exemptions and exceptions will enable the requirements to differ according to the level of child contact a person may have and their role. In this way the requirement will be made proportionate to the level of risk and will be able to be applied flexibly.

Clause 33 also allows the Governor-General, by Order in Council, to make regulations prescribing that the requirements within Part 1 – Subpart 3 may be extended to local government and organisations funded by local government. This is to enable further work to be undertaken, in consultation with the sector, prior to the requirements being extended to the local government sector.

The practical scope of the regulating-making power to deem activities to be regulated activities is limited by the statutory requirement that regulated organisations be part of the state sector, or funded by the state sector.

Further, all regulations made under this Bill will be subject to the oversight of Parliament's Regulations Review Committee.

Any other unusual provisions or features – question 4.9

Government priorities for vulnerable children and the vulnerable children's plan

Part 1 – Subpart 1 introduces a new obligation on specified chief executives to collectively develop, and report progress against, a vulnerable children's plan setting out how the chief executives will work together to achieve the Government's priorities for improving the wellbeing of vulnerable children.

This is unusual because it adds to existing accountability arrangements for chief executives. Clause 13(1) sets out the accountability arrangements for the purposes of the operation of the legislative and executive branches of Government, in the setting and achieving of Government priorities in relation to vulnerable children, and in any matter relating to the vulnerable children's plan. For these purposes, the responsible Minister is accountable, both to Parliament and the executive, and the Chief Executives are accountable to the responsible Minister.

Alternatives considered included requiring the establishment of the Vulnerable Children's Board and/or Children's Teams in legislation with statutory duties and functions, or authorising the Chief Executive of MSD to request services for vulnerable children from agencies, and requiring agencies to respond.

The provision in Part 1 – Subpart 1 was considered necessary to create a durable and visible commitment to collective government action in order to improve the wellbeing of vulnerable children. The alternatives were considered unnecessarily prescriptive and it was uncertain whether they would lead to better service provision for vulnerable children.

Amendments to CYPF Act – Ensuring the safety of subsequent children

Part 3 – Subpart 1 contains provisions reversing the onus of proof that a subsequent child is in need of care or protection. Where any adult has previously had a child or young person permanently removed from their care due to abuse or neglect, or the adult has been convicted of murder, manslaughter, or infanticide of a child or young person in the adult's care, they will be required to demonstrate to Child, Youth and Family and the Family Court that they are unlikely to inflict, or allow to be inflicted, on a subsequent child the kind of harm caused to a previous child.

This is unusual because it alters care and protection practice for these cases. Currently Child, Youth and Family are currently required to show that a child is likely to suffer harm in order for there to be a declaration that the child is in need of care or protection. The onus will now be on the parent in these cases to demonstrate they are unlikely to inflict, or allow to be inflicted on, a subsequent child, the kind of harm caused to a previous child. However, an assessment will be required to be carried out by a social worker to establish whether the parent has demonstrated this.

Alternatives considered included greater internal oversight of subsequent children cases within Child, Youth and Family, new data systems to improve systems for the tracking of high-risk adults, or requiring the Chief Executive of MSD to make an application for declaration that the child is in need of care and protection, and for a custody order in favour of the Chief Executive, in every case of a subsequent child.

The provision in Part 3 – Subpart 1 was considered preferable as the alternatives were not considered to provide the required oversight of cases, or carried significant risks. These risks included that these options may establish an adversarial process at the beginning of engagement with the parent and family, are not in keeping with established social work and Court practice, and carry the risk of delay and significant resource implications.