Note: The Minister for Children has not received any advice, nor made any decisions regarding the draft policy proposals in this paper. These proposals do not represent Government policy and should be treated solely as ideas for feedback. They are preliminary proposals that are under review and may change.

Special Guardianship Orders

Issues

Problem definition

Children and young people, who have been in State care and are unlikely to be able to return to the care of their parents, require long-term care arrangements that provide for their care and enable important decisions to be made for and with them.[1]

Special guardianship orders were introduced to promote stable care arrangements and provide certainty about how important decisions are made and by whom.

However, the ability to grant exclusive guardianship rights to caregivers, the fixed nature of special guardianship orders, and attempts to use such orders to 'cut out' parents and family, whānau, hapū and iwi from the child's life undermine mana tamaiti by inhibiting connection to whakapapa, and restricting the ability of parents, family, whānau, hapū and iwi to exercise their whanaungatanga responsibilities to the child. The additional layer of disconnection to culture means that this practice is particularly harmful for children and young people who are Māori and / or Pasifika. However, the trauma of disconnection from family applies to all children, regardless of culture.

Alternatively, caregivers can apply for parenting and/or guardianship orders under the Care of Children Act 2004 (CoCA).

However, there are issues with the extent to which CoCA provides a suitable framework for securing long-term care arrangements in providing for the role of family, whānau, hapū and iwi. CoCA has different purposes and principles compared to the Oranga Tamariki Act, and the principles in CoCA do not expressly include having regard to mana tamaiti, whakapapa and whanaungatanga, as the Oranga Tamariki Act principles do.

What is the issue?

The legal framework for enabling long-term care arrangements is likely not fit for purpose. Special guardianship orders (SGOs), in their current form and application, are likely to be inconsistent with the principles in the Oranga Tamariki Act 1989 (Oranga Tamariki Act) and the duties of the chief executive in relation to the Treaty of Waitangi.[2] There are three key inconsistencies:

1. The power to make an SGO to provide a child with "a long-term, safe, nurturing, stable, and secure environment that enhances their interests"[3] and the nature of those orders significantly diminishes the te ao Māori principles of mana tamaiti, whanaungatanga and whakapapa.[4]
2. Granting the caregiver exclusive (i.e., sole) guardianship rights (an outcome often sought) undermines the ability of the parents, family, whānau, hapū and iwi to demonstrate their whanaungatanga responsibilities to the child.
3. The high threshold for varying or discharging an SGO means that contact and access orders are typically limited (to primarily only existing guardians, with orders often limiting contact to a set number of times per year, or do not permit contact at all) and

[1] The child or young person's views should be considered and have weight as is appropriate in their circumstances.
[2] Section 7AA Oranga Tamariki Act 1989.
[3] Section 113A(1)(a) Oranga Tamariki Act 1989.
[4] Sections 4, 5, 7AA and 13 Oranga Tamariki Act 1989.

permanent,[5] seriously limiting the connection between a child, their family, whānau, hapū, iwi and their whakapapa.

These inconsistencies have resulted in divergent views regarding special guardianship within the judiciary.[6]

A recent High Court judgment provides clarity on the divergence of views on applying SGOs for tamariki Māori at the Family Court level.

- For the Court to comply with the paramountcy principle (being to act in the well-being and best interests of the child)[7] when considering an SGO application, the Court must substantively apply the principles in sections 5 and 13. This includes applying the te ao Māori values enshrined and having regard to te ao Māori which sees guardianship as the collective responsibility of whānau, hapū and iwi.
- This judgment further articulates that the least intrusive order that meets the needs of the child should be made, and there must be a highly compelling reason for an SGO where it may damage whānau connections, especially the connection between the mother and child.

There are two further issues:

4 SGOs are being sought in situations that do not always align with the original policy intent. Initial case file analysis and anecdotal reports suggest that SGOs are being sought by some caregivers "preventatively" as insurance against future conflict.

5 There are inconsistencies between the application of the Care of Children Act 2004 (CoCA) and applying SGOs. First, when applying to the court to seek an SGO, caregivers do not have to demonstrate that parents are unwilling or unable[8] to exercise their guardianship rights appropriately (this contrasts with section 29 CoCA). Second, the threshold for a caregiver to move from a CoCA order to an SGO is significantly higher[9] than if they were to apply for an SGO in the first instance, driving caregivers to apply for SGOs at the first possible opportunity.

Context

What are special guardianship orders?

- Long-term care arrangements are where a child or young person, who has been in the care of Oranga Tamariki, exit State care, to be cared for, legally and actually, by their caregiver until adulthood.
- SGOs are a type of legal order caregivers can apply for to support a long-term care arrangement. SGOs allow a judge to grant some or all guardianship rights exclusively to a caregiver.[10] SGOs also set out ongoing access and contact arrangements between children and parents (and any other existing guardians), with limited scope for change.[11] Once orders are in place, there is a high threshold for review, variation, or discharge.

Why were special guardianship orders introduced?

- SGOs were introduced in the context of the Home for Life policy introduced in 2010. The goal of Home for Life was to encourage families to take on a child permanently and reduce the time, and numbers of children and young people in

[5] Section 125(1A) and (1B) Oranga Tamariki Act 1989.

[6] The family court decisions which highlight the divergent views are *Chief Executive of Oranga Tamariki – Ministry for Children v BH* (Judge Otene, January 2021) and *Re-WH* [2021] NZFC 4090 (Judge Southwick, 5 May 2021).

[7] Section 4A.

[8] Unable meaning in this context "for some grave reason unfit to be a guardian".

[9] Section 110A(2) and 110A(4).

[10] Section 113B(4)(a).

[11] Section 113B(1)(b), and section 125(1B) – there must be a significant change of circumstances for the child or parent to vary an SGO

State Care.[12] However, there was not a reduction of children and young people in State Care, with the total number of children and young people in State Care increasing from 4900 to 5700 from 2012 to 2017.[13]

- This policy was based on focusing on establishing stable and secure placements for children and young people in State care. The social workers' focus was on finding placements where children could develop attachments to caregivers, within timeframes relevant to the child. This included "discussing an alternative Home for Life plan after six months, should it become clear that a child will not be able to return home".[14] A child was meant to be cared for as if the caregivers were their parents, and as part of a new family. This approach included drawing from those interested in adopting children.[15]
- SGOs were introduced to provide legal support for Home for Life placements and were based on concerns that orders under CoCA did not always promote secure and stable placements for children. The rationale was that the legal situation of shared guardianship through CoCA was not reflected in the following circumstances:[16]
    - There are parents that pay little or no ongoing role in the life of a child making joint guardianship decisions difficult to make.
    - Consulting and agreeing on important matters affecting the child that require joint guardianship decisions can expose caregivers to obstructive, threatening, or abusive behaviours.
    - Birth parents may be difficult to locate, destabilise placements, upset children, and discourage willing and caring people, including wider family members, from committing to providing long-term care.
    - Birth parents can usually apply without the leave of the court for parenting orders under CoCA, which effectively relitigates the court's decision to place the child away from the parents in the first place.
- SGOs, modelled on similar orders available in the UK, were introduced to address these issues. The intention was for the caregiver to have clear responsibility for all day-to-day decisions about caring for the child and their upbringing. The SGO retains the basic legal link with the parents but limits their ability to exercise parental and guardianship responsibilities to the extent necessary to achieve stability and security of care for the child.

What are Care of Children Act 2004 orders?

- The Care of Children Act contains provisions for day-to-day care, access and guardianship.
    - Parenting orders can enable a caregiver to have day-to-day care of a child.[17] If a parent does not have day-to-day care of the child, then the court must consider whether and how the order should provide for that parent to have contact. The parents retain guardianship rights.[18]

[12] Hon Paula Bennett, 11 August 2010.
[13] Statistics about how we work with children | Oranga Tamariki — Ministry for Children
[14] REP/10/07/346 HOME FOR LIFE STRATEGY
[15] REP/10/07/348 A HOME FOR LIFE FOR CHILDREN IN CARE – FINAL CABINET PAPER
[16] Regulatory Impact Statement: Specific Amendments to Care and Protection Legislation, 19 August 2013.
[17] Care of Children Act (COCA), s 48. Parenting orders can alternatively provide when a person may have contact with the child. A parenting order can provide that the person who has the role of providing day-to-day care for the child has this role at all times, or at specific times, and either alone or jointly with 1 or more persons
[18] Section 16(3).

- Caregivers are usually appointed as 'additional' guardians, as the mother (and often the father) are automatically natural guardians.[19] All guardians are required to consult and agree on important matters affecting the child.[20]
- Caregivers may be appointed as 'sole' guardians.[21] The parent(s) remain a guardian, but their guardianship rights are suspended.[22]
- The court can remove a guardian. The court must be satisfied that either the person is unwilling to act as a guardian, or for a grave reason unfit to be a guardian and the order will serve the welfare and best interests of the child.[23]

Note that in some instances, whānau caregivers may choose not to take legal orders.

This is often because of a view that 'legal ownership' over a child is inconsistent with a te ao Māori worldview, which views whakapapa rather than legal orders as the mechanism that governs the care of children.[24]

How many children and young people enter a long-term care arrangement?

- Between 300-400 children and young people each year leave care for a long-term care arrangement (20-30% of all care exits per year).[25]
  - Tamariki and rangatahi Māori make up between 70-80% of long-term care arrangements.
  - Typically, half of long-term care arrangements are in place for children by the age of 5 years, 30% between 5 and 9 years and 20% between 10 and 14 years.
  - The majority of children and young people are in the care or custody of the chief executive (CE) for between 1-4 years before a long-term care arrangement is achieved.
- Between 40-70 children and young people have an SGO granted per year. Tamariki and rangatahi Māori make up almost 60% of all SGOs granted to date. Pacific children and young people make up 13% of all SGOs granted to date.[26] [27]

Stakeholder voice

We have engaged key stakeholders on issues concerning special guardianship orders specifically and have drawn on previous engagements on long-term care arrangements more generally from April to June 2021. The key themes are summarised below:

Feedback on the original policy intent to create a legal order that promotes stability:

- Stability comes from and is supported by whakapapa and whanaungatanga. Special guardianship orders undermine whakapapa and whanaungatanga. Many Māori have Pasifika whakapapa and/or multiple iwi affiliations, which shows that whakapapa should be considered horizontally, not just vertically.
- The oranga and wellbeing of family and whānau can and will change. The certainty provided by special guardianship orders prevents orders from reflecting these changes.
- The original policy intent was to only apply for special guardianship orders when there were significant difficulties or challenges with the parents. However, many report that these orders are perceived as being an easy avenue for caregivers to

[19] Section 27(1).
[20] Section16(5) (but note that this is subject to sub-section (6) which relates to day-to-day living arrangements).
[21] Section 27(1).
[22] *Re Otela Liaena Aiulu* [2018] NZFC 10202 at [24].
[23] Section 29(3).
[24] Oranga Tamariki, Māori Design Group – *He Pāharakeke, he Rito Whakakīkinga Whāruarua*: Oranga Tamariki Urgent Inquiry WAI 2915 at page 131.
[25] Internal data, financial year 2017 to 2021.
[26] Māori is defined as combining ethnicity data identified as Māori and Māori Pacific. Pacific is defined as combining ethnicity data identified as Pacific and Māori Pacific.
[27] *He Pāharakeke, he Rito Whakakīkinga Whāruarua*: Oranga Tamariki Urgent Inquiry WAI 2915 at page 233 for financial year 2017 to 2020. Internal data is only available until end of financial year 2021.

have exclusive control, are being used to either bypass familial disagreements or to prevent future conflict. There are significant concerns that they are used to sever family connections.

- Acknowledge that special guardianship orders can be a useful tool when either the parents are transient or there is ongoing significant litigation between parents, whānau and caregivers, which draws out the court process for the child and young person.
- These decisions are often made when a child is young and imposed on them until adulthood. Children and young people know their context and should contribute to and inform any decision. As children and young people develop, these arrangements should be reviewed.

Feedback on the roles and responsibilities required to care for children:

- Caregivers should be able to make day-to-day decisions e.g., organise haircuts for a child, or approval for camp, but important decisions need to be collaborative.
- A child's name should not be changed by caregivers – names communicate whakapapa.

Feedback on connection to family, specifically contact/access:

- There needs to be an inalienable right to contact with family, within the boundaries of safety. It is for the child to choose whether to connect with family and whānau, and this should remain an option going forward. Connection cannot be built when visits are limited to a set quantity per year.
- Contact needs to be considered wider than the parents. It should include contact with grandparents, wider whānau, and connection with siblings is especially important.

Feedback on the process and system for obtaining a special guardianship order:

- The ability to apply for special guardianship orders depends on how well they are understood in a region, and whether the caregiver can access funding from Oranga Tamariki or afford the legal fees themselves.
- There is significant regional variation in decision-making for special guardianship orders, with different Family Court Judges having different understandings of how to analyse whether an SGO is in the best interests of a child.
- Decision making around long-term care arrangements should sit with the family, whānau, hapū and iwi, with Oranga Tamariki providing support, rather than the Family Court. The Family Court setting does not encourage community-led decision making, or the participation of wider whānau.
- The Family Court, Counsel for Child, and specialist experts (including psychologists and social workers) can lack cultural competency. Their processes may be inconsistent with tikanga-Māori, and their opinions are often highly regarded by the Court. This makes it challenging for family, whānau, hapū and iwi to question these opinions and provide their own views.

Current legislation

Special Guardianship Orders are governed by ss113A and 113B of the Oranga Tamariki Act.

- Applications for a variation or discharge of an SGO are governed by s125(1)(ga), (1A) and (1B).
- Applications to change from a CoCA order to an SGO are set out in s110A.

CoCA orders are governed by s48 (Parenting orders), s27 (Court-appointed guardians) and s29 (Court may remove guardians).
Appendix 2 provides a diagram explaining these orders.

Why are long-term care arrangements necessary?

If a child or young person is being discharged from being in the care of Oranga Tamariki, to be cared for by someone other than their parents, arrangements are needed to ensure:

- An appropriate person(s) has the role of providing day-to-day care for the child.

- The child's needs are met, including a process for determining with, or for, the child, important matters affecting them.
- The child's mana tamaiti and wellbeing are protected by recognising and promoting their whakapapa and the whanaungatanga responsibilities of their family, whānau, hapū, iwi, and family group.

Objectives

Formulate legal settings for long-term care arrangements that support connection to and enable and protect relationships with family, whānau, hapū and iwi. Legal settings can achieve this by:

- Protecting mana tamaiti:
  - by enabling family, whānau, hapū and iwi to practice their whanaungatanga responsibilities
  - by recognising the child's or young person's whakapapa
  - by centring the child's or young person's voice, sense of self and identity.
- Promoting stable long-term care arrangements that enable day-to-day care, meet the needs of the child, and ensure important matters affecting the child are able to be determined.

Other considerations

Legal settings for long-term care arrangements will be designed to operate consistently with the strategic direction of Oranga Tamariki, including:

- The Ministerial Advisory Board recommendation that collective Māori and community responsibility and authority must be strengthened and restored.[28]

Draft Options

Draft Criteria

Protecting mana tamaiti – To what extent the option preserves or guarantees by formal measures[29] the intrinsic value and inherent dignity derived from a child's or young person's whakapapa (genealogy) and their belonging to a whānau, hapū, iwi, or family group.[30] More particularly, protecting mana tamaiti will be assessed by:

- **enabling whanaungatanga** – to what extent the option enables family, whānau, hapū and iwi to carry out their responsibilities based on obligations to whakapapa
- **recognising whakapapa** – to what extent the option recognises the multi-generational kinship relationships that help to describe who a person is and underpins their distinct identity
- **promoting the child's voice** – to what extent the option enables the child or young person's voice to be heard and acted upon in decisions that affect them.

Promoting stable long-term care – To what extent the option supports children and young people to thrive in safe, stable and loving homes, reducing the likelihood that the arrangement may break down and the risk the child or young person will re-enter a statutory care arrangement. More particularly, promoting stable long-term care will be assessed by:

- **clarity** – to what extent the option provides clarity on who is responsible for providing care and supporting the child to meet their specific needs
- **meeting the child's needs** – to what extent the option enables long-term care arrangements that meet the child's general and specific needs
- **continuity of care** – to what extent the option protects the continuity of care arrangements and minimises the risk the care arrangements break down

[28] Te Kahu Aroha – the initial report of the Oranga Tamariki Ministerial Advisory Board July 2021 - recommendation 1.
[29] *McHugh v McHugh* [2022] NZHC 1174.
[30] Section 2 Oranga Tamariki Act 1989.

- **ensuring important matters are determined** including, but not limited to, the child's name, place of residence and travel, medical treatment, education, culture, language and religion, for and with the child as appropriate.

We will also further consider the extent to which the options are:

- **accessible decision-making** – how the option supports family, whānau, hapū and iwi to engage with and input into decisions concerning long-term care arrangements
- **adaptable –** how the option can respond to different circumstances that have led to the need for a long-term care arrangement and
- **able to be operationalised** – the extent to which the option would require resourcing and implementation support, or is feasible within current processes e.g., working with the Family Court system.

Scope of Options

The options scope has been narrowed to legislative reform options only.

- Firstly, this is to reflect that Oranga Tamariki has already made changes to their operational practice to reflect the duties of the Chief Executive under section 7AA of the Oranga Tamariki Act. A summary of the change to operational guidance, effective February 2021, is provided at Appendix 2. However, caregivers can apply to the Family Court for special guardianship orders, in their current form and application, regardless of whether these orders are supported by Oranga Tamariki. The changes to operational practices can have much less effect in these cases.
- Secondly, as special guardianship orders in their current form and application are likely to be inconsistent with the principles of the Oranga Tamariki Act and the duties of the Chief Executive under section 7AA of the Oranga Tamariki Act, this necessitates legislative reform to address these inconsistencies.

None of the options contemplate direct changes to the Care of Children Act.

Draft Options

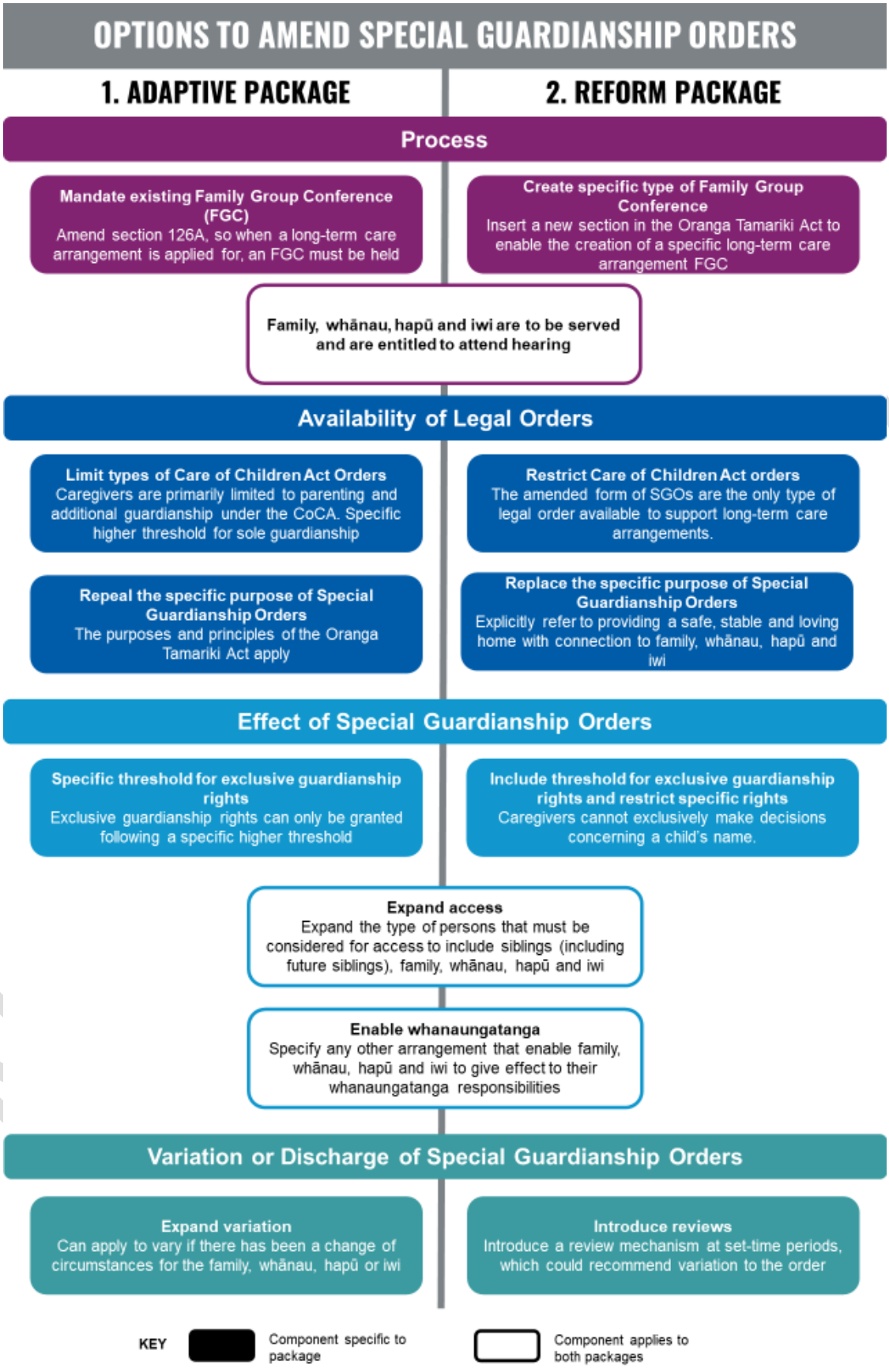
There are four draft options for Special Guardianship Orders:

1. Retain the status quo
2. Repeal special guardianship orders and revert to orders under CoCA.
3. Two variations on amending special guardianship orders, which cover:
    a. the process for entering a long-term care arrangement
    b. the availability of legal orders
    c. the effect of a special guardianship order
    d. the ability to vary or discharge special guardianship orders.

3.1: **Adaptation** – The draft adaptive package largely builds off and expands legal mechanisms that already exist within the Oranga Tamariki Act to support connection to and relationships with family, whānau, hapū and iwi.

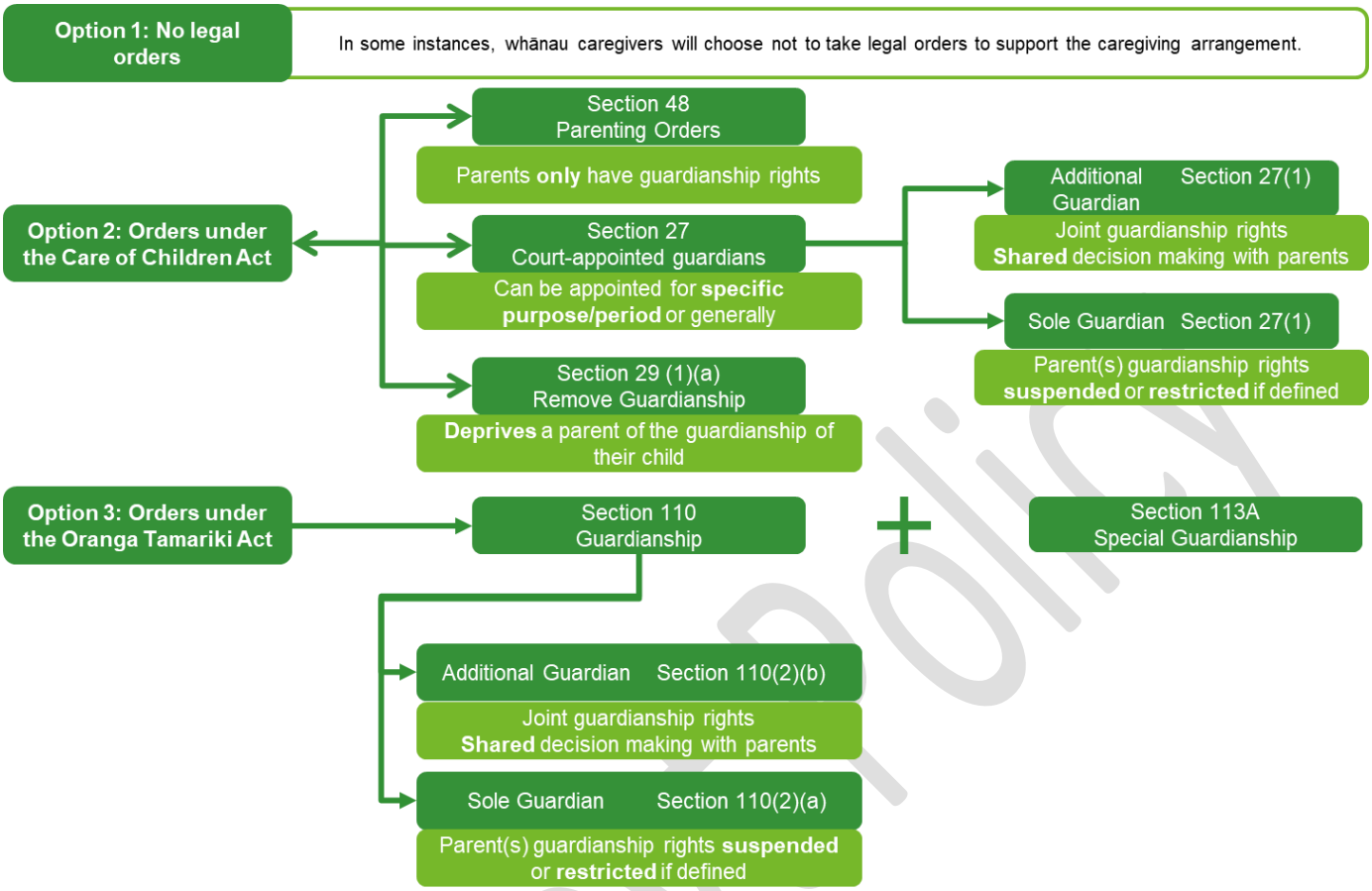
3.2: **Reform** – The draft reform package restricts the use of some legal pathways (e.g., the Care of Children Act) and creates new legal mechanisms to support connection to, and to enable and protect relationships with family, whānau, hapū and iwi.

A summary of the two amendment packages is found below. Appendix 3 provides a more detailed overview of all options.



Preferred Option? We welcome your views on the option you prefer. You can email your thoughts to us at legislation@ot.govt.nz

Appendix 1: Overview of the Legal Framework for Special Guardianship Orders



Appendix 2: Operational Guidance for Applications for Special Guardianship

Oranga Tamariki will only support applications for special guardianship if:

- the needs of te tamaiti cannot be met under parenting and guardianship orders under the Care of Children Act, and
- the terms of the order are consistent with the principles of the Oranga Tamariki Act including the maintenance of whakapapa connections and whanaungatanga responsibilities, and
- we are satisfied that the effects of the proposed order are well understood by tamariki and their whānau.

Support for special guardianship orders means that Oranga Tamariki will:

- provide funding for independent legal costs, as agreed with the site manager, to cover initial legal advice and reasonable costs of the application process.
- communicate to the Court that Oranga Tamariki supports the use of a special guardianship order, primarily through the plan prepared for the child or young person, and a report by the social worker.

Appendix 3: Detailed Description of the Options

1. Retain the Status Quo

Special Guardianship Orders remain in their current form and application. This means:

The applicant is	"a natural person" who will (typically) apply for a section 110 Oranga Tamariki Act Guardianship Order, and section 113A Oranga Tamariki Act Special Guardianship Order concurrently. They must have leave of the court to apply for a section 110 Oranga Tamariki Act Guardianship Order.
The applicant can apply	in respect of a child or young person, who is in the care of Oranga Tamariki, at any time. in respect of a child or young person, who has been in the care of Oranga Tamariki, but the caregiver now has a Care of Children Act 2004 order, the caregiver must have used all of the dispute mechanisms under CoCA to resolve the issue, satisfy the Court that they have been unable to effectively exercise guardianship or day-to-day care responsibilities due to the parents' or other guardians' conduct (which forms a pattern of behaviour), and that the child's wellbeing is threatened or severely disturbed as a result.
The current court process is	that the court must obtain a plan prepared for the child or young person, and a report by the social worker. In the report, the social worker must consider whether there is a realistic possibility that the child or young person can be returned to the care of the parent, guardian, or previous caregiver.
The court must consider	that the special guardianship order may only be made if it is for the purpose of providing the child or young person with a long-term, safe, nurturing, stable and secure environment that enhances their interests. In all matters relating to the administration or application of the Oranga Tamariki Act, the wellbeing and best interests of the child or young person are the first and paramount consideration, having regard to the principles set out in sections 5 and 13 (section 4A(1) Oranga Tamariki Act).
The effect of a special guardianship order is	that the special guardian has custody (the right to possession and care of the child or young person) and the role of providing day-to-day care of the child or young person and may have exclusive guardianship rights. The order must set out access and other rights of existing guardians (usually parents). Including any terms and conditions that apply to those rights. Existing guardians cannot apply to the court to review custody, access, or decisions about exclusive guardianship rights. Custody orders under section 101 of the Oranga Tamariki Act cannot be made, and sections 134 and 135 about reviewing plans do not apply.
The special guardianship order can only be varied or discharged	with leave of the court, unless the application is made by the Chief Executive of Oranga Tamariki, or all parties to the application agree. Leave may only be given for an application for discharge, if there has been a significant change of circumstances for the child or young person. Leave may only be given for an application for variation, if there has been a significant change in circumstances for the child or young person, or their parents.

2. Repeal Special Guardianship Orders

Repeal section 113A and 113B of the Oranga Tamariki Act (and associated provisions that relate to these sections). Long-term care arrangements could be legally supported through Care of Children Act 2004 orders only.

The applicant is	For a parenting order, any eligible person, which (for any person is not a parent or guardian of the child or a spouse or partner of a parent of the child) is any person granted leave to apply by the court. For a guardianship order, any person may apply.
The applicant can apply	once a care or protection order is discharged, as children or young people subject to a section 78, 101 or 110 order are restricted from having orders made under the CoCA. Typically, the Chief Executive of Oranga Tamariki will apply to have the order(s) discharged. If the caregiver is a near relative, or member of the child's or young person's whānau or family group, they may apply for discharge. If they are a non-kin caregiver, they will need leave of the court to apply.
The court process would be	if the child or young person was under a section 101 custody and/or section 110 guardianship order prior to discharge, the court should have obtained a plan prepared for the child or young person, and a report by the social worker. In the report, the social worker must have considered whether there is a realistic possibility that the child or young person can be returned to the care of the parent, guardian, or previous caregiver.
The court must consider	in all matters relating to the administration or application of the CoCA, the welfare and best interests of the child in his or her particular circumstances must be the first and paramount consideration, including decisions being made and implemented within a time frame that is appropriate to the child's sense of time, and the principles in section 5 of CoCA.
The effect of CoCA orders is	for parenting orders, the court will determine when specified persons have the role of providing day-to-day care for, or may have contact with, the child. If the parent(s) does not have the role of providing day-to-day care, the court must consider contact arrangements. For guardianship orders, the court may appoint the caregiver as an additional guardian or sole guardian. If appointed as an additional guardian, the caregiver would work jointly with the parents (or other guardians) to determine, for or with the child, or to help the child to determine, important decisions for and with the child. If appointed as a sole guardian, the parents' (or other existing guardians) guardianship rights are suspended. The court may remove the parent(s) as guardians, depriving the parent of the guardianship of their child. This has a high threshold to be granted (the court must be satisfied that the parent is unwilling to perform or exercise the duties, powers, rights and responsibilities of a guardian, or that the parent is for some grave reason unfit to be a guardian of the child, and that the order will serve the welfare and best interests of the child).
CoCA orders can be varied or discharged	by the court on application by any person that is affected by the order or acting on behalf of the child or young person.
The court may dismiss proceedings	when the continuation of the proceedings is clearly contrary to the welfare and best interests of the child, or the proceedings are frivolous, vexatious or an abuse of the procedure of the court.

3. Amend Special Guardianship Orders

Amend the Oranga Tamariki Act, including amendments to the process for entering a long-term care arrangement, the availability of legal orders to support long-term care arrangements, the effect of special guardianship orders, and the variation and discharge provisions for special guardianship orders.

NOTE: a long-term care arrangement occurs when a child or young person, who has been in the care of Oranga Tamariki, is discharged from Oranga Tamariki care, to be cared for by someone other than their parent(s). These options would **not** apply to children and young people who return to the care of their parents, or children and young people who have not been in State care but are cared for by someone other than their parents.

1. Adaptive Package	2. Reform Package
The Process for Entering a Long-Term Care Arrangement	
Clarify the preliminary process for entering a long-term care arrangement by introducing a mandatory family group conference (FGC)	
Amend section 126A, so that when a long-term care arrangement is applied for, a family group conference must be held The Court **must** direct that a care and protection co-ordinator convene a family group conference for the purpose of considering the application to discharge from the custody of the Chief Executive, and any subsequent legal orders to enable the long-term care arrangement.	**Insert a new section in the Act to enable the creation of a specific long-term care arrangement family group conference** At a hearing for the purpose of reviewing the plans in respect of a child or young person in the custody of Oranga Tamariki, it can be proposed to the Court that a long-term care arrangement be considered. If the Court believes that considering a long-term care arrangement is in the wellbeing and best interests of the child or young person, consistent with the purposes and principles of the Oranga Tamariki Act, then the Court must direct a care and protection co-ordinator to convene a family group conference for the purpose of considering the long-term care arrangement. Further work is required to consider who should be entitled to attend this family group conference e.g., the caregiver and if proceedings concern tamariki or rangatahi Māori, require that their whānau, hapū and iwi are represented at the family group conference. If the child or young person's whakapapa is not known by the care and protection co-ordinator, there must be proof that extensive research has been undertaken.[31] Further work is required to consider how tamariki Māori who do not know their whakapapa can be supported to situate themselves within te ao Māori. This could include specifying that a representative from the mana whenua may be involved in providing this cultural understanding at the family group conference.
This option would use existing family group conference procedures.	This option would involve setting out that a long-term care arrangement family group conference should have the purpose of considering whether a long-term care arrangement is appropriate, and what the specific arrangement would include. If there is agreement, the family group conference could make recommendations to the Court, with a corresponding plan that outlines:

[31] This obligation currently sits in case law. *McHugh v McHugh* refers.

	1. The long-term caregiver(s) who have responsibility for day-to-day care of the child or young person 2. Guardianship arrangements e.g., joint with parents, or specific exclusive guardianship rights held by caregiver(s). 3. Arrangements for connection, including access and contact arrangements with family, whānau, hapū and iwi. 4. Any other requests or arrangements proposed by the family, whānau, hapū and iwi. 5. The child's or young person's long-term needs and proposals for how those needs will be met. Further thinking needs to be undertaken about the process following an FGC for when key people do not reach agreement. For example, this could involve the views of all key people as to whether a long-term care arrangement is appropriate, and outlining their key concerns with the proposals, which could be admitted at the following Court hearing.
Rationale: The process to enter a long-term care arrangement should include involving the family, whānau, hapū and iwi in decision-making. Having the involvement of family, whānau, hapū and iwi increases the likelihood that the arrangement is stable and meets the needs of the child or young person. Building off existing FGC processes enables easier implementation.	**Rationale:** Current FGC processes are primarily designed to support action to enable the child or young person to return to the care of their parent(s). A specific type of FGC would address key issues, roles and responsibilities, and enables family, whānau, hapū and iwi to participate in decision-making. This option would require more resources and implementation support than using existing processes.

Strengthen the serving process and entitle family, whānau, hapū and iwi to be present at a hearing of proceedings when a long-term care arrangement is proposed

This option sits across both amend packages

Oranga Tamariki would have the duty to identify those persons who have responsibilities to the child from within the family, whānau, hapū and iwi, and to communicate this to the Court.[32] The above family group conference process is likely to identify the relevant persons in most circumstances.

Family, whānau, hapū and iwi shall be served with the application that proposes to both discharge orders in favour of Oranga Tamariki and commence a long-term care arrangement, and will be entitled to be present at the hearing.

Rationale: Family, whānau, hapū and iwi should be aware when a long-term care arrangement is proposed for their child or young person and have the opportunity to be heard by the Court.

Serving orders to hapū and iwi in respect of tamariki Māori addresses the issue that whānau may not engage with court processes, by enabling their hapū and iwi to support them, and/or provide a cultural understanding on the implications of the proposed long-term care arrangement.

The Availability of Specific Legal Orders

Amend the availability of Care of Children Act orders (CoCA)

Only at the time of Oranga Tamariki Act orders being discharged could parenting orders (section 48, CoCA) and guardianship orders (section 27, CoCA) be applied for by caregivers. Special guardianship orders would	CoCA orders are unavailable for caregivers to enable long-term care arrangements. SGOs are the only type of legal order available to support long-term care arrangements for caregivers.

[32] This obligation currently exists in case law. *McHugh v McHugh* refers.

also be available. Caregivers may apply for sole guardianship under the CoCA at the time of discharge only after following adapted section 110A requirements (Oranga Tamariki Act): i) The applicant is likely to be unable to effectively exercise guardianship responsibilities or responsibilities to provide day to day care, and ii) The likely inability is due to the existing conduct of the parents/existing guardians, which forms a pattern of behaviour, and iii) The child or young person's wellbeing is being threatened or seriously disturbed as a result. Whether this option is possible within the Oranga Tamariki Act only i.e., not CoCA, will need to be further explored.	Note that the option to not take legal orders to support the caregiving arrangement would still be available.
Rationale: Sole guardianship allows a caregiver to make all important decisions in respect of a child or young person. Having a specific higher threshold for sole guardianship mitigates the risk that these orders will be used to undermine the connection to and role of family, whānau, hapū and iwi. There must be evidence that the child's wellbeing is threatened by the actions of existing guardians before their role as guardians are suspended.	**Rationale:** Due to the different purposes and principles of the CoCA, CoCA is unlikely to provide a suitable framework for securing long-term care arrangements that reflect the role of family, whānau, hapū and iwi. It is not appropriate for CoCA orders to be used as these orders can disrupt the connection with family, whānau, hapū and iwi.

Repeal the purpose of Special Guardianship Orders

Repeal section 113A(1)(a) which states that "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 their interests." The purposes and principles of the Oranga Tamariki Act apply by implication, and the purpose is implied by the effect of the order.	**Replace section 113A(1)(a)** with: "the appointment is made for the purpose of providing the child or young person with a safe, stable and loving home with connection to family, whānau, hapū and iwi."
Rationale: The power to make an SGO to provide a child with "a long-term, safe, nurturing, stable, and secure environment that enhances their interests" and the nature of those orders significantly diminishes the te ao Māori principles of mana tamaiti, whanaungatanga and whakapapa. Repealing this purpose provides clarity that decisions should consider the purposes and principles of the Oranga Tamariki Act.	**Rationale:** This amendment clarifies that these orders are only to be used for a long-term care arrangement and equally weights that this arrangement must enable a child or young person to be cared for by, and maintain connection to, those that are important in their life.

The effect of Special Guardianship Orders

Guardianship

If caregivers wish to obtain exclusive guardianship rights, they can only do so following adapted section 110A requirements. Caregivers could apply for exclusive	In addition to the threshold in the first package, the option would restrict exclusive guardianship rights so

rights at the time the SGO is granted, and would have the right to apply for specific exclusive guardianship rights going forward. The caregivers must demonstrate the following: i) The person is likely to be unable to effectively exercise guardianship responsibilities or responsibilities to provide day to day care, and ii) The inability is due to the existing conduct of the parents/ existing guardians, which forms a pattern of behaviour, and iii) The child or young person's wellbeing is being threatened or seriously disturbed as a result	that rights of the following may not be granted: The child's name, and any changes to it.
Rationale: The original policy rationale for granting caregivers specific exclusive guardianship rights was when parents were not involved in a child's life, were not in a position to contribute to guardianship decisions and/ or were obstructive or threatening. The purpose of this amendment is to demonstrate evidence of the above circumstances before exclusive guardianship rights are granted.	**Rationale:** A child's name is inherent to a child or young person's sense of self and identity, in the context of who they are in respect of their family, whānau, hapū and iwi. Caregivers should not be able to change a child's name without joint decision-making with existing guardians.

Access

This option sits across both amend packages

Expand the type of persons that must be considered for access to include siblings (including future siblings), family, whānau, hapū and iwi. This would be consistent with the purpose of the Oranga Tamariki Act to maintain and strengthen relationships between children and young persons who come to the attention of Oranga Tamariki and their family, whānau, hapū, iwi and family group, and their siblings.[33]
The family group conference process is likely to outline who should be considered for access in respect of the child or young person affected by the order.

Rationale: Expanding access from existing guardians (i.e.**,** parents), enables family, whānau, hapū and iwi to connect with and build relationships with their children and young people. These connections support the child or young person to know who they are in the context of their family and whānau.

Whanaungatanga / other arrangements

This option sits across both amend packages

The Court must consider whether the order should specify any other arrangements that enable family, whānau, hapū and iwi to give effect to their whanaungatanga responsibilities. This section should be able to be utilised flexibly and give legal effect to the arrangements agreed at the above family group conference.

Rationale: Family, whānau, hapū and iwi may propose arrangements that are not considered to be access orders e.g. visiting marae. This amendment gives family, whānau, hapū and iwi the opportunity to give legal effect to these arrangements. These arrangements support the practice of whanaungatanga, recognises whakapapa, and contributes to the child's identity.

The variation and discharge provisions for Special Guardianship Orders

Leave may be granted for an application for variation if there has been a change of circumstance for the family,	Introduce a review mechanism at set time periods that requires a compulsory review of the order. For example,

[33] Section 4(1)(h)(i) and (ii) Oranga Tamariki Act.

whānau, hapū and iwi of the child or young person to whom the order applies.	a review of the long-term care arrangement 2 years after the order was made, and then every 5 years after. The young person would be able to trigger a review as of right from the age of 12. This review may be able to be connected to the existing Permanency Care Support Service (PCSS). Guidance would need to be developed for the content of the review and process for the review. The review would be able to recommend any variation to the legal orders. During these reviews, family, whānau, hapū and iwi would be able to apply to the court to vary access orders.
Rationale: This amendment reflects that the oranga and wellbeing of family and whānau, hapū and iwi can and will change over time. Family and whānau may not have been involved when a long-term care arrangement was implemented but should be able to apply to be involved in a child's life.	**Rationale:** The wellbeing and oranga of family, whānau, hapū and iwi can and will change over time. Reviews enable long-term care arrangements to respond to these changes. Reviews give greater effect to the voices of children and young people affected by SGOs, especially as they develop capacity to be increasingly involved in important decisions and arrangements that affect them.