

# Vulnerable Children Bill

Government Bill

## Explanatory note

### 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 2 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 well-being of vulnerable children (children who are at significant risk of harm to their well-being 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 that 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 in 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 the 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, whānau, 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 Fam-

ily, 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 it 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 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 well-being 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. Govern-

ment 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 well-being 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 and whānau. 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 the 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 within 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 is 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, 1 or more of the qualifying offences listed in *Schedule 3* against a child or children; 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 a 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 cover 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 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 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 time frames 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 alternative 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 options for obtaining assistance to these young people.

#### *Ensuring 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 the 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 Kiwi-

Saver 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.

### **Departmental disclosure statement**

The Ministry of Social Development is required to prepare a disclosure statement to assist with the scrutiny of this Bill. It provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2013&no=150&>.

### **Regulatory impact statement**

The Ministries of Social Development, Justice, and Education produced 6 regulatory impact statements to help inform the main policy decisions taken by the Government relating to the contents of this Bill. They are as follows:

- specific amendments to care and protection legislation, produced by the Ministry of Social Development, dated 19 August 2013:
- revised proposal for Child Harm Prevention Orders, produced by the Ministry of Justice, dated 10 April 2013:
- joint accountability and shared responsibility, produced by the Ministry of Social Development, dated 19 June 2013:
- standard safety checks for the children's workforce, produced by the Ministry of Education, dated 19 August 2013:
- additional amendments to legislation to assist children in care, produced by the Ministry of Social Development, dated 10 July 2013:
- ensuring the safety of subsequent children, produced by the Ministry of Social Development, dated 19 June 2013.

Copies of these regulatory impact statements can be found at—

- Revised proposal for Child Harm Protection Orders: <http://www.justice.govt.nz/policy/regulatoryimpactstatements>

- Standard safety checks for the children's workforce: <http://www.minedu.govt.nz/theMinistry/PublicationsAndResources/RIS.aspx>
- All other regulatory impact statements: <http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/index.html>

These regulatory impact statements can all also be found at: <http://www.treasury.govt.nz/publications/informationreleases/ris>

### Clause by clause analysis

*Clause 1* is the Title clause. The Bill is intended to be divided at the end of its committee of the whole House stage, and to be enacted as the following 4 separate Acts:

- Vulnerable Children Act **2013**—*Part 1*:
- Child Harm Prevention Orders Act **2013**—*Part 2*:
- Children, Young Persons, and Their Families (Vulnerable Children) Amendment Act **2013**—*subpart 1 of Part 3*:
- KiwiSaver (Vulnerable Children) Amendment Act **2013**—*subpart 2 of Part 3*.

*Clause 2* relates to commencement. The Bill is expressed to come into force on the day after the date of Royal assent, which means that *subparts 1 and 2 of Part 1* (other than *section 18*), some sections in *Part 3*, and *subpart 2 of Part 3* will come into force then. All the other provisions of the Bill will be brought into force by Order in Council or, if not in force on the date that is 2 years after Royal assent, on that date.

The reasons why provisions relating to the following topics need to be brought into force by Order in Council are as follows:

- in relation to the requirement for school boards (including sponsors of partnership schools kura hourua) to adopt child protection policies (*section 18*), the requirement to adopt policies as soon as practicable may not be sufficiently flexible to allow school boards the time they need to develop and implement policies. It may be more appropriate to ensure that policies are prepared and put in place before the requirement comes into force:

- in relation to children’s worker safety checking (*subpart 3 of Part 1*), the safety checking part of the Bill cannot come into force until the supporting regulations are ready. Two years will be the maximum period of time needed to get the regulations drafted, given that there will be a significant consultation process:
- in relation to Child Harm Protection Orders (*Part 2*), an information system and a risk assessment tool need to be developed for the orders to operate effectively:
- in relation to a number of amendments to the Children, Young Persons, and Their Families Act 1989 (*subpart 1 of Part 3*), significant changes are required to some existing IT systems, and training for professionals working in the area will be required.

## Part 1

### Cross-agency measures

*Clause 3* relates to the application of *Part 1* to the Crown.

#### Subpart 1—Government priorities for vulnerable children and vulnerable children’s plan

*Clause 4* states the purpose of *subpart 1*. That purpose is to support the Government’s setting of priorities for improving the well-being of vulnerable children, and to ensure that children’s agencies work together to improve the well-being of vulnerable children.

*Clause 5* defines, for the purposes of *subpart 1*, terms used in that subpart (namely, child, children’s agencies, children’s Ministers, responsible Minister, vulnerable children, and vulnerable children’s plan).

*Clause 6* defines improving the well-being of vulnerable children, in relation to—

- the setting of Government priorities under *clause 7*; and
- the preparation of the vulnerable children’s plan under *clause 8*.

*Clause 7* relates to the responsible Minister from time to time, after consulting with the children’s Ministers, setting Government priorities for improving the well-being of vulnerable children.

*Clause 8* relates to the preparation of the vulnerable children's plan.

*Clause 9* relates to the content of the plan.

*Clause 10* indicates when the plan comes into effect and continues in force.

*Clause 11* makes clear the effect of the plan. (*See also clause 13*, which relates to accountabilities.)

*Clause 12* is about the review, and amendment or replacement, of the plan.

*Clause 13* specifies accountabilities of the responsible Minister and of the chief executives of each of the children's agencies.

### Subpart 2—Child protection policies

*Clause 14* states the purpose of *subpart 2*. That purpose is to require child protection policies (that must contain provisions on the identification and reporting of child abuse and neglect) to be—

- adopted and reported on by prescribed State services and DHBs boards; and
- adopted by school boards; and
- adopted by certain people with whom those services or boards enter into contracts or funding arrangements.

*Clause 15* defines, for the purposes of *subpart 2*, terms used in that subpart (namely, board (of a DHB), child, children's services, DHB, independent person, prescribed State service, and school board). A school board means a board or body that is a board for the purposes of Part 7 (control and management of State schools) of, or a sponsor of a partnership school kura hourua under, the Education Act 1989.

A child means a person who is—

- a child as defined in section 2(1) of the Children, Young Persons, and Their Families Act 1989 (because the person is a boy or girl under the age of 14 years); or
- a young person as defined in section 2(1) of the Children, Young Persons, and Their Families Act 1989 (because the person is—
  - a boy or girl of or over the age of 14 years but under 17 years; and
  - not a person who is or has been married or in a civil union).

Children's services are services that are any of the following:

- services provided to 1 or more children;
- services to adults in respect of 1 or more children;
- services provided to adults living in households that include 1 or more children, and that—
  - do or may affect significantly any 1 or more aspects of the well-being of those children; and
  - are for the time being prescribed by an Order under *clause 15(2)*;
- services provided in respect of children that are for the time being prescribed under *clause 15(3)*.

*Clause 16* requires the chief executive of each prescribed State service (as defined in and under *clause 15(1) and (4)*) to ensure that the service,—

- if the service is or becomes a provider of children's services,—
  - adopts, as soon as is practicable, a child protection policy; and
  - reports in its annual report (under section 43 of the Public Finance Act 1989, section 101 of the Policing Act 2008, or another enactment) on whether, or on the extent to which, its operations have implemented the policy; and
  - ensures that a copy of the policy is available on an Internet site maintained by or on behalf of the service; and
  - reviews the policy within 3 years of the date of its first adoption, or of its most recent review, under *clause 16*; and
- ensures that every contract, or funding arrangement, that the chief executive or the service (in either case, acting on the Crown's behalf, or independently) enters into with an independent person requires the person to adopt (and to review in accordance with *clause 16(a)(iv)*) a child protection policy if, in the opinion of the chief executive of the State service,—
  - the person is or becomes a provider of children's services; and
  - some or all of the contract or arrangement is about providing children's services.

*Clause 17* requires every board of a DHB to adopt, as soon as is practicable, a child protection policy. The board must report in its annual report under section 150 of the Crown Entities Act 2004 on implementation of the policy. The policy must be available on an Internet site maintained by or on behalf of the board. The board must ensure that every contract, or funding arrangement, that after that commencement the board enters into with an independent person requires the person to adopt (and to review in accordance with *clause 17(e)*) a child protection policy if, in the opinion of the board, the person is or becomes a provider of children's services, and some or all of the contract or arrangement is about providing children's services. The policy must be reviewed within 3 years of the date of its first adoption, or of its most recent review, under *clause 17*.

*Clause 18* requires every school board to adopt, as soon as is practicable after the commencement (under *clause 2(2) or (3)*) of *clause 18*, a child protection policy. The policy must be available on the Internet site (if any) maintained by or on behalf of the board or be available on school premises if requested. The board must ensure that every contract, or funding arrangement, that after that commencement the board enters into with an independent person requires the person to adopt (and to review in accordance with *clause 18(d)*) a child protection policy if, in the opinion of the board, the person is or becomes a provider of children's services, and some or all of the contract or arrangement is about providing children's services. The policy must be reviewed within 3 years of the date of its first adoption, or of its most recent review, under *clause 18*.

*Clause 19* relates to the content of a child protection policy required under *subpart 2*. The policy must—

- apply to the provision of children's services by the service, board, or independent person that adopts the policy; and
- be written, and contain provisions (whether or not it contains provisions on any other matter or matters) on the identification and reporting of child abuse and neglect in accordance with section 15 of the Children, Young Persons, and Their Families Act 1989.

*Clause 20* makes clear the effect of a child protection policy.

### Subpart 3—Children’s worker safety checking

This subpart establishes a regime for ensuring that some people who work with children in child and family focused services are safety checked.

*Clause 21* states that the purpose of this subpart is to reduce the risk of harm to children by requiring that people employed or engaged in work that involves regular or overnight contact with children are safety checked.

*Clause 22* provides for the liability of Crown organisations to prosecution for offences against this subpart, and provides that, if convicted, they may be sentenced to pay a fine, despite section 8(4) of the Crown Organisations (Criminal Liability) Act 2002.

*Clause 23* is the interpretation clause for this subpart. It defines relevant terms, including:

- children’s worker (of which there are 2 kinds: core workers and non-core workers):
- regulated activity (listed in *Schedule 1*):
- safety checked:
- specified offence (listed in *Schedule 2*):
- screening service:
- regular or overnight contact (see *clause 23(2)*).

*Clause 24* defines specified organisations. These are the State services (as defined in the State Sector Act 1988), and individuals and organisations funded by any of the State services to provide regulated activities, that employ or engage children’s workers to perform regulated activities. Local authorities, and individuals and organisations funded by local authorities to provide regulated activities, may be declared to be specified organisations by regulations made under this subpart.

#### *Obligations of specified organisations*

*Clause 25* requires specified organisations to ensure that safety checks are completed before employing or engaging any person as a children’s worker. For core workers, the obligation commences as soon as this subpart comes into force, while for non-core workers it commences a year later.



*Clause 26* requires specified organisations to ensure that their existing workforce of children's workers is safety checked. For core workers, the obligation commences 3 years after this subpart comes into force, while for non-core workers it commences a year later than that.

*Clause 27* requires specified organisations to ensure that all children's workers employed or engaged by the specified organisation are safety-checked at 3-year intervals.

*Clauses 25 to 27* do not prohibit the employment or engagement of any person; they merely require that specified organisations safety-check their children's workers. Failure to comply with this obligation is an offence that carries a maximum penalty of \$10,000 for each failure.

*Clause 28* prohibits specified organisations from employing or engaging a core worker who has been convicted of a specified offence, unless the worker has an exemption granted under *clause 34*, and entitles them to dismiss such a worker, in accordance with this clause. For new core workers, the obligation commences as soon as this subpart comes into force, while for existing core workers it commences a year later. The clause sets out some rules about what a specified organisation must and may do if it knows, or believes on reasonable grounds, that an existing core worker has been convicted of a specified offence. The penalty for an offence of employing or engaging a core worker in breach of the obligations in this clause is a fine with a maximum penalty of \$50,000. *Clause 28(3)(b)(i)* (which ensures that no compensation or other payment is payable in respect of an authorised suspension or termination, despite anything to the contrary in any contract or agreement) does not limit or affect the Wages Protection Act 1983.

### *Defences*

*Clauses 29 and 30* provide 2 defences for specified organisations. For offences against *clauses 25 to 27*, it is a defence if the specified organisation took all reasonable steps to ensure the safety checks of its new and existing workers were done as required. For offences against any of *clauses 25 to 28*, there is a defence relating to the use of children's workers in an emergency, where the workers are employed or engaged for no more than 5 consecutive working days.

### *Safety checks*

*Clause 31* requires that safety checks comply with this section and the regulations that set out specific requirements for safety checks. Safety checks must include—

- checking a person's identity:
- considering specified information about the person:
- carrying out a risk assessment of the person.

An important aspect of safety checks is that, for core workers, the clean slate regime set out in the Criminal Records (Clean Slate) Act 2004 does not apply. That Act cannot be used to conceal a conviction for a specified offence, even if the person would otherwise have, under that Act, no criminal record.

### *Regulations*

*Clause 32* is the regulation-making power for making regulations relating to safety checks.

*Clause 33* is the regulation-making power for other regulations required by this subpart. It includes powers to expand or restrict the things that are described as regulated activities, to declare local authorities, and individuals and organisations funded by them, to be specified organisations, and to provide that certain individuals and organisations are not specified organisations. It also provides for regulations relating to the approval of screening services.

### *Exemption for workers convicted of specified offence*

*Clause 34* provides that the chief executive of any key agency (being the Ministries of Social Development, Health, Education, and Justice) may grant an exemption to a person who has been convicted of a specified offence if the chief executive is satisfied that the person would not pose an undue risk to the safety of children if employed or engaged as a core worker.

*Clauses 35 to 37* set out procedures for applying for, and for revoking, an exemption, and for appeals against decisions relating to the grant or revocation of an exemption.

### *Monitoring compliance*

*Clause 38* allows the chief executives of key agencies to require information from specified organisations for the purpose of monitoring compliance with the safety-checking requirements. They can also require specific information about any safety checks done on a named person, and the person's work history, if the information is necessary to prevent or lessen a serious threat to the safety of any child or children.

### *Miscellaneous*

*Clause 39* provides for the approval of screening services. Screening services are services that may carry out all or any part of a safety check on behalf of a specified organisation. (Using an approved screening service is likely to mean that a specified organisation can more readily make out the defence of having taken all reasonable steps to ensure safety checks are properly completed.) Screening services may be approved by the chief executive of any key agency.

*Clause 40* provides that the chief executive of any key agency, other than the Ministry of Justice, can prosecute an offence under this subpart, but a chief executive cannot prosecute his or her own agency.

### *Consequential amendments to other enactments*

*Clause 41* amends the Crown Organisations (Criminal Liability) Act 2002 to insert a reference to this subpart of the Bill. This is necessary to support the provision in *clause 22* that allows Crown organisations to be criminally liable for offences against this subpart.

*Clause 42* amends the Sentencing Act 2002 because Crown organisations can be criminally liable for offences against this Part.

*Clause 43* amends the Criminal Records (Clean Slate) Act 2004 to insert a cross-reference to the exception to that Act that is contained in *clause 31(3)*.

## **Part 2**

### **Child harm prevention orders**

*Clause 44* states the purpose of *Part 2*. *Part 2* aims to enhance the safety of children by imposing restrictions on persons who pose a

high risk of causing serious harm to them. It is not a purpose of *Part 2* to punish persons subject to orders made under that part.

*Clause 45* sets out the principles to which a person or court exercising a power under *Part 2* must have regard. This includes the principles that—

- orders under *Part 2* are for the sole purpose of reducing the risk of harm to children; and
- orders should only be imposed on a person who presents a high risk of causing serious harm to a child or children.

*Clause 46* provides that *Part 2* binds the Crown.

*Clause 47* defines terms used in *Part 2*.

### Subpart 1—Imposition and review of child harm prevention orders

#### *Application for child harm prevention order*

*Clause 48* provides that an application for a child harm prevention order may be made by the Commissioner of Police, the Chief Executive of the Ministry of Social Development, and, in certain circumstances, the Chief Executive of the Department of Corrections. *Subclause (4)* provides that an application may only be made against a person who has been convicted of a qualifying offence or who the applicant believes, on reasonable grounds, has committed a qualifying offence. In addition, the applicant must believe that the person against whom the application is made poses a high risk of committing further qualifying offences and that those offences, if committed, would cause serious harm to a child or children.

*Clause 49* sets out the details that must be stated in an application for a child harm prevention order.

*Clause 50* requires the applicant for a child harm prevention order to consult other agencies (as applicable).

*Clause 51* provides that the application for a child harm prevention order must be made to a District Court, unless the circumstances in *subclause (2)* apply.

*Clause 52* provides that an application for a child harm prevention order must be accompanied by a report by a psychologist that assesses the risk posed by the respondent.

*Clause 53* requires that the court must, before making a child harm prevention order, obtain a second report regarding the risk posed by the respondent. The second report must be prepared by a health assessor nominated by the respondent (or, if the respondent fails to nominate a health assessor, by the court).

*Clause 54* requires the applicant for a child harm prevention order to give victims of the respondent an opportunity to provide information that may be relevant to the risk posed by the respondent. The applicant must provide information supplied by victims to the psychologist or health assessor who is preparing a report on the risk posed by the respondent.

#### *Imposition of child harm prevention order*

*Clause 55* provides that a court may make a child harm prevention order against a person if the person has been convicted of a qualifying offence or if the court finds, on the balance of probabilities, that the person has committed a qualifying offence (whether or not that conduct has been the subject of legal proceedings). *Subclause (2)* provides that the court may only make an order against a person if the person poses a high risk of committing 1 or more qualifying offences and if those offences, if committed, will cause serious harm to a child or children.

*Clause 56* sets out the matters that the court must consider in determining the risk to children posed by the respondent.

*Clause 57* prescribes the form of a child harm prevention order.

*Clause 58* provides that the terms of a child harm prevention order include a requirement that the person subject to the order advise the Police of their name and address and any change to their name or address. *Subclause (2)* provides that a child harm prevention order may impose any of the listed terms, or any similar terms, that the court considers reasonably necessary to mitigate the risk posed by the person subject to the order. The terms that the court may impose include preventing the person from living or working with any specified child, children, or class of children, or with any children.

*Clause 59* provides that, when deciding whether to impose a child harm prevention order, or the terms that an order should impose, a court may receive as evidence statements from the transcript of a criminal trial in which the respondent was proceeded against in re-

spect of a qualifying offence. This clause is subject to *clause 77*, which requires a procedure to be followed if evidence from a criminal trial is to be considered in a proceeding relating to a child harm prevention order against the defendant. The procedure includes providing notice to the defendant before the trial that, in the event that the criminal trial ends in an acquittal, the evidence presented at the trial may be considered in a proceeding relating to a child harm prevention order. *Subclause (4)* provides an exception to this requirement for evidence presented during a criminal trial by a victim of the respondent. A victim's evidence may be considered in a proceeding relating to a child harm prevention order whether or not the procedure in *clause 77* has been followed.

*Clause 60* provides that a failure to comply with the terms of a child harm prevention order is an offence, with a maximum penalty of 2 years in prison.

*Clause 61* sets out when a child harm prevention order commences and expires.

*Clause 62* allows the court, in the event that an order is made, to direct an applicant for a child harm prevention order to notify certain persons or organisations of the existence of the order and the name and address of the person subject to the order. *Subclause (2)* prevents the court from making such a direction unless the court believes that it is necessary to mitigate the risk posed by the respondent.

*Clause 63* provides that the court may make an interim order if an application has been made for an order or the court has been notified of the intention to apply for an order. An interim order may apply for up to 3 months.

#### *Review by review panel*

*Clause 64* requires child harm prevention orders to be reviewed annually by a review panel, established by *clause 88*, which must review the continuing justification for the order and the terms imposed by the order.

*Clause 65* requires the review panel to take all reasonable steps to provide the information on which a decision of the panel will be based to the person subject to the child harm prevention order under review. The clause contains procedural safeguards to protect victims

of the person subject to the order and to prevent any publication of information provided by the panel.

*Clause 66* sets out the decisions that may be made by the review panel when it reviews a child harm prevention order. The review panel may cancel or modify any term of the order or direct the Commissioner of Police to apply to the court for a review of the order.

*Clause 67* allows the person subject to the order or the chief executive of the monitoring agency specified in the order to appeal to a District Court (or in certain circumstances, the High Court) against a decision of the review panel.

*Clause 68* provides that, on an appeal against a review panel decision, the court may cancel the child harm prevention order to which the decision relates, cancel or modify any term of the order, or impose any other term.

#### *Review by court*

*Clause 69* requires the Commissioner to apply to the court for a review of a child harm prevention order within 3 years after it is made and within each subsequent 3-year period. The Commissioner must also apply to the court for a review whenever directed to do so by the review panel under *clause 60*.

### Subpart 2—Procedural matters

#### *Procedure governing applications to court*

*Clause 70* sets out the documents the applicant for a child harm prevention order must serve on the respondent to the application.

*Clause 71* provides that the court may order a person to appear before a health assessor for the purpose of allowing the health assessor to prepare the report required by *clause 46 or 47*. The court may only make an order if—

- the person has been convicted of a qualifying offence or the court is satisfied that there are reasonable grounds to believe that the person has committed a qualifying offence; and
- the nature and seriousness of the offending, or alleged offending, justifies an assessment of the risk posed by the respondent.

*Clause 72* provides for the court to order that a person who fails to appear before a health assessor after being ordered to appear under

*clause 71* may be detained for the purpose of enabling the health assessor to address the questions that must be addressed in the reports required under *clauses 52 and 53*.

*Clause 73* allows the court to issue a summons requiring the respondent to an application for a child harm prevention order to attend a proceeding.

*Clause 74* authorises the court to issue a warrant for a respondent to be brought before the court if the respondent fails to appear at a proceeding.

*Clause 75* authorises the court to summon witnesses to attend proceedings relating to child harm prevention orders.

### *Evidence*

*Clause 76* provides for the admissibility, in proceedings under *Part 2*, of relevant matters that would otherwise be inadmissible. However, in determining whether, on the balance of probabilities, a respondent to an application for a child harm prevention order committed an offence, the court may only receive evidence that is admissible under the Evidence Act 2006.

*Clause 77* prescribes the procedure that must be followed before the court may consider, in a proceeding relating to a child harm prevention order, evidence presented during a criminal trial in which the respondent was proceeded against in respect of a qualifying offence, but was not convicted. *Subclause (2)* provides that the Commissioner of Police or the Chief Executive of the Ministry of Social Development must, before the criminal trial, provide notice to the defendant stating that 1 or more offences with which the defendant is charged is a qualifying offence and that, if the trial ends in an acquittal, the Commissioner or the chief executive is likely to apply for a child harm prevention order against the defendant. The notice must also state that the evidence presented during the trial may be considered by the court in determining—

- whether, on the balance of probabilities, the defendant committed a qualifying offence; and
- whether the defendant poses a high risk of committing 1 or more qualifying offences; and
- whether those offences, if committed, would cause serious harm to a child or children; and



- the terms of any child harm prevention order.

*Clause 78* provides that the court may determine whether proceedings relating to child harm prevention orders are held in closed or open court, but must not exclude members of the media from any proceeding.

*Clause 79* authorises the court to make an order forbidding publication of any report of the evidence or submissions made in any proceeding under this Part. An order forbidding publication may only be made on one of the grounds set out in *subclause (2)*, including that publication would be likely to cause undue hardship to any victim of the respondent or endanger the safety of any person.

*Clause 80* authorises the court, in certain circumstances, to forbid publication of the name of the respondent to an application for a child harm prevention order, or a person subject to an order.

*Clause 81* provides for the automatic suppression of the identity of a child who is—

- (a) a victim of a respondent to an application for a child harm prevention order; or
- (b) a victim of a person subject to a child harm prevention order; or
- (c) a witness in any proceeding under this Part.

*Clause 82* provides for the automatic suppression of the identity of the respondent to an application for a child harm prevention order, or a person subject to an order, where a qualifying offence on which the application or order is based is incest or sexual conduct with a dependent family member.

#### *Procedure governing reviews by review panel*

*Clause 83* allows the chairperson of the review panel to issue a summons requiring the person subject to a child harm prevention order to attend a review panel hearing at a specified time or date.

*Clause 84* allows the review panel to issue a summons to any person to appear as a witness at a meeting of the panel and to bring with him or her any document or thing specified in the summons.

*Clause 85* prescribes the manner in which a summons under *clause 83 or 84* may be served.

*Clause 86* provides that a witness summoned to a review panel hearing has the same privileges and immunities as a witness in a court of law.

*Clause 87* provides that a person commits an offence if the person fails to attend or give evidence in accordance with a summons served under *clause 85*.

### *Review panel*

*Clause 88* establishes the review panel. The review panel consists of 6 members, who must include at least 2 health assessors, that is, psychiatrists or psychologists, and at least 4 persons with experience in the operation of the New Zealand Parole Board. The members are appointed by the Minister of Justice. Before the Minister of Justice appoints a person as a member, the Minister of Justice must be satisfied that the person has experience and expertise in assessing the potential for individuals to pose a high risk to public safety. The review panel is chaired by a member who holds, or has held, office as a Judge.

*Clause 89* relates to review panel hearings. The clause requires a quorum of 3 members, who must include the chairperson or deputy chairperson, a health assessor, and a member with experience in the operation of the New Zealand Parole Board. It also provides for the panel to regulate its own procedure.

*Clause 90* provides that certain privileges applying to court proceedings also apply to review panel hearings.

*Clause 91* allows for remote attendance at review panel hearings, if the panel agrees.

*Clause 92* provides that a decision of the majority of members in attendance at a meeting is a decision of the review panel. The clause also provides that the decision must be in writing and must include reasons for the decision.

*Clause 93* provides that relevant evidence is admissible in a review panel hearing, whether or not it would be admissible in a court.

*Clause 94* provides that the chairperson must require a panel member who is perceived as having bias for or against a person subject to a child harm prevention order to excuse him or herself from a meeting that relates to that person.

*Clauses 95 to 97* provide for the term of appointment, remuneration, and immunity of members of the review panel.

*Clause 98* makes a consequential amendment to the Search and Surveillance Act 2012 to provide that section 131 of that Act applies to *clause 74(4)*.

*Clause 99* amends the Legal Services Act 2011 to provide that, for the purposes of granting legal aid, an application for an interim order under *clause 63*, if made at the end of a criminal trial, is a criminal proceeding.

### **Part 3** **Amendments to Acts**

#### **Subpart 1—Amendments to Children, Young Persons, and Their Families Act 1989**

*Clause 100* states that *subpart 1* amends the Children, Young Persons, and Their Families Act 1989 (the **principal Act**). The provisions of this subpart come into force at different times (*see clause 2*).

*Clause 101* inserts 3 new definitions into section 2 of the principal Act:

- permanent caregiver is the term given to people often referred to as “home for life carers”. These are people who are given the permanent care of a child or young person under either the principal Act or the Care of Children Act 2004, where the child or young person has previously been subject to a non-permanent care arrangement under the principal Act. This definition is required because this subpart inserts new provisions relating to the financial assistance available to permanent caregivers:
- special guardian is the term used to describe a person, appointed either as a sole or additional guardian under *section 110* of the principal Act, who is appointed as special guardian under *new section 113A*:
- subsequent child means a child of a person described in *new section 14(3)*, namely a person who either has been convicted of the murder, manslaughter, or infanticide of a child or young person, or has had the care of a child or young person permanently removed from him or her.

### *Principles*

*Clauses 102 and 103* restructure and add to the hierarchy of principles set out in sections 5, 6, and 13 of the principal Act. Section 5 sets out principles to guide any court or persons exercising powers under the Act. *Clause 102* adds a further principle to section 5, which requires a holistic approach to be taken. Section 6 sets out the paramount consideration applying to the administration and application of the Act, which is the welfare and interests of the child. This section is unchanged. Section 13 then sets out principles to be applied when exercising powers relating to the care and protection of children and young persons. The first principle, in paragraph (a), is that children or young persons must be protected from harm, have their rights upheld, and have their welfare promoted. *Clause 103* modifies section 13 to clarify that while the consideration in section 6 remains the paramount consideration, it is to be guided by the principle currently set out in paragraph (a). The other principles set out in sections 5 and 13 then sit under the framework of the paramount consideration as guided by the principle that children and young persons need to be protected from harm and have their rights upheld.

### *Subsequent children*

*Clause 104* amends section 14 of the principal Act in order to describe when a subsequent child is in need of care or protection. Section 14(1) sets out the grounds on which a child or young person is in need of care or protection. A *new paragraph (ba)* inserts a new ground, which is that a subsequent child is in need of care or protection if he or she is in the care or custody of a person described in *new section 14(3)*, and that person has not demonstrated that he or she meets the requirements of *new section 18A(2)*. *New section 14(3)* describes a person who—

- has been convicted of the murder, manslaughter, or infanticide of a child or young person in his or her care or custody; or
- has had a child or young person removed from him or her on a ground in section 14(1)(a) or (b), and there is no realistic possibility that the child or young person will be returned to the person's care.

The requirements of *new section 18A(2)* are that,—

- if the parent’s own conduct led to him or her being a person described in *new section 14(3)*, the parent is unlikely to inflict on the subsequent child the kind of harm that led to the parent being so described; or
- in any other case, the parent is unlikely to allow the kind of harm that led to the parent being a person described in *new section 14(3)* to be inflicted on the subsequent child.

For example, if a child or young person has been permanently removed from the care of a person because of that person’s abuse of the child or young person, a subsequent child of the person will be in need of care and protection unless the person has demonstrated that he or she is unlikely to abuse that subsequent child.

*New subsection (5)* addresses the complication of where the person fits more than 1 limb of the description under *section 14(3)*.

*Clause 105* makes a consequential amendment to section 18.

*Clause 106* inserts 4 new sections that deal specifically with subsequent children who may be in need of care or protection.

*New section 18A* requires a social worker (except in certain cases) to undertake an assessment of whether a person described in *section 14(3)* meets the requirements set out in *new section 18(2)*, which are set out above.

Following an assessment, the social worker must decide either to apply under section 67 for a declaration that the child is in need of care or protection on the ground set out in *new section 14(1)(ba)*, or decide not to make such an application.

*New section 18B* requires that, following a decision under *new section 18A*, a social worker must either apply to the court for a declaration under section 67 or apply for confirmation of the decision not to apply. No family group conference is required before either such application.

*New section 18C* sets out the process and considerations relating to an application for confirmation of a decision not to apply for a declaration under section 67. Following consideration of the application, the court may confirm the decision, decline to confirm it, or adjourn in order to seek more information or a reconsideration of the social worker’s assessment and decision.

*New section 18D* provides that if the court declines to confirm the application, the application must be treated as an application by the chief executive for a declaration under section 67 (that is, that the child is in need of care or protection) on the ground in *new section 14(1)(ba)*.

*Clause 107* makes a consequential amendment to section 19.

#### *Family group conferences*

*Clause 108* amends section 22 of the principal Act, which identifies the people entitled to attend a family group conference. It adds a *new subsection (3)* that clarifies that at a family group conference to review a decision, recommendation, or plan, any person who was entitled to attend the original conference may attend (and not just those who actually attended it).

*Clause 109* amends section 23 of the principal Act. It clarifies that the advice to be made available at a family group conference is the advice that the care and protection co-ordinator considers is required, and should include information relating to the health and education needs of the relevant child or young person.

*Clause 110* inserts a *new section 29A* into the principal Act. This sets out standard requirements for the content of plans prepared by family group conferences, including a requirement for the plan to identify a review date.

*Clauses 111 and 112* amend sections 34 and 35, which require the chief executive and the Police, respectively, to give effect to decisions, recommendations, and plans of a family group conference. One of the grounds on which the chief executive or the Police can decline to do so is that it is “clearly impracticable”. The amendment changes this test to one where the chief executive or Police (as appropriate) considers that it is impracticable or unreasonable to do so.

*Clause 113* amends section 36 of the principal Act, which is about the reconvening of family group conferences. It replaces subsection (1) with 3 new subsections that set out the circumstances in which a conference must or may be reconvened.

#### *Subsequent children*

*Clause 114* amends section 67 of the principal Act, which provides for a declaration by a Family Court that a child or young person is in

need of care or protection on a ground in section 14(1). The amendment inserts a *new subsection (2)* which provides that, in relation to a subsequent child, the court must make a declaration if the application is on the new ground in *new section 14(1)(ba)* unless the court is satisfied that the parent meets the requirements of *new section 18A(2)*.

#### *Permanent caregivers*

*Clause 115* inserts a *new section 86B* into the principal Act, concerning services orders. Services orders may be made under section 86 granting assistance to persons who have the care of a child or young person, or to children or young persons themselves, in certain circumstances. *New section 86B* provides that these orders are not available in respect of permanent caregivers. This is because financial assistance will be available instead under section 389 (*see clauses 132 and 133*).

#### *Special guardians*

*Clause 116* amends section 107, which authorises the person in whose custody a child or young person is placed to determine, in the absence of a court order of a specified kind, whether, and on what terms and conditions (if any), any person is to have access to the child or young person. The amendment inserts a reference to court orders under *new section 113B(1)(b)* inserted by *clause 118*.

*Clause 117* replaces section 110 of the principal Act and inserts a *section 110A*. Under existing section 110, various people can be appointed as a sole guardian or an additional guardian of a child or young person. The replacement section recasts the section to include references to *new section 110A* and also to provide that if a natural person is appointed as a guardian, the court may also make an order under *new section 113A* appointing the person as a special guardian. *New section 110A* provides for when a person appointed as a guardian under the Care of Children Act 2004 wants instead to be appointed as a special guardian under *new section 113A*. This is likely to be relatively unusual. The section describes when and how this may be done, and the consequences of the change.

*Clause 118* inserts *new sections 113A and 113B* into the principal Act. *New section 113A* provides for the appointment of a guardian or a child or young person as a special guardian. The order is for

the purpose of providing the child or young person with a long-term, safe, nurturing, stable, and secure environment. Special guardians are permanent caregivers.

*New section 113B* sets out the effect of a special guardianship order. This includes the following:

- the special guardian has custody of the child or young person:
- the order must specify whether any existing guardian has access to the child or young person and, if so, on what terms and conditions:
- the plans prepared for the court in relation to the child or young person do not have to be regularly reviewed:
- the order ceases to have effect when the child or young person turns 18 (instead of 20) or earlier marries or enters into a civil union:
- if the special guardian is an additional guardian, the order must specify which guardianship rights are held exclusively by the special guardian and which are shared with the other guardian(s):
- other guardians have rights to receive certain information.

*Clause 119* amends section 125 of the principal Act by providing that applications for the discharge or variation of a special guardianship order may be made only with the leave of the court, and setting out the grounds for leave.

*Clause 120* makes a consequential amendment to section 128 of the principal Act.

#### *Plans and agreements*

*Clause 121* amends section 130 of the principal Act, which is about the contents of plans prepared under section 128 before a court makes certain orders relating to a child or young person. The amendments insert requirements relating to people who have had, but no longer have, the care of a child or young person. It requires them to identify specific responsibilities, objectives, and steps, and the time frame within which those steps must be taken. It also requires the plan to specify a time within which a decision on whether to return the child or young person to their care will be made.



*Clause 122* replaces section 135(4) of the principal Act, which is about when a care and protection co-ordinator may convene a family group conference to review a plan. It modifies the provision so that a conference must be convened if requested, unless the plan relates only to a services order, in which case the care and protection co-ordinator has a discretion whether to convene a conference.

*Clause 123* amends section 140 of the principal Act, which is about when a child or young person may be placed in the long-term care of another person. It allows for young people aged 15 years or more to be placed in the care of a person for the purpose of assisting the young person to achieve independence.

*Clause 124* amends section 141 of the principal Act, which is about the extended care of severely disabled children and young persons. It reduces, from 2 years to 1 year, the maximum period of any agreement to place such a child or young person in the care of an organisation or body. It reduces the period for which an agreement may be extended from 2 years to 1 year. These changes do not affect existing agreements until they come up for review.

*Clause 125* amends section 145 of the principal Act, which provides that agreements under sections 140, 141, and 142 (which provide for care outside a child's or young person's own home) cannot be made unless certain preconditions are met, including the agreement of a family group conference. The amendment inserts a further requirement that the family group conference must thoroughly explore what services and supports are available to or in respect of the child or young person in his or her home environment. It also provides that a family group conference must be convened before entering into an agreement of the sort provided for in *clause 123*, for a person to move into care for the purpose of assisting him or her to achieve independence.

*Clause 126* makes consequential amendments to section 147.

#### *Reports by social workers*

*Clause 127* amends section 186 of the principal Act, which provides for reports from a social worker to be provided to a court when the court has made a declaration under section 67 and before the court makes certain orders. The amendments clarify the circumstances in which a report must be obtained, and when it is discretionary. It

also requires such reports to expressly address the likelihood of the child or young person to whom it relates being returned to the care of the person who had the care of the child or young person before the declaration under section 67 was made.

#### *Related amendments to youth justice provisions*

*Clause 128* makes a consequential amendment to section 261.

*Clause 129* makes equivalent amendments to section 268 of the principal Act as are made by *clauses 111 and 112* to sections 34 and 35 of the principal Act.

*Clause 130* makes equivalent amendments to section 270 of the principal Act as are made by *clause 113* to section 36 of the principal Act.

#### *Achieving independence*

*Clause 131* inserts a *new section 386A* into the principal Act. It provides for advice and assistance (including financial assistance) to be given to persons aged 15 to 20 as they move from certain kinds of care and custody into independence.

#### *Permanent caregivers*

*Clause 132* amends section 389 of the principal Act, under which the chief executive may grant financial and other assistance in certain cases. The amendment provides that financial assistance must be granted to a permanent caregiver under this section in the circumstances set out in *new subclause (2)*. Those circumstances include the care and protection needs, or the extraordinary health, education, or developmental needs, of a child or young person, and the financial needs being greater than it is reasonable for the permanent caregiver to meet. The chief executive's decision must be guided by any written general or special directions given by the Minister. *New section 389(2)(e)* allows the Minister to issue a direction in writing to the chief executive regarding the provision of financial assistance to permanent caregivers of a child or young person who has been placed in out-of-home care under the principal Act. A direction of this kind must be published in the *Gazette* (and is not a legislative instrument for the purposes of the Legislation Act 2012, but is a disallowable instrument for the purposes of the Legislation Act 2012) and must be presented to the House of Representatives under section 41 of

that Act. Directions of this kind are appropriately published in the *Gazette* because they relate to relatively detailed, technical matters that are not subject to criminal sanctions, and the directions will affect only a small, narrowly defined group (permanent caregivers), rather than the public at large.

*Clause 133* inserts 2 new sections providing for a review of, and appeal against, a decision on whether to grant financial assistance under the new provision in section 389. *New section 389A* provides for an internal review of such a decision. *New section 389B* provides for an appeal to the Family Court against a decision. An appeal may be lodged only after an internal review has been completed, or if the review is not completed within 3 months after it is applied for.

#### *Appointments outside State Sector Act 1988*

*Clause 134* amends section 423 of the principal Act, which is about the appointment of care and protection co-ordinators. At present, care and protection co-ordinators are required to be appointed under the State Sector Act 1988. Under the amendment, employees of iwi social services, cultural social services, and directors of child and family support services may be appointed as care and protection co-ordinators. The amendments provide that such appointments must be for no more than a term of 3 years, but are renewable. They set out when an appointment may be cancelled. They require that appointees perform their duties independently of their employers, but must have regard to guidance issued by the chief executive relating to care and protection co-ordinators.

*Clause 135* amends section 425 of the principal Act, which is about the appointment of youth justice co-ordinators, in an equivalent way to the amendments made by *clause 134*.

*Clause 136* amends section 427 of the principal Act, which enables a care and protection co-ordinator or youth justice co-ordinator to delegate functions or powers to a social worker with suitable training or experience for that purpose. *New section 427(1A)* ensures that the power of delegation does not apply to a care and protection co-ordinator, or to a youth justice co-ordinator, who is an employee of an iwi social service, a cultural social service, or the director of a child and family support service.

*Related amendment to Care of Children Act  
2004*

*Clause 137* amends the Care of Children Act 2004 to provide for the revocation of a guardianship order, and the discharge or parenting orders, made under that Act where an application under *new section 110A* of the Children, Young Persons, and Their Families Act 1989 is made.

Subpart 2—Amendments to  
KiwiSaver Act 2006

*Clause 138* indicates the principal Act amended by *subpart 2*: the KiwiSaver Act 2006.

*Clause 139* amends section 4(1), which relates to interpretation. One amendment ensures that a guardian as defined in section 4(1) has the same meaning as in (and so includes a person who is a guardian by virtue of) the Care of Children Act 2004, but excludes a CYPFA guardian. The other amendment ensures that section 4(1) defines a CYPFA guardian of a person as any other person—

- appointed by an order under *section 110(1)(a) to (d)* of the Children, Young Persons, and Their Families Act 1989 as the sole guardian, or as a guardian of the person in addition to any other guardians (whether or not guardians by virtue of that Act), of the person; or
- whose sole guardianship of the person arises under section 119 of that Act (about the death of a guardian appointed under *section 110(1)(e)* of that Act who, on his or her death, was the person's sole guardian).

*Clause 140* amends section 35, which relates to opting into membership of a KiwiSaver scheme by persons under 18 years old.

*Clause 140(1)* amends section 35(3), which enables a person who is 16 or 17 years old with a guardian (as defined in section 4(1)) to opt in if the person and 1 of their guardians jointly contract directly with a provider, in the name of the person. The amendments ensure that section 35(3) applies not only to 1 of the person's guardians, but also to 1 of the person's CYPFA guardians (as defined in section 4(1)).

*Clause 140(2)* inserts *new section 35(5) and (6)*.

*New section 35(5)* relates to a person who is less than 16 years old with a CYPFA guardian. *New section 35(5)* enables the person to opt

in if the CYPFA guardian while his or her guardianship of the person has effect (and independently from the person, and from all other, if any, CYPFA guardians, guardians, or both, of the person) contracts directly with a provider, in the name of the person. If the provider accepts the person, then the person is treated as—

- contracting directly with the provider; and
- 18 years for the purposes of the Minors' Contracts Act 1969; and
- opting in under section 34(1)(a).

*New section 35(6)* applies if a person who is less than 16 years old with a CYPFA guardian is a member of a KiwiSaver scheme (whether opted into before or while the CYPFA guardian's guardianship has effect). *New section 35(6)* makes it clear that the CYPFA guardian has for the purposes of the KiwiSaver Act 2006, while the CYPFA guardian's guardianship has effect, authority (instead of all guardians, if any, of the person, and independently from the person, and from all other, if any, CYPFA guardians of the person) to make decisions (for example, voluntary transfer decisions), or to take other steps, in respect of the person's membership of the scheme.

*Clause 141* amends consequentially sections 2(1) and 390 of the Children, Young Persons, and Their Families Act 1989.

In section 2(1), the definition of guardianship is amended to make it clear that a guardian includes, without limitation, a person who is a guardian by virtue of that Act.

Section 390 gives specified guardians power to control the finances of young persons under guardianship or in custody. Section 390(1)(a) and (b) are amended to make it clear that the specified guardians—

- may opt in to a KiwiSaver scheme in the name of the young person under section 35(3) or *new section 35(5)* of the KiwiSaver Act 2006; and
- can pay or arrange for the payment or crediting of the whole or any part of the earnings or other income of that young person into any KiwiSaver scheme (whenever it was opted into) of which the young person is a member.

*New section 390(4)* ensures that section 390(2) and (3) (about operation of, and payments out of, bank accounts opened under section 390(1)) does not apply to, or to money (to be paid out only in accordance with the KiwiSaver Act 2006) standing to the young per-

son's credit in, a KiwiSaver scheme of which the young person is a member, and does not limit or affect *new section 35(6)* of the KiwiSaver Act 2006 (as inserted by *clause 140(2)*). *New section 35(6)* authorises specified CYPFA guardians to make decisions or take steps in respect of a KiwiSaver scheme membership of a person younger than 16 years.

*Schedule 1* lists the activities that, for the purposes of the children's worker safety-checking provisions in *subpart 3 of Part 1*, are regulated activities.

*Schedule 2* lists the specified offences for the purposes of the same subpart.

*Schedule 3* lists qualifying offences for the purposes of *Part 2*.

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*Hon Paula Bennett*

## **Vulnerable Children Bill**

Government Bill

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Vulnerable Children Act **2013**.

**2 Commencement**

- (1) This Act comes into force on the day after the date on which it receives the Royal assent, except as provided in **subsections (2) and (3)**. 5
- (2) The following provisions come into force on a date or dates to be appointed by the Governor-General by Order in Council, and 1 or more Orders in Council may be made appointing different dates for different provisions: 10
- (a) **section 18** and **subpart 3 of Part 1**;
- (b) **Part 2**;
- (c) in **subpart 1 of Part 3**, **sections 104 to 110, 113 to 123, and 130 to 136**. 15
- (3) Any provision not brought into force earlier comes into force 2 years after the date on which this Act receives the Royal assent.

## Part 1

### Cross-agency measures

#### 3 Part binds the Crown

- (1) This **Part** binds the Crown.
- (2) **Subsection (1)** is subject to **section 11** (effect of vulnerable children’s plan), **section 20** (effect of child protection policy), and **section 22** (application to Crown Organisations for offences relating to safety checking of children’s workers). 5

#### Subpart 1—Government priorities for vulnerable children and vulnerable children’s plan 10

#### 4 Purpose of this subpart

The purpose of this **subpart** is to—

- (a) support the Government’s setting of priorities for improving the well-being of vulnerable children; and 15
- (b) ensure that children’s agencies work together to improve the well-being of vulnerable children.

#### 5 Interpretation

- (1) In this **subpart**, unless the context otherwise requires,—

**child** means a person who— 20

- (a) is under the age of 18 years; and
- (b) is not married or in a civil union

**children’s agencies** mean those departments of State or instruments of the Crown that are, with the authority of the Prime Minister, for the time being responsible (alone, or with 1 or more other departments or instruments) for the administration of all or any provisions of 1 or more the following Acts: 25

- (a) Children, Young Persons, and Their Families Act 1989:
- (b) Education Act 1989:
- (c) New Zealand Public Health and Disability Act 2000: 30
- (d) Policing Act 2008:
- (e) Sentencing Act 2002:
- (f) any other Act or Acts for the time being prescribed under **subsection (2)**

**children’s Ministers** means the Ministers of the Crown who for the time being—

- (a) have relevant portfolio responsibilities for 1 or more of the children’s agencies (but excluding all related Associate Ministers of the Crown, if any); or 5
- (b) are designated by the Prime Minister as children’s Ministers for the purpose of this **subpart**

**responsible Minister** means the Minister of the Crown for the time being designated by the Prime Minister as the responsible Minister for the purpose of this **subpart** 10

**vulnerable children** means children of the kind or kinds (that may be or, as the case requires, have been and are currently) identified as vulnerable in the setting of Government priorities under **section 7**

**vulnerable children’s plan** means the plan prepared, approved, published, and from time to time amended or replaced, under this **subpart**. 15

- (2) The Governor-General may, by Order in Council, prescribe any other Act or Acts for the purposes of **paragraph (f)** of the definition of children’s agencies in **subsection (1)**. 20

## 6 Improving the well-being of vulnerable children

In this **subpart**, **improving the well-being of vulnerable children**, in relation to the setting of Government priorities under **section 7** and the preparation of the vulnerable children’s plan under **section 8**, means promoting the best interests of vulnerable children (having regard to the whole of their lives), including (without limitation) taking measures aimed at— 25

- (a) protecting them from abuse and neglect:
- (b) improving their physical and mental health and their cultural and emotional well-being: 30
- (c) improving their education and training and their participation in recreation and cultural activities:
- (d) strengthening their connection to their families, whānau, hapū, and iwi, or other culturally recognised family group: 35
- (e) increasing their participation in decision making about them, and their contribution to society:



- (f) improving their social and economic well-being.

## 7 Government priorities for vulnerable children

- (1) The responsible Minister may from time to time, after consulting the children's Ministers, set Government priorities for improving the well-being of vulnerable children. 5
- (2) Priorities, and changes to priorities, set under this section must be set, or as soon as practicable recorded, in writing.
- (3) An instrument recording priorities set or changed under this section is neither a legislative instrument nor a disallowable instrument for the purposes of the Legislation Act 2012, and does not have to be presented to the House of Representatives under section 41 of that Act. 10

## 8 Preparation of vulnerable children's plan

- (1) The chief executives of the children's agencies must after priorities are set or changed under **section 7** work together to do both of the following no later than a date specified (under this subsection and, if applicable, **section 12(1)(b)**) by the responsible Minister: 15
- (a) develop a draft vulnerable children's plan; and
- (b) submit it to the responsible Minister for approval. 20
- (2) The responsible Minister must, after consulting the children's Ministers about the draft plan,—
- (a) approve the draft plan; or
- (b) refer it to the chief executives of the children's agencies for reconsideration, together with the Minister's reasons for referring it back to the chief executives. 25
- (3) The chief executives, on receiving a referral under **subsection (2)(b)**, must reconsider the draft plan and, as soon as practicable, submit a revised draft plan to the Minister for approval under **subsection (1)**. 30
- (4) The vulnerable children's plan must, after it is approved by the responsible Minister, be published (with, or without, any related reports under **subsection (1)(b)**)—
- (a) in the *Gazette*; or
- (b) by 1 or more other means of publication (for example, on Internet sites maintained by or on behalf of children's 35

agencies) each of which has been approved by the responsible Minister and notified in the *Gazette*.

- 9 Content of vulnerable children’s plan**  
 The vulnerable children’s plan (and any draft of it) must set out steps that will be taken by chief executives of the children’s agencies to work together to achieve the Government’s priorities for improving the well-being of vulnerable children. 5
- 10 Duration of vulnerable children’s plan**  
 The vulnerable children’s plan—
- (a) comes into effect on a date (after the date on which it is approved) specified in it for the purpose; and 10
  - (b) continues in force until it is amended or replaced under **section 12**.
- 11 Effect of vulnerable children’s plan**
- (1) Once the vulnerable children’s plan has come into effect, the chief executive of each children’s agency must— 15
    - (a) report (jointly with each of the other chief executives of the children’s agencies) to the responsible Minister, by a date in each year specified by the responsible Minister, on whether the agency has, or on the extent to which the agency has, before that date (and after the periods covered by all earlier reports, if any, under this paragraph), implemented the plan while it has been in force; and 20
    - (b) ensure that a copy of every implementation report required by **paragraph (a)** is included in the agency’s next annual report (under section 43 of the Public Finance Act 1989, section 101 of the Policing Act 2008, or another enactment) and is available on an Internet site maintained by or on behalf of the agency. 30
  - (2) The vulnerable children’s plan—
    - (a) does not—
      - (i) create legal rules; or
      - (ii) create any legal right enforceable in a court of law; or 35

- (iii) affect or limit the way in which a chief executive or other person is required to exercise a statutory power of decision; or
      - (iv) affect the interpretation of any enactment or the operation of a rule of law; and 5
    - (b) is neither a legislative instrument nor a disallowable instrument for the purposes of the Legislation Act 2012, and does not have to be presented to the House of Representatives under section 41 of that Act.
  - (3) **Subsection (2)** overrides **section 13(1)**. 10
- 12 Review and amendment or replacement of plan**
- (1) The chief executives of the children’s agencies must, working together,—
    - (a) review the vulnerable children’s plan—
      - (i) within 3 years of the date of its first approval under **section 8**; and 15
      - (ii) thereafter within 3 years of the date of each review of the plan under this section; and
    - (b) review the plan, within a time specified by the responsible Minister, if at any time the Government priorities set from time to time under **section 7** change. 20
  - (2) When reviewing the vulnerable children’s plan, the chief executives must—
    - (a) consider whether the plan is still consistent with current Government priorities set under **section 7**; and 25
    - (b) if the chief executives consider it appropriate, recommend to the responsible Minister that he or she—
      - (i) approve amendments to the plan; or
      - (ii) approve a new plan.
  - (3) **Section 8(2) and (3)** applies with any necessary modifications. 30
- 13 Accountabilities**
- (1) 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,— 35

- (a) the responsible Minister is the Minister of the Crown who is accountable, both to Parliament and the Executive; and
  - (b) the chief executive of each of the children's agencies is accountable to the responsible Minister. 5
- (2) **Subsection (1)**—
- (a) does not limit or affect—
    - (i) **section 11(2)** of this Act; or
    - (ii) the operation of the Public Finance Act 1989; or
    - (iii) the independence of the Commissioner of Police 10  
(as affirmed by sections 8(e) and 16(2) of the Policing Act 2008); but
  - (b) overrides any contrary other law (for example, section 32 of the State Sector Act 1988).
- (3) A duty, function, or power of the responsible Minister, or of 15  
the chief executive of a children's agency, is affected by this **subpart** only to the extent necessary to give effect to **subsection (1)** (as overridden by **section 11(2)**).

## Subpart 2—Child protection policies

- 14 Purpose of this subpart** 20
- The purpose of this **subpart** is to require child protection policies (that must contain provisions on the identification and reporting of child abuse and neglect) to be—
- (a) adopted and reported on by prescribed State services and DHBs boards; and 25
  - (b) adopted by school boards; and
  - (c) adopted by certain people with whom those services or boards enter into contracts or funding arrangements.
- 15 Interpretation**
- (1) In this **subpart**, unless the context otherwise requires,— 30  
**board**, in relation to a publicly-owned health and disability organisation that is a DHB, means the members of the board of that organisation (who number not less than the required quorum) acting together as a board

**child** means a person who is—

- (a) a child as defined in section 2(1) of the Children, Young Persons, and Their Families Act 1989 (because the person is a boy or girl under the age of 14 years); or
- (b) a young person as defined in section 2(1) of the Children, Young Persons, and Their Families Act 1989 (because the person is—
  - (i) a boy or girl of or over the age of 14 years but under 17 years; and
  - (ii) not a person who is or has been married or in a civil union)

**children's services** means services that are any of the following:

- (a) services provided to 1 or more children:
- (b) services to adults in respect of 1 or more children: 15
- (c) services provided to adults living in households that include 1 or more children, and that—
  - (i) do or may affect significantly any 1 or more aspects of the well-being of those children; and
  - (ii) are for the time being prescribed under **subsection (2)**: 20
- (d) services provided in respect of children that are for the time being prescribed under **subsection (3)**

**DHB** means an organisation established as a DHB (that is to say, as a District Health Board) by or under section 19 of the New Zealand Public Health and Disability Act 2000 25

**independent person**, in relation to a prescribed State service and its chief executive, a board of a DHB, or a school board, means a person who is neither of the following:

- (a) a member of the board: 30
- (b) an employee or officer of the service or its chief executive, or the board

**prescribed State service** means each of the following:

- (a) the Ministry of Business, Innovation, and Employment:
- (b) the Ministry of Education: 35
- (c) the Ministry of Health
- (d) the Ministry of Justice:
- (e) the Ministry of Maori Development:
- (f) the Ministry of Social Development:

- (g) the New Zealand Police;
- (h) every other instrument for the time being prescribed under **subsection (4)**
- school board** means a board or body that is—
- (a) a board as defined in section 60, and for the purposes of Part 7 (control and management of State schools), of the Education Act 1989; or
- (b) a sponsor of a partnership school kura hourua (as those terms are defined in section 2(1) of that Act).
- (2) The Governor-General may, by Order in Council, prescribe, for the purposes of **paragraph (c)(ii)** of the definition of children’s services in **subsection (1)**, classes, descriptions, or kinds of services—
- (a) provided to adults living in households that include 1 or more children; and
- (b) that do or may affect significantly any 1 or more aspects of the well-being of those children.
- (3) The Governor-General may, by Order in Council, prescribe, for the purposes of **paragraph (d)** of the definition of children’s services in **subsection (1)**, classes, descriptions, or kinds of services provided in respect of children.
- (4) The Governor-General may, by Order in Council, prescribe, for the purposes of **paragraph (h)** of the definition of prescribed State service in **subsection (1)**, other instruments of the Crown in respect of the Government of New Zealand (whether departments, corporations, agencies, or other instruments), being instruments of that kind that are neither—
- (a) DHBs; nor
- (b) school boards.
- 16 Prescribed State services to adopt, report on, and require child protection policies**
- The chief executive of a prescribed State service must ensure that the service,—
- (a) if the service is or becomes a provider of children’s services,—
- (i) adopts, as soon as is practicable, a child protection policy; and

- (ii) reports in its annual report (under section 43 of the Public Finance Act 1989, section 101 of the Policing Act 2008, or another enactment) on whether, or on the extent to which, its operations have implemented the policy; and 5
      - (iii) ensures that a copy of the policy is available on an Internet site maintained by or on behalf of the service; and
      - (iv) reviews the policy within 3 years of the date of its first adoption, or of its most recent review, under this section; and 10
    - (b) ensures that every contract, or funding arrangement, that the chief executive or the service (in either case, acting on the Crown’s behalf, or independently) enters into with an independent person requires the person as soon as is practicable to adopt (and to review in accordance with **paragraph (a)(iv)**) a child protection policy if, in the opinion of the chief executive of the State service,— 15
      - (i) the person is or becomes a provider of children’s services; and 20
      - (ii) some or all of the contract or arrangement is about providing children’s services.
- 17 DHBs boards to adopt, report on, and require child protection policies 25**
- Every board of a DHB must—
- (a) adopt, as soon as is practicable, a child protection policy; and
  - (b) report in its annual report (under section 150 of the Crown Entities Act 2004) on whether, or on the extent to which, its operations have implemented the policy; and 30
  - (c) ensure that a copy of the policy is available on an Internet site maintained by or on behalf of the board; and
  - (d) ensure that every contract, or funding arrangement, that after that commencement the board enters into with an independent person requires the person as soon as is practicable to adopt (and to review in accordance with 35

- paragraph (e)** a child protection policy if, in the opinion of the board,—
- (i) the person is or becomes a provider of children’s services; and
  - (ii) some or all of the contract or arrangement is about providing children’s services; and
- (e) review the policy within 3 years of the date of its first adoption, or of its most recent review, under this section. 5
- 18 School boards to adopt and require child protection policies** 10
- Every school board must—
- (a) adopt, as soon as is practicable after the commencement (under **section 2(2) or (3)**) of this section, a child protection policy; and 15
  - (b) ensure that a copy of the policy is available on the Internet site (if any) maintained by or on behalf of the board or is available on school premises if requested; and
  - (c) ensure that every contract, or funding arrangement, that after that commencement the board enters into with an independent person requires the person as soon as is practicable to adopt (and to review in accordance with **paragraph (d)**) a child protection policy if, in the opinion of the board,— 20
    - (i) the person is or becomes a provider of children’s services; and 25
    - (ii) some or all of the contract or arrangement is about providing children’s services; and
  - (d) review the policy within 3 years of the date of its first adoption, or of its most recent review, under this section. 30
- 19 Content of child protection policy**
- Every child protection policy required by this **subpart** must—
- (a) apply to the provision of children’s services by the service, board, or independent person that adopts the policy; and 35



- (b) be written, and contain provisions (whether or not it contains provisions on any other matter or matters) on the identification and reporting of child abuse and neglect in accordance with section 15 of the Children, Young Persons, and Their Families Act 1989. 5

## 20 Effect of child protection policy

A child protection policy—

- (a) does not—
- (i) create legal rules; or
  - (ii) create any legal right enforceable in a court of law; or 10
  - (iii) affect or limit the way in which a chief executive or other person is required to exercise a statutory power of decision; or
  - (iv) affect the interpretation of any enactment or the operation of a rule of law; and 15
- (b) is neither a legislative instrument nor a disallowable instrument for the purposes of the Legislation Act 2012, and does not have to be presented to the House of Representatives under section 41 of that Act. 20

### Subpart 3—Children’s worker safety checking

## 21 Purpose of this subpart

The purpose of this **subpart** is to reduce the risk of harm to children by requiring people employed or engaged in work that involves regular or overnight contact with children to be safety checked. 25

## 22 Application to Crown

- (1) A Crown organisation (as defined in the Crown Organisations (Criminal Liability) Act 2002) may be prosecuted for an offence against this **subpart** only if— 30
- (a) the offence is alleged to have been committed by the Crown organisation; and
  - (b) the proceedings are commenced—

- (i) against the Crown organisation in its own name and the proceedings do not cite the Crown as defendant; and
- (ii) in accordance with the Crown Organisations (Criminal Liability) Act 2002. 5
- (2) However, section 8(4) of the Crown Organisations (Criminal Liability) Act 2002 (which provides that a court may not sentence a Crown organisation to pay a fine in respect of certain offences) does not apply in respect of offences under this **subpart**, and the reference in section 12 of that Act to reparation, 10  
compensation, or costs must be taken to include a reference to any fine imposed as a consequence of a prosecution for an offence under this **subpart**.
- 23 Interpretation**
- (1) In this **subpart**, unless the context otherwise requires,— 15
- child** has the meaning given in **section 15**
- children’s worker** means a person who works with children (other than with children who are co-workers) in a regulated activity, and that work—
- (a) may or does involve regular or overnight contact with a child or children; and 20
- (b) takes place without a parent or guardian of the child, or of each child, being present
- core worker** means a children’s worker whose work requires the person regularly to work alone with, or to control, children, 25  
where that work or control generally does not take place in the presence of a core worker who is safety checked
- key agency** means any of the following:
- (a) the Ministry of Social Development:
- (b) the Ministry of Health: 30
- (c) the Ministry of Education:
- (d) the Ministry of Justice
- local authority** means a local authority, as defined in section 2(1) of the Local Government Official Information and Meetings Act 1987, to which Parts 1 to 6 of that Act apply 35
- Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Min-

ister, is for the time being responsible for the administration of  
**this subpart**

**non-core worker** means a children's worker who is not a core  
worker

**regulated activity** means the provision of any of the services, 5  
being child and family-focused services, identified in **Sched-  
ule 1**

**safety checked**, in relation to a person at a particular time,  
means that a safety check that complies with **section 31** has  
been completed for the person within the previous 3 years 10

**screening service** means a person or organisation that carries  
out, on behalf of a specified organisation, all or any part of a  
safety check of children's workers

**specified offence** means an offence identified in **Schedule 2**

**specified organisation** has the meaning given in **section 24** 15

**State services** has the meaning given in section 2 of the State  
Sector Act 1988

**work** means work that is—

- (a) paid work; or
- (b) unpaid work that is undertaken as part of an educational 20  
or vocational training course.

(2) A person's work involves **regular or overnight contact** with  
children if—

(a) the person has contact (other than merely incidental  
contact) with 1 or more children— 25

- (i) overnight; or
- (ii) at least once each week; or
- (iii) on at least 4 days each month; and

(b) that contact is any of the following kinds:

- (i) physical contact: 30
- (ii) oral communication, whether in person or by  
telephone:
- (iii) communication through any electronic medium,  
including by way of writing or visual images.

**24 Specified organisation defined**

- (1) In this **subpart**, **specified organisation** means any of the following that employs or engages a children's worker to perform a regulated activity:
- (a) any of the State services: 5
  - (b) an individual or organisation that is funded (whether wholly or partly) by a State service to provide regulated activities:
  - (c) any of the following that are declared by regulations made under **section 33** to be specified organisations: 10
    - (i) local authorities:
    - (ii) any individual or organisation, or class of individual or organisation, that is funded (whether wholly or partly) by a local authority to provide regulated activities. 15
- (2) Despite **subsection (1)**, an individual or organisation is not a specified organisation if it is declared by regulations made under **section 33** not to be a specified organisation for the purposes of this **subpart**.

*Obligations of specified organisations* 20**25 Safety checks of new children's workers**

- (1) A specified organisation must not employ or engage a person as a children's worker without ensuring that a safety check of the person that complies with **section 31** is completed before the employment or engagement commences. 25
- (2) The obligation in **subsection (1)** applies,—
- (a) with respect to core workers, to employment or engagement that commences on or after the date on which this **subpart** comes into force; and
  - (b) with respect to non-core workers, to employment or engagement that commences on or after the date that is 1 year after the date on which this **subpart** comes into force. 30
- (3) A specified organisation that, in relation to a person whom it employs or engages as a children's worker, fails to comply with **subsection (1)** commits an offence and is liable on conviction to a fine not exceeding \$10,000. 35

**26 Safety checks of existing children's workers**

- (1) A specified organisation must, on or before the applicable date set out in **subsection (2)**, ensure that a safety check that complies with **section 31** is completed of every children's worker who is employed or engaged by the organisation before that date and who it intends will still be employed or engaged by the organisation on that date. 5
- (2) The applicable dates are as follows:
- (a) in the case of a core worker, the date that is 3 years after the date on which this **subpart** comes into force: 10
- (b) in the case of a non-core worker, the date that is 4 years after the date on which this **subpart** comes into force.
- (3) However, a specified organisation need not comply with **subsection (1)** if the organisation is satisfied that a safety check of the person that complies with **section 31** was completed within 3 years before the relevant date described in **subsection (2)**. 15
- (4) A specified organisation that, in relation to a children's worker whom it continues to employ or engage, fails to comply with **subsection (1)** commits an offence and is liable on conviction to a fine not exceeding \$10,000. 20

**27 Periodic safety checks of children's workers**

- (1) A specified organisation must ensure that each children's worker whom it employs or engages is safety checked at intervals of no more than 3 years. 25
- (2) A specified organisation that, in relation to a children's worker whom it employs or engages, fails to comply with **subsection (1)** commits an offence and is liable on conviction to a fine not exceeding \$10,000.

**28 Core worker convicted of specified offence not to be employed or engaged** 30

- (1) This section applies to a person who—
- (a) has been convicted of a specified offence; and
- (b) does not hold an exemption granted under **section 34**.

- (2) On and after the date on which this **subpart** comes into force, a specified organisation must not employ or engage a person to whom this section applies as a core worker.
- (3) On and after the date that is 1 year after the date on which this **subpart** comes into force, a specified organisation— 5
- (a) must not continue to employ or engage a person to whom this section applies as a core worker, regardless of when that worker commenced employment or was engaged; and
- (b) is entitled, in accordance with this section, to suspend 10 or terminate the employment or engagement of a core worker to whom this section applies, and in that case—
- (i) no compensation or other payment is payable in respect of the suspension or termination, despite anything to the contrary in any contract or agreement; and 15
- (ii) the suspension or termination is deemed to be a justifiable action or, as the case requires, a justifiable dismissal for the purposes of Part 9 of the Employment Relations Act 2000. 20
- (4) On and after the date referred to in **subclause (3)**, if a specified organisation believes on reasonable grounds that a worker whom it employs or engages is a person to whom this section applies, the organisation must immediately suspend the worker from all duties that require or enable him or her to act 25 as a core worker, and must tell the worker the reason for the suspension and the grounds for the organisation's belief.
- (5) If a worker is suspended under **subsection (4)**, the employer must not terminate the worker's employment or engagement until at least 5 working days after the suspension begins (unless the person's employment or engagement is terminated sooner for reasons unrelated to that suspension). 30
- (6) A specified organisation that contravenes **subsection (2) or (3)**, knowing that, or being reckless as to whether, the person is a person to whom this section applies, commits an offence and is liable on conviction to a fine not exceeding \$50,000. 35
- (7) A specified organisation that contravenes **subsection (4) or (5)** commits an offence and is liable on conviction to a fine not exceeding \$50,000.

- (8) **Subsection (3)(b)(i)** does not limit or affect the Wages Protection Act 1983.

### *Defences*

- 29 Defence of taking all reasonable steps** 5  
It is a defence to a charge for an offence against any of **sections 25 to 27** that the specified organisation took all reasonable steps to ensure that a safety check of the person that complied with **section 31** was completed as required by the relevant section.
- 30 Defence relating to short-term emergencies** 10  
It is a defence to a charge for an offence against **sections 25 to 28** that all the following conditions applied:
- (a) the specified organisation considered that an emergency had occurred, or unexpected conditions had arisen, that increased the risks to any children to whom it provides regulated activities: 15
  - (b) in order to reduce the risks to those children, the organisation employed or engaged additional children's workers:
  - (c) any of those children's workers who were not safety checked were employed or engaged by the specified organisation for no more than 5 consecutive working days. 20

### *Safety checks*

- 31 Requirements of safety checks** 25
- (1) Every safety check of a person must comply with the requirements for safety checks for core workers or for non-core workers (as appropriate) prescribed by this section and by regulations made under **section 32**.
  - (2) Every safety check of a person must include— 30
    - (a) confirmation of the identity of the person, carried out as prescribed by regulations made under **section 32**; and
    - (b) consideration of specific information prescribed by regulations made under **section 32**; and

- (c) a risk assessment, carried out as prescribed by regulations made under **section 32**, that assesses the risk the person would pose to the safety of children if employed or engaged as a children's worker.
- (3) Despite anything in the Criminal Records (Clean Slate) Act 2004, nothing in that Act authorises the concealment of a conviction for a specified offence of a person who is subject to a safety check in relation to employment or engagement as a core worker, even if the person is otherwise deemed to have no criminal record. 5  
10

### *Regulations*

- 32 Regulations prescribing requirements for safety checks**
- (1) The Governor-General may, by Order in Council, make regulations prescribing requirements for safety checks, including the following: 15
- (a) prescribing the way or ways in which a person's identity must be confirmed:
- (b) prescribing the information that must be considered in the course of a safety check:
- (c) prescribing the manner in which a risk assessment must be carried out, and the content of a risk assessment: 20
- (d) providing that certain forms of checking undertaken by the licensing body of any specified profession or occupation may be treated as satisfying the requirement for safety checking, or for satisfying any 1 or more prescribed requirements for safety checking: 25
- (e) exempting any specified organisation from any 1 or more requirements relating to safety checking:
- (f) exempting any person, or class of persons, from any 1 or more requirements relating to safety checking: 30
- (g) prescribing forms for use in safety checking:
- (h) providing for any other matter contemplated by or necessary for giving effect to the provisions of this Act that relate to the requirements for safety checking.
- (2) Regulations made under this section may prescribe different requirements, and may provide exemptions and exceptions, for different— 35



- (a) classes of children’s worker; and
- (b) specified organisations or classes of specified organisation.

**33 Other regulations**

The Governor-General may, by Order in Council, make regulations for any of the following purposes: 5

- (a) prescribing activities, in addition to those listed in **Schedule 1**, that are specified activities:
- (b) prescribing activities that are not specified activities:
- (c) declaring that local authorities, or individuals, organisations, or classes of individuals or organisations, that are funded to provide regulated activities are specified organisations: 10
- (d) providing that individuals or organisations, or a class of individuals or organisations, are not specified organisations: 15
- (e) prescribing the process, not inconsistent with this **subpart**, for applying for, granting, and revoking exemptions under **section 34**:
- (f) prescribing the processes and requirements for approving screening services under **section 39**, and the process and grounds on which any approval may be suspended or cancelled. 20

*Exemption for workers convicted of specified offence* 25

**34 Exemption for certain individuals**

- (1) The chief executive of any key agency may grant an exemption under this section to a person who has been convicted of a specified offence.
- (2) An exemption may be granted only if the chief executive is satisfied that the person would not pose an undue risk to the safety of children if employed or engaged as a core worker. 30
- (3) An exemption may be qualified or contain conditions.

**35 Application for exemption**

- (1) An application for an exemption must be made by way of a statutory declaration signed by the person to whom it relates and set out the following:
- (a) the person's full name and contact details: 5
  - (b) in respect of each specified offence of which the person has been convicted—
    - (i) a description of the offence (eg, sexual violation under section 128B of the Crimes Act 1961); and
    - (ii) the date of conviction; and 10
    - (iii) any sentence imposed; and
    - (iv) the sentence expiry date (if any):
  - (c) whether the person is subject to any conditions imposed under the Parole Act 2002 or the Criminal Justice Act 1985 in respect of that sentence: 15
  - (d) any other information prescribed by regulations made under **section 33**:
  - (e) any other information the applicant wishes to place before the chief executive to whom the application is sent.
- (2) A chief executive who receives an application may, with the agreement of the chief executive of a different key agency, refer the application to that other chief executive for decision. 20
- (3) Before making a decision on an application, a chief executive must confirm—
- (a) whether the person has previously applied for an exemption, and the outcome of that application; and 25
  - (b) whether the person has ever had an exemption revoked.

**36 Revocation of exemption**

- (1) The chief executive of the key agency that granted an exemption may revoke it at any time without notice. 30
- (2) A chief executive may revoke an exemption only if the chief executive—
- (a) becomes aware that the person has been charged with, or convicted of, a specified offence; or
  - (b) is satisfied on reasonable grounds that the person would pose an undue risk to the safety of children if employed or engaged as a core worker. 35

**37 Appeal against decision not to grant, or to revoke, exemption**

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 not to grant the application, or to revoke it, as appropriate. 5

*Monitoring compliance*

**38 Requirement to provide information to chief executives**

- (1) The chief executive of any key agency may, for the purpose of monitoring compliance with this **subpart**, require any specified organisation to provide to the chief executive, in the manner and within the time specified, information about the safety checking of children’s workers employed or engaged by the organisation. 10
- (2) The chief executive of any key agency may exercise the power in **subsection (3)** only if he or she believes on reasonable grounds that the information required is necessary to prevent or lessen a serious threat to the safety of any child or children. 15
- (3) The chief executive may require any specified organisation to provide details to the chief executive of any safety check done on a named person and the person’s work history, including— 20
- (a) how the person’s identity was confirmed; and
  - (b) all information provided about the person in the course of the safety check; and
  - (c) the risk assessment of the person; and 25
  - (d) the date or dates on which the person has been employed or engaged by the organisation and the nature of the work that he or she is or has been engaged in.

*Miscellaneous*

**39 Approval of screening services** 30

- (1) The chief executive of any key agency may approve a screening service to carry out specified aspects of safety checks.
- (2) Every approval—
- (a) must specify the aspects of a safety check that the screening service is approved to provide; and 35

- (b) may specify which specified organisations, and which kind of children’s worker, the screening services may be used in relation to.
- (3) Approval of a screening service must be given, and may be suspended or cancelled, in accordance with the processes, requirements, and grounds set out in regulations made under **section 33**. 5
- (4) Notice of every approval, and of every suspension or cancellation, must be given in the *Gazette*.

#### 40 Prosecution of offences 10

- (1) A charging document for an offence against any provision of this **subpart** may be filed by the chief executive of any key agency other than the Ministry of Justice.
- (2) However, a chief executive may not file a charging document in respect of a specified organisation that is the key agency of which he or she is the chief executive. 15

#### *Consequential amendments to other enactments*

#### 41 Amendments to Crown Organisations (Criminal Liability) Act 2002

- (1) This section amends the Crown Organisations (Criminal Liability) Act 2002. 20
- (2) After section 6(1)(d), insert:  
“(e) an offence against **subpart 3 of Part 1 of the Vulnerable Children Act 2013**.”
- (3) In section 7(a), replace “or the Resource Management Act 1991” with “the Resource Management Act 1991, or **subpart 3 of Part 1 of the Vulnerable Children Act 2013**”. 25

#### 42 Amendment to Sentencing Act 2002

- (1) This section amends the Sentencing Act 2002.
- (2) In section 4(4), replace “or the Resource Management Act 1991,” with “the Resource Management Act 1991, or **subpart 3 of Part 1 of the Vulnerable Children Act 2013**,”. 30

- 43 Amendment to Criminal Records (Clean Slate) Act 2004**
- (1) This section amends the Criminal Records (Clean Slate) Act 2004.
  - (2) In section 6(1), after “The clean slate scheme applies”, insert “(except as provided in **section 31(3) of the Vulnerable Children Act 2013**)”.

**Part 2**

**Child harm prevention orders**

- 44 Purpose**
- (1) The purpose of this **Part** is to enhance the safety of children by imposing restrictions on persons who pose a high risk of causing serious harm to them.
  - (2) It is not a purpose of this **Part** to punish persons against whom orders are made under this **Part**.

- 45 Principles**
- Every person or court exercising a power under this **Part** must have regard to the following principles:
- (a) orders under this **Part** should be for the sole purpose of reducing the risk of harm to children:
  - (b) orders should be imposed only on a person who presents a high risk of causing serious harm to a child or children:
  - (c) orders should be imposed only if there is no alternative means of reducing the risk to children that would be equally effective and would be less intrusive on the respondent:
  - (d) the terms of an order should be directed towards the mitigation of the risk posed by the respondent and be proportionate to the severity of that risk:
  - (e) the welfare and interests of children are paramount.

- 46 Part binds the Crown**
- This **Part** binds the Crown.

- 47 Interpretation**
- In this **Part**, unless the context otherwise requires,—  
**child** means a person who is under the age of 18 years

- child harm prevention order** means an order made under **section 55**, as modified from time to time by the review panel or a court
- Commissioner** means the Commissioner of Police holding office under section 12 of the Policing Act 2008 5
- health assessor** means a health practitioner who—
- (a) is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine, and who is a practising psychiatrist; or 10
  - (b) is a registered psychologist
- proceeding** means—
- (a) a proceeding conducted by a court; and
  - (b) any interlocutory or other application to a court connected with that proceeding 15
- qualifying offence** means an offence identified in **Schedule 3**
- registered psychologist** means a health practitioner who is, or is deemed to be, registered with the Psychologists Board continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of psychology 20
- release conditions** has the meaning given in section 4(1) of the Parole Act 2002
- respondent**, in relation to an application for a child harm prevention order, means the person against whom the order is sought 25
- review panel** means the review panel established by **section 88**
- victim** means a person against whom a qualifying offence has been committed, or is believed to have been committed. 30

Subpart 1—Imposition and review of child  
harm prevention orders

*Application for child harm prevention order*

**48 Application for child harm prevention order**

- (1) The following persons may at any time apply for a child harm prevention order against a person: 5
- (a) the Commissioner;
  - (b) the Chief Executive of the Ministry of Social Development.
- (2) The Chief Executive of the Department of Corrections may apply for a child harm prevention order against a person serving 1 or more sentences if at least 1 of those sentences is being served for a qualifying offence. 10
- (3) An application under **subsection (2)** may be made at any time before the later of— 15
- (a) the sentence expiry date of the sentence to which the person is subject that has the latest sentence expiry date, regardless of whether that sentence is for a qualifying offence; and
  - (b) the date on which the person ceases to be subject to any release conditions. 20
- (4) An application for a child harm prevention order must not be made unless—
- (a) the respondent has been convicted of a qualifying offence or the applicant believes, on reasonable grounds, that the respondent has committed a qualifying offence; and 25
  - (b) the applicant believes, on reasonable grounds,—
    - (i) that the respondent poses a high risk of committing a further qualifying offence or offences; and 30
    - (ii) that those offences, if committed, would cause serious harm to a child or children; and
  - (c) the respondent is aged 18 years or over.
- (5) In this section, **sentence expiry date** has the meaning given in section 4(1) of the Parole Act 2002. 35

**49 Contents of application**

An application for a child harm prevention order must state—

- (a) the respondent's name and date of birth; and
- (b) if the respondent has been convicted of 1 or more qualifying offences, details of that offence or those offences; and
- (c) if the respondent has not been convicted of a qualifying offence,— 5
  - (i) a statement of the applicant's belief that the respondent has committed a qualifying offence; and
  - (ii) the grounds for that belief; and 10
- (d) a statement of the applicant's belief, and the grounds for that belief, that—
  - (i) the respondent poses a high risk of committing 1 or more qualifying offences; and
  - (ii) those offences, if committed, would cause serious harm to a child or children; and 15
- (e) the proposed terms of the order.

**50 Requirement to consult on application for child harm prevention order**

- (1) An applicant for a child harm prevention order must consult the following persons (as applicable) before an application is made: 20
  - (a) the Commissioner;
  - (b) the Chief Executive of the Ministry of Social Development. 25
- (2) Consultation under **subsection (1)** must be carried out in accordance with a protocol developed by the Commissioner and agreed to by the Chief Executive of the Ministry of Social Development.
- (3) An application may only be made if the persons listed in **subsection (1)** agree on— 30
  - (a) the need for the child harm prevention order; and
  - (b) the proposed terms of the order.

**51 Court to which application must be made**

- (1) Unless **subsection (2)** applies, an application for a child harm prevention order must be made to a District Court in its civil jurisdiction. 35



- (2) An application must be made to the High Court in its civil jurisdiction if—
- (a) a criminal trial in relation to a qualifying offence took place in the High Court and the applicant intends to rely upon evidence presented in that trial; or 5
  - (b) 1 or more of the qualifying offences on which the application is based is an offence that must be tried in the High Court.
- 52 Report by psychologist** 10
- An application for a child harm prevention order must be accompanied by a report that—
- (a) has been prepared by a registered psychologist; and
  - (b) addresses the following questions:
    - (i) whether the respondent poses a high risk of committing 1 or more qualifying offences; and 15
    - (ii) whether those offences, if committed, would cause serious harm to a child or children; and
    - (iii) whether the terms sought by the applicant are necessary and sufficient to address the risk posed by the respondent. 20
- 53 Court must obtain independent report**
- (1) Before making a child harm prevention order, the court must obtain a second report that—
- (a) has been prepared by a health assessor nominated by the respondent; and 25
  - (b) addresses the questions set out in **section 52(b)**.
- (2) If the respondent does not nominate a health assessor for the purposes of **subsection (1)**, the court must nominate a health assessor to prepare the second report.
- 54 Victims must be given opportunity to contribute to reports** 30
- (1) An applicant for a child harm prevention order must notify victims of the respondent who are over the age of 16, to the extent that those victims can be identified, if a report is being prepared under **section 52** or **53**.

- (2) The victims must be given a reasonable opportunity to submit to the applicant any information relevant to the following questions:
- (a) whether the respondent poses a high risk of committing 1 or more qualifying offences; and 5
  - (b) whether those offences, if committed, would cause serious harm to a child or children.
- (3) The applicant must ensure that any information submitted under **subsection (2)** is communicated to the psychologist or health assessor preparing the report. 10

*Imposition of child harm prevention order*

**55 Court may make child harm prevention order**

- (1) After considering all of the evidence offered in a proceeding on an application for a child harm prevention order, the court may make a child harm prevention order against a respondent if— 15
- (a) the respondent has been convicted of a qualifying offence; or
  - (b) the court finds, on the balance of probabilities, that the respondent has committed a qualifying offence. 20
- (2) The court may only make an order under **subsection (1)** if the court is satisfied, having considered the matters set out in **section 56**,—
- (a) that the respondent poses a high risk of committing 1 or more qualifying offences; and 25
  - (b) that those offences, if committed, will cause serious harm to a child or children.
- (3) A child harm prevention order may not be made against a child.

**56 Matters court must consider in determining risk posed by respondent** 30

The matters that the court must consider under **section 55(2)** are—

- (a) the extent to which the respondent has a pattern of past conduct that has caused harm to children: 35

- (b) the seriousness and frequency of past conduct that has caused harm to children:
- (c) the absence or failure of efforts by the respondent to address the cause or causes of previous offending:
- (d) the extent to which the respondent exhibits the following characteristics: 5
  - (i) poor interpersonal relationships or social isolation or both:
  - (ii) poor self-regulation, evidenced by general impulsiveness, high emotional reactivity, and failure to cope with, or manage, stress and difficulties: 10
  - (iii) absence of understanding or concern for the impact of offending on actual or potential victims:
- (e) the terms of any other court order to which the respondent is subject. 15

#### 57 Form of order

A child harm prevention order must state—

- (a) the name and date of birth of the person subject to the order: 20
- (b) the terms of the order:
- (c) the date on which the order expires.

#### 58 Child harm prevention order may impose terms

- (1) The terms of a child harm prevention order are— 25
  - (a) that the person subject to the order must advise the Police of his or her current address and any change of address; and
  - (b) that the person subject to the order must advise the Police if he or she changes his or her name; and
  - (c) any terms imposed by the court under **subsection (2)**. 30
- (2) A child harm prevention order may impose any of the following terms, or any similar term, that is reasonably necessary, in the opinion of the court, to mitigate the risk posed by the person subject to the order:
  - (a) the person subject to the order must not live with— 35
    - (i) any specified child, children, or class of children; or

- (ii) any children:
    - (b) the person subject to the order must not work with—
      - (i) any specified child, children, or class of children; or
      - (ii) any children: 5
    - (c) the person subject to the order must not associate with any specified child, children, or class of children:
    - (d) the person subject to the order must not be present in, or loiter around, places of a particular kind that are specified in the order as the kinds of places where, in the opinion of the court, the respondent poses a high risk to children: 10
    - (e) the person subject to the order must advise the Police of the identity of any children that live with him or her:
    - (f) the person subject to the order must advise the Police of his or her employment and any change to employment. 15
  - (3) The terms of the order—
    - (a) must be the least restrictive terms necessary to mitigate the risk posed by the respondent and must be proportionate to the severity of the risk; and 20
    - (b) may not require the respondent to participate in any programme or activity.
  - (4) The maximum period for which a child harm prevention order may apply is 10 years.
- 59 Court may receive transcript of criminal trial as evidence 25**
- (1) This section applies to a proceeding during which a court considers either or both of the following matters:
    - (a) whether to make a child harm prevention order under **section 55**:
    - (b) the terms to impose under **section 58**. 30
  - (2) The court may receive as evidence any statement from the transcript of a criminal trial in which the respondent was proceeded against in respect of a qualifying offence.
  - (3) However, unless the procedure set out in **section 77** has been followed, the court must not consider evidence presented during a criminal trial in which— 35
    - (a) the respondent was acquitted of a qualifying offence; or
    - (b) the respondent is discharged without conviction; or

- (c) the proceedings were stayed.
- (4) **Subsection (3)** does not apply to evidence presented during a criminal trial by a victim of the respondent (which may be considered whether or not the procedure set out in **section 77** has been followed). 5
- (5) If the court is not prevented under **subsection (3)** from considering evidence, it may—
- (a) rely on that evidence; or
- (b) re-hear any part of the evidence if, in the opinion of the court, this is necessary in the interests of justice. 10
- 60 Offence to breach terms of child harm prevention order**  
A person who is subject to a child harm prevention order commits an offence if the person fails to comply with the terms of the order and is liable on conviction to imprisonment for a term not exceeding 2 years. 15
- 61 Commencement and expiry of order**
- (1) A child harm prevention order comes into force,—
- (a) if the order is made while the person subject to the order is detained under a sentence of imprisonment or is liable to be recalled under the Parole Act 2002 to continue serving a sentence of imprisonment, on the person's statutory release date; or 20
- (b) if the order is made while the person subject to the order is subject to release conditions following a sentence of imprisonment for a qualifying offence, but is no longer liable to be recalled, on the date when the person ceases to be subject to those release conditions; or 25
- (c) if the order is made at any other time, on the date specified in the order.
- (2) A child harm prevention order expires on— 30
- (a) the date specified in the order as the date on which the order expires; or
- (b) the date on which the order is cancelled.
- (3) In this section, **statutory release date** has the meaning given in section 4(1) of the Parole Act 2002. 35
- Compare: 2002 No 10 s 107L

**62 Court may make directions in relation to child harm prevention order**

- (1) If a court makes a child harm prevention order, it may direct the applicant for the order to notify certain persons or organisations of— 5
- (a) the existence and terms of the order; and
  - (b) the name and address of the person subject to the order.
- (2) The court must not make a direction under **subsection (1)** unless, in the opinion of the court, notifying the persons or organisations is reasonably necessary to mitigate the risk posed by the respondent. 10

**63 Court may make interim order**

- (1) This section applies when—
- (a) an application has been made for a child harm prevention order; or 15
  - (b) a court has been notified of the intention of a person who is able to apply for an order under **section 48** to apply for an order.
- (2) At any time before the application is finally determined, a person who is able to apply for a child harm prevention order under **section 48** may apply to a District Court or the High Court for an interim order. 20
- (3) After receiving an application under **subsection (2)**, the court may, if the court is satisfied that it is necessary in the circumstances, make an interim order against the respondent imposing any of the terms listed in **section 58(2)**, or any similar term, that is reasonably necessary, in the opinion of the court, to mitigate the risk posed by the respondent. 25
- (4) The terms of the interim order—
- (a) must be the least restrictive necessary to mitigate the risk posed by the respondent and must be proportionate to the severity of the risk; and 30
  - (b) may not require the respondent to participate in any programme or activity.
- (5) Unless **subsection (6)** applies, an interim order made under this section ceases to have effect on the earlier of— 35

- (a) the expiry date, which must not be more than 3 months after the date on which the order takes effect, specified in the order; and
- (b) the date on which the application for a child harm prevention order is finally determined or withdrawn. 5
- (6) An interim order expires 1 month after the date on which the order was made if—
  - (a) the order was made on the basis that **subsection (1)(b)** applies; and
  - (b) the court has not received an application for a child harm prevention order against the person subject to the interim order. 10

*Review by review panel*

- 64 Review of child harm prevention order by review panel** 15
- (1) During the currency of a child harm prevention order, the review panel must complete a review of the continuing justification for the order, and the terms imposed by the order,—
    - (a) within 1 year after the order is made; and
    - (b) then,—
      - (i) once every 12 months after the most recent previous review of the order by the review panel; or 20
      - (ii) if an application under **section 69** is pending before the court, within 1 year after the date on which the application is determined.
  - (2) The following persons may apply to the review panel at any time for a review of a child harm prevention order: 25
    - (a) the Commissioner;
    - (b) the person who is subject to the child harm prevention order.
- 65 Review panel to provide information to person subject to order** 30
- (1) The review panel must take all reasonable steps to ensure that the information the panel receives, on the basis of which it will make a decision relating to a child harm prevention order, is made available to the person subject to the order— 35

- 
- (a) at least 5 working days before the relevant review hearing; or
- (b) if that is not possible, as soon as practicable before the hearing.
- (2) Despite **subsection (1)**, the review panel must ensure that— 5
- (a) no information is given to the person subject to the order that discloses the address or contact details of any victim of the person; and
- (b) if any written submissions by a victim or any personal information about the victim are shown to the person, they are not retained by the person. 10
- (3) Despite **subsection (1)**, the review panel may, in exceptional circumstances, order that any information referred to in that subsection not be made available to a person subject to a child harm prevention order if, in the opinion of the chairperson, it would prejudice the mental or physical health of the person, or endanger the safety of any person. 15
- (4) **Subsections (2) and (3)** apply despite anything in the Official Information Act 1982 or the Privacy Act 1993.
- (5) Information withheld under **subsection (3)** may be provided to counsel representing the person subject to the order. 20
- (6) Information provided or shown to a person under this section must be used only for the purpose of assisting the person to make submissions to the review panel.
- (7) The review panel must give a written copy of every decision to the person subject to the order that is under review, along with information about how the person may exercise any appeal rights that he or she has in relation to the decision. 25
- (8) Any person who publishes information provided under this section in a form that identifies, or enables the identification of, a victim commits an offence and is liable on conviction to,— 30
- (a) in the case of an individual, a term of imprisonment not exceeding 3 months or a fine not exceeding \$2,000; and
- (b) in the case of a body corporate, a fine not exceeding \$10,000. 35



- (9) In this section, **victim** has the meaning given in section 4 of the Victims' Rights Act 2002.  
Compare: 2002 No 10 s 13

## 66 Review panel decisions

- (1) After carrying out a review under **section 64(1)**, the review panel may— 5  
 (a) cancel the order; or  
 (b) cancel or modify any term of the order; or  
 (c) direct the Commissioner to apply to a District Court (or, if **subsection (2)** applies, the High Court) for a review of the order under **section 69**. 10
- (2) A direction to apply for a review under **subsection (1)(c)** must require the application to be made to the High Court if the child harm prevention order that is the subject of the review was made by the High Court. 15
- (3) The review panel must not exercise its power under **subsection (1)(a)** unless the review panel is satisfied that the order is no longer required to mitigate the risk posed by the person subject to the order.
- (4) The review panel must not exercise its power under **subsection (1)(b)** unless the review panel is satisfied that— 20  
 (a) any term of the order being cancelled or modified is no longer required to mitigate the risk posed by the respondent; and  
 (b) any modification of a term makes the term less restrictive for the person subject to the order. 25

## 67 Appeal to court against review panel decision

- (1) The following persons may appeal to a District Court (or, if **subsection (2)** applies, the High Court) against a decision of the review panel under **section 66**: 30  
 (a) the person subject to the child harm prevention order to which the decision relates;  
 (b) the Commissioner.
- (2) An appeal under **subsection (1)** must be made to the High Court if the child harm prevention order that is the subject of the appeal was made by the High Court. 35

- (3) An appeal under **subsection (1)** may be based on 1 or more of the following grounds:
- (a) the review panel failed to comply with the procedures set out in this **Part**:
  - (b) the review panel made an error of law: 5
  - (c) the review panel acted without jurisdiction:
  - (d) the review panel based its decision on erroneous or irrelevant information:
  - (e) the review panel failed to take into account relevant information that was material to the decision: 10
  - (f) the review panel's decision was otherwise unreasonable.
- (4) If an appeal is lodged, the review panel decision to which the appeal relates has no effect and the terms of the child harm prevention order that were in force before the review panel decision came into effect are reinstated. 15
- (5) **Subsection (4)** applies from the date on which the appeal is lodged until the date on which the appeal is determined or withdrawn.
- (6) An appellant must ensure that a copy of his or her appeal is made available, as applicable, to— 20
- (a) the person subject to the child harm prevention order to which the decision relates; or
  - (b) the Commissioner.
- 68 Powers of court on appeal** 25
- On an appeal against a decision of the review panel, a court may do 1 or more of the following:
- (a) cancel the child harm prevention order to which the decision relates:
  - (b) cancel or modify any term of the order: 30
  - (c) impose any other term of the order that, in the opinion of the court, is necessary to mitigate the risk posed by the person subject to the order.

*Review by court*

- 69 Review by court of child harm prevention order**
- (1) During the currency of a child harm prevention order, the Commissioner must apply to a District Court (or, if **subsection (2)** applies, the High Court) for a review of the continuing justification for the order—
    - (a) within 3 years after the order is made; and
    - (b) then, at intervals of not more than 3 years; and
    - (c) whenever the review panel directs the Commissioner to apply. 10
  - (2) An application for a review under **subsection (1)** must be made to the High Court if the child harm prevention order that is the subject of the review was made in the High Court.
  - (3) On a review of a child harm prevention order, the court may—
    - (a) cancel the order: 15
    - (b) cancel or modify any term of the order:
    - (c) impose any other term that, in the opinion of the court, is necessary to mitigate the risk posed by the person subject to the order.
  - (4) The review panel must provide the court with all reports provided to the review panel during its most recent review. 20
  - (5) The court may call for any further or supplementary reports from any person. 25

Subpart 2—Procedural matters

*Procedure governing applications to court* 25

- 70 Service of applications**
- (1) When an application for a child harm prevention order is made, the applicant must serve the respondent personally with—
    - (a) a copy of the application; and
    - (b) copies of any affidavits accompanying the application; 30 and
    - (c) a copy of the psychologist’s report accompanying the application; and
    - (d) a notice setting out the respondent’s rights and the procedures relating to the application. 35

- (2) The service of an application under this section must comply with the High Court Rules governing personal service.

**71 Court may order person to appear before health assessor**

- (1) A court may order a person to appear before a health assessor at a specified time and place for the purpose of allowing the health assessor to prepare— 5
- (a) the psychologist’s report required under **section 52**; or
  - (b) the health assessor’s report required under **section 53**.
- (2) The court may make an order under **subsection (1)** only if— 10
- (a) the person has been convicted of a qualifying offence or the court is satisfied that there are reasonable grounds to believe that the person has committed a qualifying offence; and 10
  - (b) the nature and seriousness of the offending or alleged offending justifies an assessment of whether the person presents a high risk of committing further offences that will cause serious harm to children. 15

**72 Court may order interim detention of person to allow health assessor to prepare report**

- (1) The court may, on an application by 1 of the persons specified in **section 48**, order that a person who fails to appear before a health assessor after being ordered to appear under **section 71** may be— 20
- (a) detained by a constable; and
  - (b) brought before a health assessor in a place specified in the order. 25
- (2) A person may only be detained under **subsection (1)** for as long as is reasonably necessary to allow the health assessor to address the questions set out in **section 52(b)**.

**73 Issue of summons to attend proceedings** 30

A Judge or a Registrar of a District Court (or the High Court, as the case may be) may issue a summons requiring the respondent to an application for a child harm prevention order to attend at a specified time and date a proceeding under this **Part**. 35

- 74 Respondent who fails to appear may be brought to court**
- (1) If a respondent who has been duly summoned to attend a proceeding fails to appear at the proceeding, the Judge may issue a warrant for the respondent to be detained and brought before the court. 5
- (2) The warrant must be directed to every constable.
- (3) The warrant may be executed by any constable.
- (4) For the purposes of executing the warrant, the constable executing it may at any time enter any premises, by force if necessary, if he or she has reasonable grounds to believe that the respondent is on those premises. 10
- (5) Section 131 of the Search and Surveillance Act 2012 applies to the exercise of the power under **subsection (4)**.
- 75 Issue of summons to witness**
- (1) A Judge or the Registrar of a District Court (or the High Court, as the case may be) may issue a summons requiring any person to appear as a witness in a proceeding relating to a child harm prevention order. 15
- (2) A summons issued under **subsection (1)** may require the person summoned to bring with him or her and produce at the proceeding any document or thing that is specified in the summons. 20
- Evidence*
- 76 Evidence in proceedings under this Part**
- (1) In a proceeding under this **Part**, a court may receive as evidence any statement, document, information, or matter that it considers relevant, whether or not it would be otherwise admissible in a court of law. 25
- (2) However, in considering whether to make a finding under **section 55(1)(b)** that a respondent has, on the balance of probabilities, committed an offence, the court may only receive evidence that is admissible under the Evidence Act 2006. 30
- 77 Procedure if evidence in trial to be considered in determining application**
- (1) This section applies if— 35

- (a) a person (the **defendant**) is charged with 1 or more qualifying offences; and
- (b) the Commissioner and the chief executive resolve that, if the defendant is acquitted of those qualifying offences, they are likely to apply for a child harm prevention order against that person. 5
- (2) Evidence presented during the defendant’s criminal trial may only be considered for the purposes set out in **section 59(1)** if the Commissioner or the chief executive—
- (a) provides written notice to the defendant, which meets the requirements in **subsection (3)**, at least 5 working days before the first day of the trial; and 10
- (b) files a copy of the notice in court; and
- (c) applies for the child harm prevention order against the defendant no later than— 15
- (i) 1 month after the last day of the criminal trial; or
- (ii) with the leave of the court, 2 months after the last day of the criminal trial.
- (3) A notice under **subsection 2(a)** must state—
- (a) that 1 or more of the offences with which the defendant is charged is a qualifying offence; and 20
- (b) that, in the event that the defendant is acquitted of the qualifying offence or offences, the Commissioner, or the chief executive, is likely to apply for a child harm prevention order against the defendant; and 25
- (c) that any evidence presented during the trial may be considered by the court in determining—
- (i) whether, on the balance of probabilities, the defendant has committed an offence; and
- (ii) whether the defendant poses a high risk of committing 1 or more qualifying offences; and 30
- (iii) whether those offences, if committed, will cause serious harm to a child or children; and
- (iv) the terms of any child harm prevention order; and
- (d) the defendant’s rights and the procedures relating to the notice. 35
- (4) In this section, **chief executive** means the chief executive of the Ministry of Social Development.

**78 Court may determine whether proceedings are held in closed or open court**

- (1) A court may determine whether to hold any proceeding relating to a child harm prevention order in closed or open court.
- (2) However, the court may not exclude members of the media from any hearing. 5
- (3) For the purposes of this section, **member of the media** means—
  - (a) a person who is in the court for the purpose of reporting on the proceeding and who is either subject to or employed by an organisation that is subject to— 10
    - (i) a code of ethics; and
    - (ii) the complaints procedure of the Broadcasting Standards Authority or the Press Council; or
  - (b) any other person reporting on the proceedings with the permission of the court. 15

Compare: 2011 No 81 s 198

**79 Court may suppress evidence and submissions**

- (1) A court may make an order forbidding publication of any report or account of the whole or any part of the evidence given or the submissions made in any proceeding under this **Part**. 20
- (2) The court may make an order under **subsection (1)** only if the court is satisfied that publication would be likely to—
  - (a) cause undue hardship to any victim of a person subject to an order under this **Part** or against whom such an order is sought; or 25
  - (b) endanger the safety of any person; or
  - (c) lead to the identification of a person whose name is suppressed by order or by law; or
  - (d) prejudice the maintenance of the law, including the prevention, investigation, and detection of offences; or 30
  - (e) prejudice the security or defence of New Zealand.

**80 Court may suppress identity of respondent or person subject to order**

- (1) A court may make an order forbidding publication of the name of— 35

- (a) the respondent to an application for a child harm prevention order; or
  - (b) the person subject to a child harm prevention order.
  - (2) The court may make an order under **subsection (1)** only if the court is satisfied that publication could be likely to cause— 5
    - (a) extreme hardship to the respondent or the person subject to the order; or
    - (b) undue hardship to any other person.
- 81 Automatic suppression of identity of victims and witnesses**
- (1) Unless the court, by order, permits publication, no person may 10
    - (a) is a victim of a respondent; or
    - (b) is a victim of a person subject to a child harm prevention order; or
    - (c) is called as a witness in any proceeding under this **Part**. 15
  - (2) Despite **subsection (1)**, the name, address, or occupation of a child may be published if the child dies as a result of an offence committed, or believed to have been committed, by—
    - (a) a respondent; or
    - (b) a person subject to a child harm prevention order. 20
  - (3) The court must make an order permitting any person to publish the name, address, or occupation of a victim or witness, if—
    - (a) the victim or witness, having reached the age of 18 years, applies to the court for such an order; and
    - (b) the court is satisfied that the victim or witness understands the nature and effect of his or her decision to apply to the court for the order; and 25
    - (c) in any case where publication of the identity of the victim or witness may lead to the identification of a respondent, or a person subject to a child harm prevention order, no order has been made under **section 80** prohibiting publication of the identity of that person. 30
  - (4) An order under **subsection (3)** ceases to have effect if—
    - (a) publication of the identity of the victim or witness may lead to the identification of a respondent or a person subject to a child harm prevention order; and 35
    - (b) that person applies to a court for an order under **section 80** prohibiting publication of his or her identity; and



- (c) the court makes the order under **section 80**.

**82 Automatic suppression of identity of respondent, or person subject to order, in certain cases**

- (1) This section applies if a qualifying offence upon which an application for a child harm prevention order is based is an offence against section 130 or 131 of the Crimes Act 1961. 5
- (2) The purpose of this section is to protect the victim.
- (3) No person may publish the name, address, or occupation of a respondent to an application for child harm prevention order, or a person subject to an order, unless the court, by order, permits that publication. 10
- (4) The court may make an order referred to in **subsection (3)** if—
- (a) the victim (or, if there were 2 or more victims, each victim)— 15
- (i) is aged 18 years or older (whether or not he or she was aged 18 years or older when the offence was, or is believed to have been, committed); and
- (ii) applies to the court for such an order; and 20
- (b) the court is satisfied that the victim (or, as the case requires, each victim) understands the nature and effect of his or her decision to apply to the court for the order.
- (5) An order made under **subsection (4)** ceases to have effect if— 25
- (a) the respondent, or the person subject to the order, applies to a court for an order under **section 80** prohibiting publication of his or her identity; and
- (b) the court makes the order under **section 80**.

Compare: 2011 No 81 s 201

*Procedure governing reviews by review panel* 30

**83 Issue of summons to attend review hearing**

The chairperson of the review panel may issue a summons requiring the person subject to a child harm prevention order to attend a review hearing at a specified time and date.

**84 Issue of summons to witness**

- (1) The chairperson of the review panel may issue a summons calling on any person to appear as a witness in a review hearing.
- (2) The chairperson may not exercise the power conferred by **subsection (1)** on the basis of an application or request, but may do so only on his or her own initiative. 5
- (3) A summons issued under **subsection (1)** may require the person summoned to bring with him or her and produce at the hearing any document or thing that is specified in the summons. 10
- (4) The sum payable for allowances and travelling expenses, but not fees, under the Witnesses and Interpreters Fees Regulations 1974 must be paid or tendered to the witness— 15
- (a) at the time the summons is served; or
- (b) at some other reasonable time before the day on which the attendance of the witness is required.

Compare: 2002 No 10 s 118A; 2011 No 81 s 159

**85 Service of summons**

- (1) A summons under **section 83 or 84** may be served by— 20
- (a) delivering it to the person being summoned; or
- (b) leaving it at the person's usual place of residence; or
- (c) posting it by registered post addressed to the person at the person's usual place of residence.
- (2) The summons must be served at least 10 days before the day on which the person is required to attend. 25
- (3) A summons served under **subsection (1)(c)** must be treated as having been served at the time when the letter would be delivered in the ordinary course of post.

**86 Protection of witnesses** 30

Every witness giving evidence before the review panel has the same privileges and immunities as a witness in a court of law.

**87 Offences**

- (1) A person commits an offence if that person— 35
- (a) fails to attend in accordance with the summons; or

- (b) refuses to give evidence or refuses to answer any question that the person is lawfully required by any member of the panel to answer concerning the subject of the matter before the panel; or
  - (c) fails to produce any document or thing in accordance with the summons. 5
- (2) A person who commits an offence under **subsection (1)** is liable on conviction to a fine not exceeding \$1,000.  
Compare: 2002 No 10 s 118D.

*Review panel* 10

**88 Establishment and constitution of review panel**

- (1) A review panel is established.
- (2) The review panel consists of 6 members appointed by the Minister of Justice by written notice.
- (3) The Minister of Justice must nominate 1 member of the review panel as its chairperson and another member of the review panel as its deputy chairperson, and a member so nominated must hold, or have held, office as a High Court Judge or as a District Court Judge. 15
- (4) Before the Minister of Justice appoints a person as a member, the Minister of Justice must be satisfied that the person has experience and expertise in assessing the potential for individuals to pose a high risk to public safety. 20
- (5) The review panel must include—
  - (a) at least 2 members who are health assessors; and 25
  - (b) at least 4 members who have experience in the operation of the New Zealand Parole Board.

**89 Review hearings**

- (1) The quorum necessary for any review hearing is 3 members, which must include— 30
  - (a) the chairperson or deputy chairperson; and
  - (b) 1 health assessor; and
  - (c) 1 member who has experience in the operation of the New Zealand Parole Board and who is not a health assessor. 35

- (2) The review panel may regulate its own procedure, subject to this **Part**.

### **90 Application of privileges to review hearings**

- (1) The following privileges are recognised for the purposes of review hearings: 5
- (a) legal professional privilege, to the extent that (under section 53(5) of the Evidence Act 2006) it forms part of the general law:
  - (b) privilege for communications with legal advisers (as described in section 54 of the Evidence Act 2006): 10
  - (c) privilege for preparatory materials for proceedings (as described in section 56 of the Evidence Act 2006):
  - (d) privilege for settlement negotiations or mediation (as described in section 57 of the Evidence Act 2006):
  - (e) privilege for communications with ministers of religion (as described in section 58 of the Evidence Act 2006): 15
  - (f) privilege in criminal proceedings for information obtained by medical practitioners and clinical psychologists (as described in section 59 of the Evidence Act 2006): 20
  - (g) privilege against self-incrimination (as described in section 60 of the Evidence Act 2006):
  - (h) privilege for informers (as described in section 64 of the Evidence Act 2006):
  - (i) the rights conferred on a journalist under section 68 of the Evidence Act 2006 to protect certain sources. 25
- (2) Section 53 of the Evidence Act 2006 applies in relation to the privileges set out in **subsection (1)** as if the review hearing were a proceeding.
- (3) For the purposes of this **Part**, no privilege applies in respect of any communication or information if there is a prima facie case that the communication or information is made or received, or compiled or prepared,— 30
- (a) for a dishonest purpose; or
  - (b) to enable or aid any person to commit or plan to commit what the person claiming the privilege knew, or ought reasonably to have known, to be an offence. 35

Compare: 2012 No 2 Schedule 2 cl 62; 2012 No 24 s 136

**91 Attendance at review hearings**

- (1) For the purpose of any review hearing, a person (including the person subject to the order and any counsel or witness) attends the hearing if he or she is present at the hearing, whether in person or by way of remote access, such as by telephone, video, or Internet link. 5
- (2) A person may only attend a review hearing by remote access if the review panel agrees.

**92 Decisions of review panel**

- (1) The decision of the majority of members in attendance at a review hearing is the decision of the review panel. 10
- (2) A decision of the review panel must be in writing and include reasons for the decision.
- (3) A copy of every decision made by the review panel in relation to a child harm prevention order must be given to— 15
  - (a) the person subject to the order; and
  - (b) the Commissioner.

**93 Information before review panel**

- (1) In any review hearing, the panel may receive and take into consideration whatever information it thinks fit, whether or not the information would be admissible as evidence in a court of law. 20
- (2) Information received by the panel may be in any form that the panel thinks fit. 25  
Compare: 2002 No 10 s 117

**94 Avoiding actual or perceived bias**

The chairperson must, if he or she becomes aware that a member has, or may be perceived as having, bias for or against a person subject to a child harm prevention order, require the member to excuse himself or herself from participating in a meeting of the review panel that relates to that person. 30  
Compare: 2002 No 10 s 118

**95 Term of appointment, and reappointment**

- (1) Every member of the review panel, including the chairperson, must be appointed for a term of 3 years or less.
- (2) A member continues in office despite the expiry of his or her term of office until— 5
- (a) the member is reappointed; or
- (b) the member's successor is appointed.
- (3) A member who participates in a review that is not complete on the date that he or she ceases to be in office may complete his or her participation in the review after that date and is, for that purpose, deemed to be in office until the review is complete. 10
- (4) Any member may be reappointed any number of times.
- (5) A member may at any time resign from office by written notice to the Minister of Justice.

**96 Remuneration and expenses of members**

15

- (1) The remuneration of any member of the review panel who is a District Court Judge or a Judge of the High Court must, so far as it relates to the Judge's membership of the review panel, be determined by the Remuneration Authority.
- (2) Every other member of the review panel must be paid fees and expenses in accordance with the framework determined by the Government from time to time for the classification and remuneration of statutory and other bodies. 20
- (3) A person is not employed in the service of the Crown, for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956, merely as a result of being a member of the review panel. 25

**97 Immunity of members**

No member of the review panel is personally liable for any act or omission done in pursuance, or intended pursuance, of the panel's functions, unless the act or omission was done in bad faith. 30

**98 Search and Surveillance Act 2012 amended**

- (1) This section amends the Search and Surveillance Act 2012.

- (2) In the Schedule, after the item relating to the Unsolicited Electronic Messages Act 2007, insert:

<b>Vulnerable Children Act 2013</b>	<b>section 74(4)</b>	Constable execut-	section 131
		ing warrant may enter any premises, by force if necessary, if he or she has reasonable grounds to believe that a respondent to an application for a child harm prevention order who has failed to appear in court is on those premises	

**99 Legal Services Act 2011 amended**

- (1) This section amends the Legal Services Act 2011.
- (2) In section 6, insert as subsection (2): 5
- “(2) For the purposes of subsection (1)(a), **criminal proceedings** includes an application for an interim order under **section 63** of the Vulnerable Children Act **2013** if the application is made at the end of a criminal trial.”

**Part 3**

10

**Amendments to Acts**

Subpart 1—Amendments to Children,  
Young Persons, and Their Families Act 1989

**100 Principal Act**

This **subpart** amends the Children, Young Persons, and Their Families Act 1989 (the **principal Act**). 15

**101 Section 2 amended (Interpretation)**

In section 2(1), insert in their appropriate alphabetical order:  
 “**permanent caregiver**, in relation to a child or young person, means a guardian as described in **paragraph (a) or (b)**, where the order appointing the person as a guardian was made in substitution for an order under section 78, 101, or **110** or for an agreement under section 140: 20  
 “(a) a special guardian:

- “(b) a person who has the care of the child or young person by virtue of being appointed as a guardian under section 27 of the Care of Children Act 2004 and has rights in relation to the child or young person under parenting orders made under section 48 of that Act 5
- “**special guardian** means a guardian of a child or young person appointed under **section 110** who is appointed as a special guardian under **section 113A**
- “**subsequent child** means a child, born or unborn, who has a parent who is a person described in **section 14(3)**”. 10

*Principles*

**102 Section 5 amended (Principles to be applied in exercise of powers conferred by this Act)**

After section 5(f), insert:

- “(g) the principle that decisions affecting a child or young person should be made by adopting a holistic approach that takes into consideration, without limitation, the child’s or young person’s age, identity, cultural connections, education, and health.” 15

**103 Section 13 amended (Principles)** 20

(1) Below the heading to section 13, insert as subsection (1):

- “(1) Every court or person exercising powers conferred by or under this Part, Parts 3 or 3A, or sections 341 to 350, must adopt, as the first and paramount consideration, the welfare and interests of the relevant child or young person (as required by section 6).” 25

(2) In section 13, replace “Subject to sections 5 and 6, any court which, or person who, exercises any powers conferred by or under this Part of Part 3 or Part 3A or sections 341 to 350 shall be guided by the following principles:” with “In determining the welfare and interests of a child or young person, the court or person must be guided by the principle that children and young people need to be protected from harm and have their rights upheld, and also the principles in section 5 as well as the following principles:” 30

(3) Repeal section 13(a). 35



*Subsequent children***104 Section 14 amended (Definition of child or young person in need of care or protection)**

- (1) After section 14(1)(b), insert:
- “(ba) in the case of a subsequent child, the child’s parent (being a person described in **subsection (3)** who has the care or custody of the child) has not demonstrated that he or she meets the requirements of **section 18A(2)**.” 5
- (2) After section 14(2), insert:
- “(3) A person described in this subsection is a person— 10
- “(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 his or her 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 him or her on the basis described in **subsection (4)(a) and (b)** and, in accordance with **subsection (4)(c)**, there is no realistic prospect that the child or young person will be returned to the person’s care. 15 20
- “(4) **Subsection (3)** applies, in relation to a child or young person removed from the care of a person, if—
- “(a) the court has declared under section 67, or a family group conference has agreed, that the child or young person is in need of care or protection on a ground in **subsection (1)(a) or (b)**; and 25
- “(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 30
- “(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 agreed, that there is no realistic prospect that the child or young person will be returned to the person’s care. 35
- “(5) If a person is a person described in **subsection (3)** on more than 1 of the grounds listed in that subsection, the references in **subsection (1)(ba)** and **section 18A** to the kind of harm

that led a person to being a person described in **subsection (3)** is taken to be a reference to any or all of the kinds of harm that led to the person being a person described in **subsection (3)**.”

- 105 Section 18 amended (Referral of care or protection cases to care and protection co-ordinator or youth justice co-ordinator by social workers or constables)** 5  
In section 18(1), replace “specified in section 14(1)(e)” with “specified in section 14(1)(**ba**) or (e)”.
- 106 New sections 18A to 18D inserted** 10  
After section 18, insert:
- “18A Assessment of person described in section 14(3)**
- “(1) If a social worker believes on reasonable grounds that a person described in **section 14(3)** is a parent of a subsequent child, the social worker must prepare an assessment of whether the parent meets the requirements of **subsection (2)** in respect of the subsequent child. 15
- “(2) A parent meets the requirements of this subsection if,—
- “(a) in a case where the parent’s own act or omission led to him or her being a person described in **section 14(3)**, the parent is unlikely to inflict on the subsequent child the kind of harm that led to the parent being so described; or 20
- “(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 14(3)** to be inflicted on the subsequent child. 25
- “(3) The assessment of the parent must conclude that the parent does not meet the requirements of **subsection (2)** unless the parent demonstrates, to the satisfaction of the social worker, that he or she does meet those requirements. 30
- “(4) On completing an assessment, the social worker must—
- “(a) decide to apply for a declaration under section 67 in relation to the subsequent child on the ground in **section 14(1)(ba)**; or
- “(b) decide not to apply for a declaration on that ground. 35

- “(5) A social worker may only decide not to apply for a declaration on the ground in **section 14(1)(ba)** if the parent has demonstrated to the satisfaction of the social worker that he or she meets the requirements of **subsection (2)**.
- “(6) A social worker need not make an assessment under **subsection (1)** in relation to a parent if— 5
- “(a) a social worker has previously assessed the parent under this section in relation to another subsequent child of the parent and, following that assessment,—
- “(i) the court confirmed, under **section 18C**, a decision not to seek a declaration under section 67 in relation to that child; or 10
- “(ii) a social worker applied for a declaration under section 67 that the child is in need of care or protection on the ground in **section 14(1)(ba)**, but the application was refused on the ground that the court was satisfied that the parent met the requirements of **subsection (2)**; or 15
- “(b) before this section came into force, a social worker had completed under section 17 an investigation of a subsequent child or young person of the parent and did not at that time form the belief that the child or young person was in need of care or protection. 20
- “**18B Application to court in relation to person described in section 14(3)** 25
- “(1) On making the decision referred to in **section 18A(4)** in relation to a person described in **section 14(3)** and a subsequent child, a social worker must either—
- “(a) apply under section 67 for a declaration that the subsequent child is in need of care or protection on the ground in **section 14(1)(ba)**; or 30
- “(b) apply to the court under this section for confirmation of a decision not to seek a declaration under section 67 on that ground.
- “(2) Where an application is made under this section, no family group conference need be held before the application is heard by the court, and nothing in section 70 applies. 35

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

- “(1) An application under **section 18B(1)(b)** for confirmation of a decision not to apply for a declaration that a subsequent child is in need of care or protection on the ground in **section 14(1)(ba)** must include— 5
- “(a) information showing that the child is a subsequent child; and
  - “(b) an affidavit, signed by the social worker, setting out the circumstances of the application and the reasons for the social worker’s belief that the subsequent child’s parent meets the requirements of **section 18A(2)**. 10
- “(2) The application must be served in accordance with section 152(1) as if it were an application for a declaration under section 67. 15
- “(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— 20
- “(a) confirm the decision not to seek a declaration under section 67 on the ground in **section 14(1)(ba)**; or
  - “(b) adjourn the hearing and require the social worker to— 25
    - “(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 decision under **section 18A(4)** and report to the court within a period specified by the court; or
  - “(c) decline to confirm the social worker’s decision under **section 18A(4)**. 30
- “(5) The court may confirm the decision 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— 35
- “(a) is not a person described in **section 14(3)**; or
  - “(b) has demonstrated that he or she meets the requirements of **section 18A(2)**.

“(6) Except as provided in this section, nothing in Part 3 applies in respect of an application for, or 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)(c)**, the court declines to confirm a social worker’s decision under **section 18A(4)**, the application for confirmation—

“(a) must be treated as an application for a declaration under section 67 made by the chief executive, as if leave of the court had been granted under section 68(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 his or her representative) is entitled to attend the conference as if he or she were entitled to do so under section 22(1)(a) to (h).”

**107 Section 19 amended (Referral of care or protection cases to care and protection co-ordinator by other persons or by court)**

In section 19(1), after “section 14(1)”, insert “(other than on the ground specified in **section 14(1)(ba)**)”.

*Family group conferences*

**108 Section 22 amended (Persons entitled to attend family group conference)**

After section 22(2), insert:

“(3) If a family group conference is reconvened to review a decision, recommendation, or plan, every person who, at the time of the reconvened conference, is a person to whom subsection (1) applies is entitled to attend the conference.”

**109 Section 23 amended (Care and protection co-ordinator to ensure that relevant information and advice made available to family group conference)**

In section 23(1),—

- (a) after “advice”, insert “that the co-ordinator considers are”; and
- (b) after “functions”, insert “(including information and advice relating to the health and education needs of every child or young person in respect of whom the conference is convened)”. 5

**110 New section 29A inserted (Content of plan)**

After section 29, insert:

**“29A Content of plan**

- “(1) Every plan of which a written record is prepared under section 29(3) must, without limitation,— 10
  - “(a) specify, contain, or state all the matters listed in **section 130(1)** (except as provided in **section 130(2)**); and
  - “(b) specify a date by which the plan must be reviewed.
- “(2) The review date referred to in **subsection (1)(b)** must be,— 15
  - “(a) if the plan relates to a child under the age of 7 years, within 6 months after the date on which the plan comes into effect in accordance with section 30; or
  - “(b) in any other case, within 12 months after that date.”

**111 Section 34 amended (Chief executive to give effect to decisions, recommendations, and plans of family group conference) 20**

In section 34(1), replace “it is clearly impracticable” with “the chief executive considers that it is impracticable, unreasonable,”. 25

**112 Section 35 amended (Police to comply with decisions, recommendations, and plans of family group conference)**

In section 35, replace “it is clearly impracticable” with “it is impracticable, unreasonable,”.

**113 Section 36 amended (Family group conference may reconvene to review its decisions, recommendations, and plans) 30**

- (1) In the heading to section 36, replace “**may**” with “**to**”.
- (2) Replace section 36(1) with:

- “(1) For the purpose of reviewing a decision, recommendation, or plan made or formulated by a family group conference, the care and protection co-ordinator who convened the conference—
- “(a) must (subject to **subsection (1A)**) reconvene the conference on or before the review date (if any) specified in the plan; and 5
  - “(b) must reconvene the conference if required to do so, in accordance with **subsection (1B)**, by a social worker; and 10
  - “(c) must reconvene the conference if required to do so, in accordance with **subsection (1B)**, by an iwi social service, a cultural social service, or a child and family support service, but only if that service—
    - “(i) was the body or organisation that referred the relevant child or young person to a care and protection co-ordinator under section 19; or 15
    - “(ii) is a body or organisation directly involved in the implementation of the decision, recommendation, or plan to be considered; and 20
  - “(d) may reconvene the conference, at any time, at the co-ordinator’s own motion or at the request of at least 2 members of the conference that made or formulated the decision, recommendation, or plan under review. 25
- “(1A) **Subsection (1)(a)** does not apply if— 25
- “(a) the care and protection co-ordinator, after consulting the social worker, is of the view that no further action under the plan is required; or
  - “(b) before the review date, a court makes any of the following orders in respect of the child or young person to whom the plan relates: 30
    - “(i) a services order under section 86:
    - “(ii) a support order under section 91:
    - “(iii) a custody order (other than an interim order) under section 101: 35
    - “(iv) a guardianship order under **section 110** that appoints any person as the sole guardian of the child or young person:

“(v) a special guardianship order under **section 113A**.

“(1B) A social worker, or a service referred to in **subsection (1)(c)**, may require a care and protection co-ordinator to reconvene a family group conference under **subsection (1)(b) or (c)** only if the social worker or service is satisfied that there has been a change of circumstances such that the decision, recommendation, or plan no longer adequately addresses the needs of the child or young person to whom it relates.”

*Subsequent children*

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**114 Section 67 amended (Grounds for declaration that child or young person is in need of care or protection)**

In section 67, insert as subsection (2):

“(2) However, if the application is made on the ground in **section 14(1)(ba)** in relation to a subsequent child who has a parent who is a person described in **section 14(3)**, the court must make the declaration unless satisfied that the parent has demonstrated that he or she meets the requirements of **section 18A(2)**.”

*Permanent caregivers*

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**115 New section 86B inserted (No services orders in respect of permanent caregivers)**

After section 86A, insert:

**“86B No services orders in respect of permanent caregivers**

“(1) Despite sections 86 and 86A, a court must not make a services order or an interim services order under either of those sections in respect of—

“(a) a person who is, or is to be made, a permanent caregiver of a child or young person; or

“(b) a child or young person who is, or is to be, in the care of a permanent caregiver.

“(2) If a services order or an interim services order in respect of a permanent caregiver, or in respect of a child or young person in the care of a permanent caregiver, is in force on the date on which this section comes into force,—

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- “(a) on and from that date, sections 134 to 137 have no effect so far as they relate to the order; and
- “(b) the order ceases to have effect on the date on which it is next due for review. ”

*Special guardians*

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**116 Section 107 amended (Person in whose custody child or young person is placed may determine access rights in absence of court order)**

In section 107(b), after “an order under”, insert “**section 113B(1)(b)** or”.

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**117 Section 110 replaced (Guardianship orders)**

Replace section 110 with:

**“110 Guardianship orders**

“(1) Where the court makes a declaration under section 67 in relation to any child or young person, or on an application referred to in **section 110A**, it may make an order appointing any of the following persons to be a guardian of the child or young person:

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- “(a) the chief executive;
- “(b) an iwi social service;
- “(c) a cultural social service;
- “(d) the director of a child and family support service;
- “(e) any other person.

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“(2) A guardian appointed under **subsection (1)** must be appointed as—

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- “(a) the sole guardian of the child or young person; or
- “(b) a guardian of the child or young person in addition to any other guardian.

“(3) The director of a child and family support service may not be appointed as the sole guardian of a child or young person.

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“(4) If a person who is appointed as a sole or additional guardian of a child or young person under this section is a natural person, the court may also make an order under **section 113A** appointing the person as a special guardian of the child or young person (including when the order under this section is made at a hearing under section 127).

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**“110A Application for change of guardianship order**

- “(1) If a person is, in relation to a child or young person, a permanent caregiver who is not a special guardian, the person may, with the leave of the court, make a combined application for a guardianship order under **section 110** and a special guardianship order under **section 113A**. 5
- “(2) Leave of the court may be given only if the court is satisfied that—
- “(a) the application is made with the intention of replacing a guardianship order made under section 27 of the Care of Children Act 2004 and all associated parenting orders under section 48 of that Act with the guardianship orders referred to in **subsection (1)**; and 10
  - “(b) the person has exercised all available mechanisms available under the Care of Children Act 2004 to resolve disputes with any parent or other guardian of the child or young person that relate to the circumstances referred to in **subsection (4)(a)**. 15
- “(3) An application under this section must be treated as if it were an application under section 125 for the variation or discharge of an order made under Part 2, and, for that purpose, must be served and heard in accordance with Part 3 (with any necessary modifications). 20
- “(4) On an application under this section, the court may make the orders applied for only if— 25
- “(a) the court is satisfied that—
    - “(i) the person has been unable to effectively exercise his or her guardianship responsibilities or responsibilities to provide day-to-day care to the child or young person under the orders made under the Care of Children Act 2004; and 30
    - “(ii) that inability is due to the conduct of the parents or other guardians of the child or young person, and that conduct forms a pattern of behaviour; and 35
    - “(iii) the child’s or young person’s welfare is being threatened or seriously disturbed as a result; and
  - “(b) following an application under **section 29A** of the Care of Children Act 2004, the court will at the same time re-

voke both the person’s appointment as a guardian under that Act and any associated parenting orders under section 48 of that Act.”

**118 New sections 113A and 113B inserted**

After section 113, insert: 5

**“113A Special guardianship orders**

“(1) The court may make an order under this section appointing a person referred to in **section 110(4)** as a special guardian of a child or young person only if—

“(a) the appointment is made for the purpose of providing the child or young person with a long-term, safe, nurturing, stable, and secure environment that enhances his or her interests; and 10

“(b) either—

“(i) the child or young person has no other guardian; or 15

“(ii) the special guardian either replaces, or is additional to, an existing guardian of the child or young person.

“(2) For the purposes of this section and **section 113B**, **existing guardian** means a person (other than a special guardian) who, immediately before the special guardianship order was made in respect of a child or young person, is a guardian of the child or young person. 20

**“113B Effect of special guardianship order**

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“(1) Where a special guardianship order is made in respect of a child or young person, then, whether the special guardian is a sole or additional guardian and despite anything in this section,—

“(a) the special guardian has custody of the child or young person, and— 30

“(i) no order under section 101 may be made in respect of the child or young person; but

“(ii) section 114(2)(b) and (c) applies as if the special guardian were a sole guardian; and 35

“(b) the order must specify the access and other rights (not being custody or guardianship rights), including any

terms and conditions that apply to those rights, of each existing guardian in relation to the child or young person.

- “(2) Where a special guardianship order specifies the access and other rights of any existing guardian,— 5
- “(a) no existing guardian may apply for an order under section 121(2)(c) or (d) concerning his or her access or other rights in relation to the child or young person, but any other parent or person may apply for orders under that section in relation to the child or young person, as if the special guardian were a sole guardian; and 10
- “(b) section 122 applies to any access rights specified in the order as if those access rights access had been granted by an order made under section 121.
- “(3) If a person who is appointed as the sole guardian of a child or young person is also appointed as a special guardian, the provisions of this Act relating to sole guardians apply, except that— 15
- “(a) sections 134 and 135 (about reviewing plans) do not apply to the court plan that was prepared for the purposes of section 128; and 20
- “(b) despite section 117(1)(a), the order ceases to have effect when the child or young person attains the age of 18 years or sooner marries or enters into a civil union.
- “(4) If a person who is appointed as an additional guardian of a child or young person is also appointed as a special guardian,— 25
- “(a) the order must set out which guardianship rights (which may include those set out in section 16(2) of the Care of Children Act 2004) are to be held exclusively by the special guardian and which are to be shared between the existing guardian and the special guardian; and 30
- “(b) the order must require that the existing guardian is informed of any decisions made by the special guardian in the exercise of any guardianship rights held exclusively by the special guardian; and 35
- “(c) the provisions of this Act relating to additional guardians apply, except as follows:

- “(i) no existing guardian may apply under section 115 in respect of any guardianship rights held exclusively by the special guardian; and
  - “(ii) sections 134 and 135 (about reviewing plans) do not apply to the court plan that was prepared for the purposes of section 128; and 5
  - “(iii) despite section 117(1)(a), the order ceases to have effect when the child or young person attains the age of 18 years or sooner marries or enters into a civil union. 10
- “(5) Every special guardianship order must require that, if the child or young person to whom the order applies begins to live with anyone other than the special guardian on more than a temporary basis, the special guardian must,—
- “(a) if the child or young person, immediately before the guardianship order was made, was in the custody of the chief executive or a natural person, advise a social worker; or 15
  - “(b) if the child or young person, immediately before the guardianship order was made, was in the custody of an iwi social service, cultural social service, or the director of a child and family support service, advise that service or director, as appropriate. 20
- “(6) The obligation on the chief executive imposed by section 7(2)(e) does not apply in respect of a child or young person in respect of whom a special guardianship order is made. 25
- “(7) If a child or young person has more than 1 existing guardian, or more than 1 special guardian, this section and any other applicable sections must be applied with all necessary modifications to each existing guardian and each special guardian.” 30

**119 Section 125 amended (Application for variation or discharge of orders made under this Part)**

- (1) After section 125(1)(g), insert:
  - “(ga) any special guardianship order made under **section 113A**, (but only with leave, as required by **subsection (1A)**):” 35
- (2) After section 125(1), insert:

“(1A) Leave of the court must be obtained before an application is made for the variation or discharge of a special guardianship order made under **section 113A**, unless—

- “(a) the application is made by the chief executive, a social worker, an iwi social service, a cultural social service, or the director of a child and family support service; or
- “(b) all parties to the proposed application agree to the making of the application.

“(1B) Leave may be given for the purpose of **subsection (1A)** only if—

- “(a) in the case of an application for discharge, there has been a significant change in the circumstances of the child or young person to whom the order relates; and
- “(b) in the case of an application for variation, there has been a significant change in the circumstances of the child or young person to whom the order relates, or in the circumstances of his or her parents or any guardian.”

**120 Section 128 amended (Court to obtain and consider plan for child or young person before making certain orders)**

After section 128(2)(d), insert:

- “(e) a special guardianship order under **section 113A**.”

*Plans and agreements*

**121 Section 130 amended (Content of plans)**

(1) Replace section 130(d) and (e) with:

- “(d) state the responsibilities and personal objectives of the child or young person:
- “(e) state the responsibilities and personal objectives of any parent, guardian, or other person who, under the plan, will have the care of the child or young person:
- “(ea) set out the following:
  - “(i) the responsibilities and personal objectives of any parent, guardian, or other person who, under the plan, will not have the care of the child or young person, but who had the care of the child or young person immediately before the plan was formulated:

- “(ii) the steps that each such parent, guardian, or other person must take, or the behavioural changes each must make, before the child or young person can be returned to his or her care:
    - “(iii) the time frames within which those steps or changes must be taken or made: 5
    - “(iv) the time within which a decision will be made about whether to return the child or young person to the care of any parent, guardian, or other person.”. 10
  - (2) In section 130, insert as subsections (2) and (3):
  - “(2) A plan need not contain the matters set out in **subsection (1)(ea)** if the plan is prepared on the basis that there is no realistic possibility that the child or young person will be returned to the care of a parent, guardian, or other person who had the care of the child or young person before the plan was formulated. 15
  - “(3) If a plan does not contain the matters set out in **subsection (1)(ea)**, it must, instead, set out the child’s or young person’s long-term needs and proposals for how those needs will be met.” 20
- 122 Section 135 amended (Review of plan)**  
 Replace section 135(4) with:
- “(4) On the request of a person who is required to review a plan, for the purpose of reviewing the plan a care and protection co-ordinator— 25
    - “(a) must convene a family group conference, unless the plan relates only to a services order under section 86; and
    - “(b) may convene a family group conference if the plan relates only to a services order.” 30
- 123 Section 140 amended (Agreements for extended care of children and young persons by chief executive, iwi social service, etc)**
- (1) In section 140(1)(c), after “days”, insert “; or”. 35
  - (2) After section 140(1)(c), insert:

- “(d) with the agreement of any person referred to in paragraphs (a) to (c) or any other person approved by the chief executive for the purpose of this paragraph, place a young person aged 15 years or more in the care of that person for the purpose of assisting the young person to achieve independence.” 5
- (3) In section 140(2), replace “subsection (1)” with “subsection (1)(a) to (c)”.
- (4) After section 140(2), insert:
- “(3) An agreement made under **subsection (1)(d)** may be entered into for any period of up to 12 months and may, if approved by a family group conference convened for the purpose, be extended by any further periods of up to 12 months.” 10
- 124 Section 141 amended (Agreements for extended care of severely disabled children and young persons)** 15
- (1) In section 141(3), replace “2 years” with “1 year” in each place.
- (2) After section 141(3), insert:
- “(3A) On and after the date on which **section 110 of the Vulnerable Children Act 2013** comes into force, the time periods referred to in **subsection (3)** apply only to an agreement, or an extension to an agreement, that is entered into or agreed to on or after that date.” 20
- 125 Section 145 amended (Agreement not to be made without approval of family group conference)** 25
- (1) Replace section 145(1)((b) and (c) with:
- “(b) in the case of a proposed agreement under section 141 or 142, the family group conference has thoroughly explored what services and supports, such as those provided or funded by the Ministry of Health, are available to, or in respect of, the child or young person in his or her home environment; and 30
- “(c) the family group conference approves the making of the agreement; and
- “(d) a care and protection co-ordinator issues a certificate to the effect,— 35



- “(i) in all cases, that the requirements of paragraphs (a) and (c) have been complied with; and
  - “(ii) in the case of a proposed agreement under section 141 or 142, that the family group conference has thoroughly explored the matters referred to in **paragraph (b)**; and 5
  - “(iii) in all cases, that the co-ordinator is satisfied that, having regard to the objects, considerations, and principles in sections 4, 5, 6, and 13, the agreement is an appropriate care option for the child or young person.” 10
- (2) In section 145(2), replace “may” with “must”.
- (3) After section 145(2)(b), insert:
- “(c) whether an agreement entered into under **section 140(1)(d)** for the purpose of assisting a young person to achieve independence should be extended or terminated.” 15

**126 Section 147 amended (Further restrictions on making agreements)**

- (1) In section 147(1), replace “section 140” with “section 140(1)(a) to (c)” 20
- (2) In section 147(2), replace “section 140” with “section 140(1)(a) to (c)”.

*Reports by social workers*

**127 Section 186 amended (Report by social worker)** 25  
 Replace section 186(1) and (2) with:

- “(1) Where the court makes a declaration under section 67, the court—
- “(a) must obtain and consider a report from a social worker before making— 30
  - “(i) a custody order under section 101 (other than an interim custody order) placing the child or young person in the custody of any person listed in section 101(1); or
  - “(ii) a guardianship order under **section 110** that appoints the chief executive, an iwi social service, 35

- a cultural social service, or any other person as the sole guardian of the child or young person to whom the declaration relates; or
- “(iii) a special guardianship order under **section 113A**; and 5
- “(b) may obtain and consider a report from a social worker before making any other order referred to in section 83(1) or 84(1).
- “(2) In the course of preparing a report for the purposes of **subsection (1)(a)**, the social worker must consider whether there is a realistic possibility that the child or young person to whom the report relates will be returned to the care of the parent, guardian, or other person who had the care of the child or young person before the declaration under section 67 was made. 10 15
- “(2A) Every report provided to the court pursuant to **subsection (1)(a)** must (without limiting subsection (3)) make a recommendation, with reasons, on whether there is a realistic possibility that the child or young person to whom the report relates can be returned to the care of the parent, guardian, or other person who had the care of the child or young person before the declaration under section 67 was made, and— 20
- “(a) if there is such a realistic possibility, must—
- “(i) set out the steps that the parent, guardian, or other person must take, or the behavioural changes that he or she must make, before the child or young person can be returned to his or her care; and 25
- “(ii) recommend a time when, or a period within which, the option of returning the child or young person to the care of the parent, guardian, or other person will be pursued, having particular regard to the age of the child or young person; or 30
- “(b) if there is no such realistic possibility, set out—
- “(i) the child’s or young person’s likely long-term needs, and proposals for how those needs will be met; and 35
- “(ii) if a special guardianship order under **section 113A** is contemplated, a recommendation about which guardianship rights, if any, should be

shared between the special guardian and the existing guardian.”

*Related amendments to youth justice provisions*

- 128 Section 261 amended (Family group conference may make decisions, recommendations, and plans relating to care or protection of child or young person)** 5  
In section 261(2), replace “sections 30 to 38” with “sections **29A** to 38”.
- 129 Section 268 amended (Chief executive to give effect to decisions, recommendations, and plans of family group conference)** 10
- (1) In section 268(1), replace “it is clearly impracticable” with “the chief executive considers that it is impracticable, unreasonable,”.
- (2) In section 268(2), replace “it is clearly impracticable” with “the chief executive considers that it is impracticable, unreasonable,”. 15
- 130 Section 270 amended (Family group conference may reconvene to review its decisions, recommendations, and plans)** 20
- (1) In the heading to section 270, replace “**may**” with “**to**”.
- (2) Replace section 270(1) with:
- “(1) For the purpose of reviewing a decision, recommendation, or plan made or formulated by a family group conference under section 261, the youth justice co-ordinator who convened the conference— 25
- “(a) must reconvene the conference if required to do so by a social worker, an iwi social service, a cultural social service, or the director of a child and family support service; and 30
- “(b) may reconvene the conference at any time, at the co-ordinator’s own motion or at the request of at least 2 members of that conference.
- “(1A) A social worker may require a youth justice co-ordinator to reconvene a family group conference under **subsection (1)(a)** 35

only if the chief executive is required under section 34 to give effect to the decision, recommendation, or plan to be reviewed.

- “(1B) An iwi social service, a cultural social service, or the director of a child and family support service may require a youth justice co-ordinator to reconvene a family group conference under **subsection (1)(a)** only if the service is directly involved in the implementation of the decision, recommendation, or plan to be reviewed and has agreed to it under section 30.” 5

*Achieving independence*

- 131 New section 386A and cross-heading inserted** 10  
After section 386, insert:

*“Transition from care to independence*

**“386A Advice and assistance for people moving from care to independence**

- “(1) This section applies to a person aged between 15 and 20 years who has, for at least 3 months, been in the care or custody of the chief executive, an iwi social service, a cultural social service, or the director of a child and family support service, pursuant to any agreement or order specified in section 361(1)(a), (c), or (d). 15 20
- “(2) If a person to whom this section applies is in the care or custody of the chief executive, an iwi social service, a cultural social service, or the director of a child and family support service, the person or organisation who has the care or custody of the person must— 25
- “(a) consider what advice and assistance the person will need to become and remain independent after he or she leaves care or custody; and
- “(b) provide, or arrange for the provision of, that advice and assistance to the person, to the extent that it reasonably relates to the period before the person leaves care or custody. 30
- “(3) If a person to whom this section applies requests advice or assistance after he or she leaves the care or custody of an iwi social service, a cultural social service, or the director of a child and family support service, the agency that receives the request must refer the request to the chief executive. 35

- “(4) On receiving a request for advice or assistance from a person to whom this section applies who has left the care or custody referred to in **subsection (1)**, the chief executive—
- “(a) must provide, or arrange for, the provision of such advice and assistance (not being direct financial assistance) as the chief executive in his or her discretion considers necessary to enable the person to achieve independence; and 5
  - “(b) may, in exceptional circumstances, provide financial assistance of the sort described in **subsection (5)**, but only if— 10
    - “(i) the assistance is necessary to enable the person to transition from care to independence; and
    - “(ii) the chief executive has considered what other financial assistance is available to the person. 15
- “(5) Without limiting **subsection (4)(a)**, the advice and assistance provided may include any of the following:
- “(a) giving information:
  - “(b) assisting the person to obtain accommodation, enrol in education or training, or obtain employment: 20
  - “(c) legal advice:
  - “(d) counselling.
- “(6) The chief executive may provide the following kinds of financial assistance under **subsection (4)(b)**:
- “(a) contributing to the expenses incurred by the person in living near the place where he or she is or will be— 25
    - “(i) employed or seeking employment; or
    - “(ii) receiving education or training:
  - “(b) making a grant to assist the person to meet expenses connected with his or her education or training. 30
- “(7) If the chief executive is providing financial assistance to a person that includes making a contribution or grant with respect to a course of education or training, the chief executive may—
- “(a) continue to do so even though the person reaches the age of 20 years before completing the course; and 35
  - “(b) disregard any interruption in the person’s attendance at the course if the person resumes it as soon as practicable.”

*Permanent caregivers***132 Section 389 amended (Financial and other assistance in other cases)**

In section 389, insert as subsections (2), (3), and (4):

- “(2) Despite subsection (1), the chief executive must provide financial assistance under this section to a permanent caregiver of a child or young person if—
- “(a) the need for financial assistance arises from the care and protection needs or the extraordinary health, education, or developmental needs of the child or young person; and
  - “(b) the financial needs are greater than it is reasonable to expect the permanent caregiver to meet; and
  - “(c) the financial needs cannot be met by existing sources of support under this Act or any other enactment, and are unlikely to be provided otherwise; and
  - “(d) it is reasonable in the circumstances for the chief executive to provide the financial assistance; and
  - “(e) the provision of financial assistance is consistent with any general or special directions (not inconsistent with this section) given to the chief executive in writing by the Minister.
- “(3) A direction given for the purpose of **subsection (2)(e)** (other than a direction of that kind that relates exclusively to an individual) must be published in the *Gazette*.
- “(4) A direction referred to in **subsection (3)** is a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.”

**133 New sections 389A and 389B inserted**

After section 389, insert:

**“389A Review of decisions about financial assistance to permanent caregivers**

- “(1) A permanent caregiver who is dissatisfied with any decision of the chief executive regarding the provision of financial assistance under **section 389(2)** may apply for an internal review of that decision.

- “(2) The internal review must be conducted in accordance with a process established from time to time by the chief executive for that purpose, and must either confirm or modify the original decision.
- “(3) A confirmed or modified decision is for all purposes to be treated as the decision of the chief executive under **section 389(2)**. 5
- “389B Appeal against decisions about financial assistance to permanent caregivers**
- “(1) A permanent caregiver who has applied for a review of a decision under **section 389(2)** may appeal to the Family Court against the decision if he or she— 10
- “(a) has not received notification of the outcome of the review within 3 months after the application was lodged; or 15
- “(b) is dissatisfied with the outcome of the review.
- “(2) An appeal under this section may be made only on the ground that the decision is wrong or unreasonable, or both.
- “(3) The appeal must be made by filing a written notice of appeal in the Family Court, and the notice of appeal must— 20
- “(a) set out the particulars supporting the grounds of appeal and the relief sought; and
- “(b) be served on the chief executive in accordance with rules of court.
- “(4) After being served with a notice of appeal, the department 25 must file in the Family Court a report that contains the decision appealed against, the considerations to which regard was had in making that decision, and a copy of all information that the chief executive had when making it.
- “(5) The Family Court may (on an application for the purpose, or its own initiative), but is not obliged to, appoint a lawyer for the child or young person to whom the appeal relates, in which case sections 159(2) and (3), 161, and 162 apply accordingly with any necessary modifications. 30
- “(6) An appeal under this section is by way of rehearing, and is to be heard and determined in accordance with this section and rules of court. 35

“(7) The Family Court’s determination of the appeal may confirm, modify, or reverse the decision appealed against, and the chief executive must give effect to that determination.

“(8) A Family Court’s determination of an appeal under this section is final.” 5

*Appointments outside State Sector Act 1988*

**134 Section 423 amended (Appointment of care and protection co-ordinators)**

(1) Replace section 423(1) with:

“(1) The chief executive must appoint a sufficient number of care and protection co-ordinators. 10

“(1A) Care and protection co-ordinators may—

“(a) be appointed under the State Sector Act 1988; or

“(b) be employees of an iwi social service, a cultural social service, or the director of a child and family support service.” 15

(2) After section 423(2), insert:

“(3) An employee of an iwi social service, of a cultural social service, or of the director of a child and family support service—

“(a) may be appointed as a care and protection co-ordinator for a term of not more than 3 years, but the term may be renewed by the chief executive from time to time; and 20

“(b) may have his or her appointment as a care and protection co-ordinator cancelled (without compensation) by the chief executive on any ground that the chief executive considers justifies removal from the office; but the removal may only take place after consultation with the person’s employer and after a process that accords with the principles of natural justice has been completed; and 25

“(c) ceases to be appointed as a care and protection co-ordinator (and no compensation is payable with respect to that loss of office) if he or she ceases to be an employee of the iwi social service, cultural social service, or director of a child and family support service (as applicable) under which he or she was originally appointed; and 30

and 35



- “(d) must perform his or her duties as a care and protection co-ordinator independently of his or her employer; and
- “(e) in performing those duties, must have regard to any guidance for care and protection co-ordinators that is issued by the chief executive.” 5

**135 Section 425 amended (Appointment of youth justice co-ordinators)**

- (1) Replace section 425(1) with:
  - “(1) The chief executive must appoint a sufficient number of youth justice co-ordinators. 10
  - “(1A) Youth justice co-ordinators may—
    - “(a) be appointed under the State Sector Act 1988; or
    - “(b) be employees of an iwi social service, a cultural social service, or the director of a child and family support service.” 15
- (2) After section 425(2), insert:
- “(3) An employee of an iwi social service, of a cultural social service, or of the director of a child and family support service—
  - “(a) may be appointed as a youth justice co-ordinator for a term of no more than 3 years, but the term may be renewed by the chief executive from time to time; and 20
  - “(b) may have his or her appointment as a youth justice co-ordinator cancelled (without compensation) by the chief executive on any grounds that the chief executive considers justifies removal from the office; but the removal may only take place after consultation with the person’s employer and after a process that accords with the principles of natural justice has been completed; and 25
  - “(c) ceases to be appointed as a youth justice co-ordinator (and no compensation is payable with respect to that loss of office) if he or she ceases to be an employee of the iwi social service, cultural social service, or director of a child and family support service (as applicable) under which he or she was originally appointed; and 30
  - “(d) must perform his or her duties as a youth justice co-ordinator independently of his or her employer; and 35

“(e) in performing those duties, must have regard to any guidance for youth justice co-ordinators that is issued by the chief executive.”

**136 Section 427 amended (Delegation of functions of care and protection co-ordinator or youth justice co-ordinator to social worker)** 5

After section 427(1), insert:

“(1A) Subsection (1) does not apply to a care and protection co-ordinator, or to a youth justice co-ordinator, who is an employee of an iwi social service, a cultural social service, or the director of a child and family support service.” 10

*Related amendment to Care of Children Act  
2004*

**137 Amendment to Care of Children Act 2004**

(1) This section amends the Care of Children Act 2004. 15

(2) After section 29, insert:

**“29A Revocation of appointment as guardian**

“(1) The court may, on application, revoke the appointment under section 27 of a person as a guardian of a child or young person if— 20

“(a) the person is a permanent caregiver (as defined in section 2(1) of the Children, Young Persons, and Their Families Act 1989) who is not a special guardian (as defined in that Act); and

“(b) the application is made at the same time as an application referred to in **section 110A** of that Act; and 25

“(c) a guardianship order under **section 110** of that Act, and a special guardianship order under **section 113A** of that Act, are made.

“(2) If the court revokes an appointment under this section, it must discharge, under section 56, the associated parenting order under section 48 that confers on the person the role of providing day-to-day care for the child and any associated parenting order that provides for any specified person to have contact with the child.” 30 35

Subpart 2—Amendments to  
KiwiSaver Act 2006

- 138 Principal Act**  
This **subpart** amends the KiwiSaver Act 2006 (the **principal Act**). 5
- 139 Section 4 amended (Interpretation)**
- (1) In section 4(1), definition of **guardian**, after “the Care of Children Act 2004”, insert “, but excludes a CYPFA guardian”.
- (2) In section 4(1), insert in its appropriate alphabetical order:  
**“CYPFA guardian**, of a person, means any other person— 10  
**“(a)** appointed by an order under **section 110(1)(a) to (d)** of the Children, Young Persons, and Their Families Act 1989 as the sole guardian, or as a guardian of the person in addition to any other guardians (whether or not guardians by virtue of that Act), of the person; or 15  
**“(b)** whose sole guardianship of the person arises under section 119 of that Act (about the death of a guardian appointed under **section 110(1)(e)** of that Act who, on his or her death, was the person’s sole guardian”).
- 140 Section 35 amended (Opting in by persons under 18)** 20
- (1) In section 35(3),—
- (a) after “with a guardian”, insert “or a CYPFA guardian”; and
- (b) after “and 1 of their guardians”, insert “or CYPFA guardians”. 25
- (2) After section 35(4), insert:
- “(5)** A person who is less than 16 years with a CYPFA guardian may opt in if the CYPFA guardian while his or her guardianship of the person has effect (and independently from the person, and from all other, if any, CYPFA guardians, guardians, 30 or both, of the person) contracts directly with a provider, in the name of the person. If the provider accepts the person, then the person is treated as—
- “(a)** contracting directly with the provider; and
- “(b)** 18 years for the purposes of the Minors’ Contracts Act 1969; and 35

“(c) opting in under section 34(1)(a).

- “(6) If a person who is less than 16 years with a CYPFA guardian is a member of a KiwiSaver scheme (whether opted into before or while the CYPFA guardian’s guardianship has effect), the CYPFA guardian has for the purposes of this Act, while the CYPFA guardian’s guardianship has effect, authority (instead of all guardians, if any, of the person, and independently from the person, and from all other, if any, CYPFA guardians of the person) to make decisions (for example, voluntary transfer decisions), or to take other steps, in respect of the person’s membership of the scheme.”

**141 Children, Young Persons, and Their Families Act 1989 amended**

- (1) This section amends the Children, Young Persons, and Their Families Act 1989.
- (2) In section 2(1), definition of **guardianship**, after “corresponding meaning”, insert “, and includes, without limitation, a person who is a guardian by virtue of this Act”.
- (3) In section 390(1)(a), after “any bank”, insert “, or opt into a KiwiSaver scheme in the name of the young person under section 35(3) or **(5)** of the KiwiSaver Act 2006”.
- (4) In section 390(1)(b), after “into that account”, insert “or into any KiwiSaver scheme (whenever it was opted into) of which the young person is a member”.
- (5) After section 390(3), insert:
- “(4) Subsections (2) and (3) do not apply to, or to money standing to the young person’s credit in, a KiwiSaver scheme of which the young person is a member, and do not limit or affect section 35**(6)** of the KiwiSaver Act 2006 (which authorises specified guardians under this Act to make decisions or take steps in respect of a KiwiSaver scheme membership of a person younger than 16 years).”

## Schedule 1

### Regulated activities

s 23

The following child and family-focused activities are regulated activities:

- (a) child welfare and protection services: 5
- (b) health services and disability support services (as defined in the New Zealand Public Health and Disability Act 2000) provided specifically to children:
- (c) child care and early years education provided outside a child's home: 10
- (d) schooling and education provided by registered schools or early childhood services (as defined in the Education Act 1989):
- (e) child residential services:
- (f) youth justice services: 15
- (g) child social or support services:
- (h) other activities specified by regulations made under **section 31**.

However, family arrangements and personal, non-commercial arrangements (such as lift shares, baby-sitting, and informal child care) are not regulated activities. 20

## Schedule 2

### Specified offences

s 23

- (1) An offence against any of the following sections of the Crimes Act 1961 is a specified offence for the purpose of **subpart 3 of Part 1**:
- (a) section 128B (sexual violation): 5
  - (b) section 129 (attempted sexual violation and assault with intent to commit sexual violation):
  - (c) section 129A (sexual conduct with consent induced by certain threats): 10
  - (d) section 130 (incest):
  - (e) section 131 (sexual conduct with dependent family member):
  - (f) section 131B (meeting young person following sexual grooming, etc): 15
  - (g) section 132 (sexual conduct with child under 12):
  - (h) section 134 (sexual conduct with young person under 16):
  - (i) section 135 (indecent assault):
  - (j) section 138 (sexual exploitation of person with significant impairment): 20
  - (k) section 144A (sexual conduct with children and young people outside New Zealand):
  - (l) section 144C (organising or promoting child sex tours):
  - (m) section 154 (abandoning child under 6): 25
  - (n) section 167 (murder):
  - (o) section 171 (manslaughter):
  - (p) section 173 (attempt to murder):
  - (q) section 178 (infanticide):
  - (r) section 188 (wounding with intent): 30
  - (s) section 189(1) (injuring with intent to cause grievous bodily harm):
  - (t) section 191 (aggravated wounding or injury):
  - (u) section 194 (assault on child):
  - (v) section 195 (ill-treatment or neglect of child or vulnerable adult): 35
  - (w) section 195A (failure to protect child or vulnerable adult):

- 
- (x) section 198 (discharging firearm or doing dangerous act with intent):
- (y) section 208 (abduction for purposes of marriage or sexual connection):
- (z) section 210 (abduction of young person under 16). 5
- (2) An offence that is equivalent to an offence against any section of the Crimes Act 1961 referred to in **subclause (1)**, but that was committed against a provision of the Crimes Act 1961 that has been repealed, is a specified offence.
- (3) An attempt to commit any offence referred to in **subclause (1) or (2)**, where the offence is not itself specified as an attempt and the provision does not itself provide that the offence may be completed on an attempt, is a specified offence. 10
- (4) A conspiracy to commit any offence referred to in **subclause (1) or (2)** is a specified offence. 15
-

### Schedule 3 Qualifying offences

s 47

- (1) The following are qualifying offences for the purposes of **Part 2**:
- (a) an offence against any of the following sections of the Crimes Act 1961: 5
- (i) section 131B (meeting young person following sexual grooming, etc):
  - (ii) section 132 (sexual conduct with child under 12):
  - (iii) section 134 (sexual conduct with young person under 16): 10
  - (iv) section 144A (sexual conduct with children and young people outside New Zealand):
  - (v) section 154 (abandoning child under 6):
  - (vi) section 178 (infanticide): 15
  - (vii) section 210 (abduction of young person under 16):
- (b) an offence against any of the following sections of the Crimes Act 1961 if the victim of the offence was a child at the time the offence was committed: 20
- (i) section 128B (sexual violation):
  - (ii) section 129 (attempted sexual violation and assault with intent to commit sexual violation):
  - (iii) section 129A (sexual conduct with consent induced by certain threats): 25
  - (iv) section 130 (incest):
  - (v) section 131 (sexual conduct with dependent family member):
  - (vi) section 135 (indecent assault):
  - (vii) section 138 (sexual exploitation of person with significant impairment): 30
  - (viii) section 167 (murder):
  - (ix) section 171 (manslaughter):
  - (x) section 173 (attempt to murder):
  - (xi) section 188 (wounding with intent): 35
  - (xii) section 189 (injuring with intent):
  - (xiii) section 195 (ill-treatment or neglect of child or vulnerable adult):



- 
- (xiv) section 208 (abduction for purposes of marriage or sexual connection):
- (c) an offence that is equivalent to an offence against any section of the Crimes Act 1961 referred to in **paragraph (a) or (b)** but that was committed against a provision of the Crimes Act 1961 that has been repealed: 5
- (d) an attempt to commit any offence referred to in **paragraphs (a) to (c)**, where the offence is not itself specified as an attempt and the provision does not itself provide that the offence may be completed on an attempt: 10
- (e) a conspiracy to commit any offence referred to in **paragraphs (a) to (c)**.
- (2) An offence specified in **subclause (1)** is a qualifying offence for the purposes of **Part 2** whether the offence was committed before or after the commencement of that **Part**. 15