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### Legislative Statement for the first reading of the Oranga Tamariki Amendment Bill

#### **Presented to the House of Representatives in accordance with Standing Order 272**

This legislative statement supports the first reading of the Oranga Tamariki Amendment Bill (the Bill).

#### **Overview of the Bill**

The Bill amends the Oranga Tamariki Act 1989 (the Act) by:

- partially repealing the subsequent child provisions in the Act (section 18B(1)(b));
- repealing a redundant information sharing provision (section 66D);
- making minor technical amendments.

#### **Partial repeal of the subsequent child provisions**

This Bill proposes to partially repeal the subsequent child provisions of the Act. Sections 14(1)(c) and 18A – 18D of the Act set out how Oranga Tamariki must respond when a subsequent child comes to its notice.

Currently, a parent of a subsequent child is described in section 18B(1) as a person—

- (a) who has been convicted under the Crimes Act 1961 of the murder, manslaughter, or infanticide of a child or young person who was in the person's care or custody at the time of the child's or young person's death; or
- (b) who has had the care of a child or young person removed from that person and there is no realistic prospect that the child or young person will be returned to the person's care.

The provisions were introduced with the aim of improving the safety of a subsequent child. Under the provisions, the Family Court is required to oversee all decisions about whether a subsequent child needs care and protection, and parents were required to demonstrate that they were unlikely to inflict the same kind of harm on the child. However, in practice, the provisions have only been applied in a small number of cases.

A first principles review of the provisions in 2019 assessed whether they were ensuring greater oversight of the safety of a subsequent child, as originally intended. The review found that the provisions were not operating as intended, and highlighted some key concerns with the provisions, such as that they:

- are overly complex;
- are not often used;
- have negative impacts on the wellbeing of children, young people, families and whānau;
- pre-determine the risk of harm for children and restrict engagement with family and whānau;
- require Family Court oversight even when Oranga Tamariki considers there are no care and protection concerns;
- result in additional Family Court proceedings for the older sibling in care to determine that there is no realistic prospect that a child or young person will be returned to a parent's care.

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Subsequently, the Waitangi Tribunal found that the Crown has continued to breach its Te Tiriti / Treaty obligation to honour the right of Māori to exercise tino rangatiratanga over their kāinga and taonga by failing to partially repeal the subsequent child provisions.

This Bill will repeal the provisions as they apply to parents who have had a previous child permanently removed from their care (section 18B(1)(b)). However, the provisions as they apply to parents with a conviction relating to the murder, manslaughter, or infanticide of a child in their care (section 18B(1)(a)), are retained due to the seriousness of those convictions. It will also make other consequential changes to a number of other provisions as a result of the changes to section 18B of the Act.

### **Repeal of the information sharing provisions**

This Bill proposes to repeal section 66D of the Act (referred to as the dataset provision), which relates to the public notification of information about combined datasets relating to children and young people. Under the Act, a child welfare and protection agency may use information relating to a child or young person to produce, link, or analyse datasets of information and produce combined datasets. If this is done, the agency is required to publicly notify details of that dataset at least once a year. The notification must indicate the type, source, and purpose of the combined dataset. It must also outline privacy safeguards relating to the use of the combined dataset.

The policy intent of the dataset provision was to increase child welfare and protection agency transparency about the linked datasets they have used. The Bill proposes to repeal section 66D because Oranga Tamariki found the provision could place an unnecessary administrative burden on child welfare and protection agencies without achieving the public accountability that was intended. In addition, child welfare and protection agencies can now access a growing body of knowledge and evidence to assess wellbeing for strategic policy and operational purposes, such as the Integrated Data Infrastructure (IDI). There are also now policies, processes, and procedures in place, or being developed, that allow agencies to safely share and use combined datasets for operational purposes. These include the Social Wellbeing Agency's Data Protection and Use Policy and Data Exchange and Statistics New Zealand and the Privacy Commissioner's principles for the safe and effective use of data and analytics.

### **Technical amendments**

The Bill also includes a range of minor and technical amendments to improve clarity, enhance the rights of children and young people, remove redundant provisions, and remove barriers to practical implementation. The changes are part of the work to tidy up an Act that is over 30 years old and has been subjected to a number of significant legislative amendments.

The technical amendments included in Part One of the Bill are set out in the table in the Appendix.

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**Appendix: Table of clauses and technical changes in Part One of the Oranga Tamariki Amendment Bill (by type of technical change)**

Clause	Intent of the clause change
<i>Addressing issues where the current framing of the section is not strengthening the rights children and young people</i>	
4	Amends section 11(2)(f) to provide that decisions must be explained to children and young people in a manner appropriate for their age and level of understanding.
17	Amends section 144(1) to replace redundant reference to repealed section 144(2), and to reflect that consent can be acquired in a variety of ways, not just “in writing”, as this does not account for children and young people who cannot write.
<i>Amending provisions that conflict with other sections of the Act</i>	
5	Amends the heading of section 17 to ensure consistency with changes previously made to the heading of section 16.
<i>Amending provisions that have had unintended consequences which need to be addressed</i>	
9	Amendment to section 87(1) to make it clear that where there are existing care and protection orders in place, a fresh application under section 68 is not required for a restraining order to be granted under section 87.
12	Amends section 110 by repealing subsection 110(4) as the substance of the provision is incorporated into new section 113A(1AA) - see clause 13 below.
13	Amends section 113A to include text from section 110(4) to make it clearer that the jurisdiction to make a special guardianship order arises under section 113A.
14	Amends section 121 to make the provision more specific by limiting the type of interim guardianship orders that may be accompanied by an access order to only those orders that appoint a person as a sole guardian, not those that appoint an additional guardian.
32	Amends section 248A to clarify that if a child or young person wishes to use their own lawyer at a Youth Justice Family Group Conference, the chief executive should not be required to appoint one.
33	Amends section 258(1) to allow Youth Justice Family Group Conferences to make decisions and formulate plans when the child or young person is not considered to be in need of care or protection but still needs assistance. Decisions could therefore be made even where there is no agreement to a care or protection ground. This change aligns section 258 and 261 with previous changes made to Care and Protection Family Group Conferences in section 28(b). The changes were meant to also apply to Youth Justice Family Group Conferences.
34	Amends section 261 to allow Youth Justice Family Group Conferences to make decisions and formulate plans when the child or young person is not considered to be in need of care or protection but still needs assistance. This change aligns section 258 and 261 with previous changes made to Care and Protection Family Group Conferences in section 28(b). The changes were meant to also apply to Youth Justice Family Group Conferences.
42	Amends section 386A to extend eligibility for the advice and assistance component of the transition support service to young persons who have been in a youth unit of a prison. This amendment is in line with the original policy intent of changes made to ensure young people detained in a residential setting under a Youth Justice order are eligible for advice and assistance from the transition support service to enable them to successfully transition to adulthood. The amendment does not impact eligibility for advice and assistance for young people under remand or a prison sentence in the adult justice system (before turning 18) under section 386A(1)(d).
<i>Removing or amending provisions that rely on obsolete legislative provisions</i>	
10	Amends section 95 to replace a reference to a declaration. Section 67 (the empowering provision for the making of declarations) was repealed by section 42 of the Children, Young Persons and Their Families (Oranga Tamariki) Legislation Act 2017.
15	Amends section 126(f) to replace redundant reference to repealed section 67.
16	Amends section 137(1)(f) to replace redundant reference to repealed section 67.

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21	Amends section 187(1) to simplify the provision and to replace redundant reference to repealed section 67.
22	Replaces section 196 as the specific privilege relating to the disclosure in proceedings of protected communications to a medical practitioner or clinical psychologist set out in section 32 of the Evidence Amendment Act (No 2) 1980 has been repealed. New section 196 provides that if a court is, in relation to a child or young person, asked to exercise its discretion under section 69 of the Evidence Act 2006 (overriding discretion as to confidential information), the court must give the lawyer, appointed under section 159 to represent the child or young person, an opportunity to be heard on the matter.
23	Amends section 198(2) to replace a redundant reference to repealed section 195 and remove a redundant reference to repealed section 67.
24	Amends section 207B to replace a redundant reference to repealed section 67.
25	Amends section 207O, which concerns appeals against an order for transfer, by removing obsolete cross-references and requiring that appeals are brought within 10 working days after the day on which the order was made.
26	Amends section 207U, which concerns appeals against an order for transfer, by removing obsolete cross-references and requiring that appeals must be brought within three working days after the day on which the order was made.
27	Amends section 207ZC to correct an obsolete cross-reference.
30	Repeals section 239A because it has expired.
35	Amends section 272 to replace a redundant reference to repealed section 67.
<i>Amending provisions where there is confusion in applying that provision</i>	
11	Amends section 104 to make the section clearer by incorporating the search powers contained in section 105 into section 104(3)(c). This simplifies the need to reference and interpret how section 105 relates to section 104.
20	Amends section 186(1) to streamline the section and make it easier to understand. It also amends section 186 to replace a redundant reference to repealed section 67.
28	Amends section 214 to clarify that the requirements to section 214(1) do not need to be complied with when a child or young person is arrested for breach of bail conditions under section 214A.
29	Amends section 214A to clarify that a child or young person may be arrested without warrant if bail conditions are in breach or have recently been breached for a third time. The amendment provides that if a child or young person appears before a court and the court considers the child's or young person's bail, no breach of a bail condition that occurred before the appearance may be used to support a subsequent arrest under section 214A. The amendment also clarifies that section 214A does not apply if the child or young person is arrested without warrant under section 35 of the Bail Act 2000.
31	Amends section 242 to align legislation with policy intent that senior staff approval is needed for placing tamariki in police custody, but not for detention in residence. The amendment resolves an incorrect change made by the Children, Young Persons, and Their Families (Advocacy, Workforce, and Age Settings) Amendment Act 2016 which applied senior staff approval to 242(1)(a) and 242(1)(b).
36	Amends section 273(1) to clarify that the section applies, amongst others, to 17-year-olds who have committed murder or manslaughter.
37	Amends section 311(3) to provide that a supervision order (made subsequent to a supervision with residence order) may be made on the same date that a young person is released from the custody of the chief executive.
40	Amends the heading of section 350 so that it matches the content of the provision.
41	Amends section 365 so that when placing a child or young person in a residence, the chief executive must comply with the requirements in regulations. It also amends section 365 to clarify that section 365 applies to sole guardianship, not additional guardianship. This amendment also aids interpretation and increases consistency with section 361.
43	Amends section 447, which provides for the making of regulations under the Act. The amendments add the power to make regulations for assessing the safety and suitability of

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	caregivers and other persons and for providing for the training and support of caregivers and care providers.
<i>Removing barriers to practical implementation of the provisions</i>	
19	Amends section 165 to provide that the Registrar of the Court may determine the fees and expenses for a lay advocate appointed under section 163 in the absence of relevant regulations.
38	Amends section 325 to provide that the Registrar of the Court may determine the fees and expenses for a youth advocate in the absence of relevant regulations.
39	Amends section 328A to provide that the Registrar of the Court may determine the fees and expenses for a lay advocate appointed under section 326 in the absence of relevant regulations.