

## Subsequent Children: a step by step guide

The subsequent children sections (s18A – s18D) of the Children, Young Persons and Their Families Act 1989 (CYP&F Act) contain additional things we must do when working with mokopuna whose parent(s) have had mokopuna permanently removed from their care due to abuse or neglect in the past.

This document provides a step-by-step guide for working with the subsequent children provisions, and identifies differences to usual practice or process.

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### Introduction

An assessment of a parent under section 18A of the subsequent children provisions is only carried out if a parent has (or will have) the care of a child aged 0-14 years. The requirement to assess under section 18A of the subsequent children provisions does not apply to young people. The need to complete an assessment under section 18A is triggered if the child is younger than 14 years at the time that Oranga Tamariki becomes aware that there is a subsequent child matter. Proceed with the subsequent child process even if the child turns 14 years part-way through the process.

Parent means a mother, father or step-parent, and does not include near relatives or custody and parenting orders.

It is important to note that the process described here works with the usual Oranga Tamariki processes and practice. The same timeframes apply for the completion of a child and family assessment (CFA) or investigation, and where the specific criteria of s18A and s18B are not met, all usual processes and courses of action are still available.

### Intake and allocation



When the National Contact Centre (NCC) receives a report of concern (or becomes aware that the subsequent child provisions have been triggered), and a person added as a participant to the case is flagged as meeting the s18B criteria, an indicator will automatically appear on the case in CYRAS to identify that an assessment may be required to address s18A subsequent child specific matters.

Any report of concern for a person who meets the criteria of s18B will require further action. The decision response tool will be used to decide whether the case requires a CFA or Investigation, and the response timeframe. Where a flagged person is present, 'no further action' will not be as a decision response option.

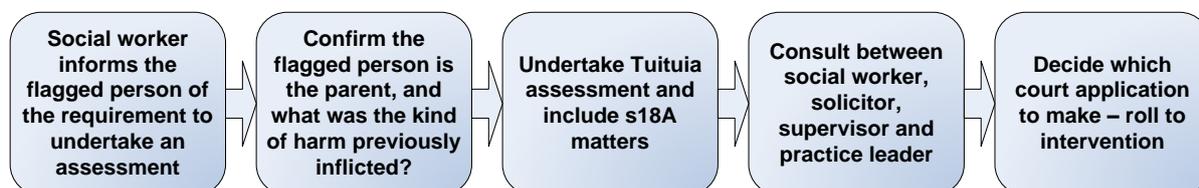
The s18A indicator enables the site to clearly see any case on their intake queue that requires an assessment which includes s18A matters. The site may be able to quickly identify, based upon local knowledge or enquiring with Work and Income for example, that the flagged person is not the parent (i.e. mother, father or step-parent) of the mokopuna.

If this is the case, the 's18A assessment not required' case note will be entered with a rationale for the decision, and upon approval of the casenote by a supervisor or practice leader, this will automatically remove the indicator from the phase.

The report of concern should then be treated as it would be usually. This could include making changes to the response decision if necessary.

Where an assessment is required to include s18A matters, the site will allocate this to a suitably skilled and experienced social worker.

### Assessment and decision making



The social worker and solicitor will work closely together on cases where the assessment includes s18A matters. The social worker will consult with the solicitor, who will review the legal files to establish the s18B criteria have been met (if this is not already clearly recorded in CYRAS), and will provide further context to the kind of harm inflicted or allowed to be inflicted on the previous child.

When the social worker makes contact with the flagged parent(s) they are informed that the subsequent child provisions of the Act have been triggered. This will likely be at the initial visit to the family/whānau. The parent may be confused or concerned about why this assessment must be taken to court. It is important the social worker develops a positive working relationship with the family, keeps them informed, and advises them to seek legal advice.

It is expected that by the time the safety and risk screen is completed, any doubt about whether the criteria are met to require a s18A assessment will have been resolved.

At any time, if concerns for the safety of mokopuna require it, all usual avenues to secure safety are available.

The social worker will undertake a holistic assessment and use the Tuituia assessment framework and recording tools as they would usually do. The Tuituia resources have additional information specifically for subsequent children to assist the social worker. This will help to ensure their assessment adequately answers the question of whether the flagged parent is likely or unlikely to inflict the kind of harm on the subsequent child as was inflicted on the previous child or young person.

A key difference is that the responsibility sits with the parent(s) to demonstrate that they are unlikely to inflict (or allow to be inflicted) the kind of harm as was inflicted previously. In practice, the social worker will be looking at how the parent gathers information and evidence of change, and their engagement in the assessment process.

A child and family consult will take place between the social worker, their supervisor, practice leader and solicitor. The purpose of this is to analyse the information gathered and consider the question of whether the flagged parent(s) is likely or unlikely to inflict (or allow to be inflicted) the kind of harm on the subsequent child as was inflicted on the previous child. This will then determine which court application is made.

CYRAS will not require findings to be entered on these cases before closing the phase; these can be left blank. All findings are available to be applied as usual, if it is substantiated that the mokopuna has been abused or neglected. Do not enter 'Not found' as a finding in subsequent child cases.

All assessments which include s18A matters must be rolled into an intervention to enable the court work to take place.

## Court preparation



A significant difference in subsequent child matters is that, regardless of whether the social worker thinks the subsequent child is likely or unlikely to experience the kind of harm inflicted or allowed to be inflicted on the previous child or young person, an application must be made so that the court can consider the matter.

In addition, a Family Group Conference (FGC) is not held before making an application for declaration. A referral for FGC on the ground of s14 (1) (ba) can only be made by the court.

There are two options for applications:

- s18C Application for confirmation of decision not to apply for a declaration
- s18A Application for declaration that the child is in need of care and/or protection on the ground contained in s14 (1) (ba).

By selecting these as 'orders sought' in CYRAS, the required court templates are made available.

The social worker will be required to provide evidence to support their view and to assist the court in its consideration of the application. It will be helpful for the court to be provided with a written s18A assessment. A template guide for the 's18A Assessment by

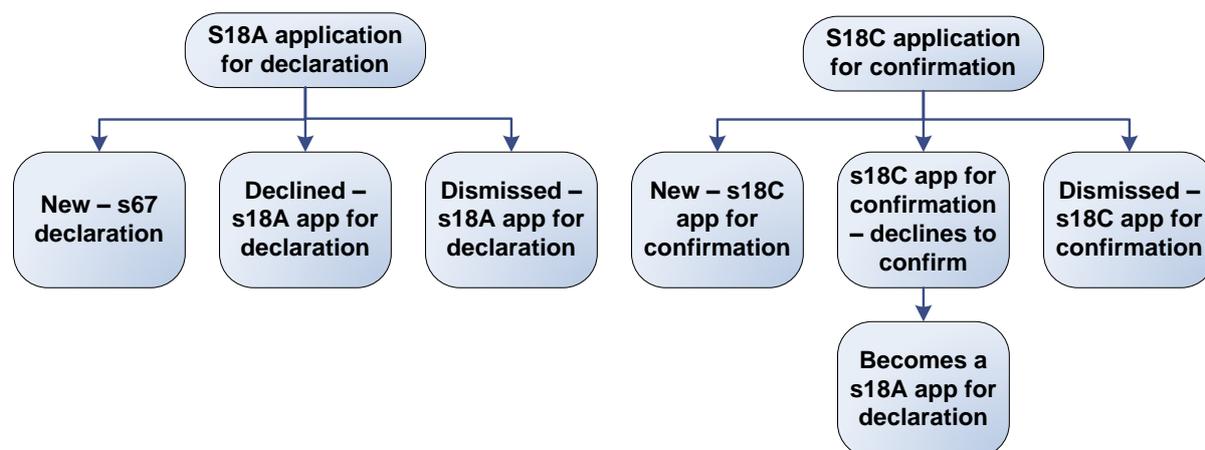
Social Worker' is included with the CYRAS templates for subsequent children. The s18A specific matters contained in the Tuituia assessment, and any other relevant information on file, are copied into the 's18A Assessment by social worker'. Do not provide the court with the Tuituia assessment as it a social work practice tool and it is not the finished document for this court process. In addition, the Tuituia assessment might contain other information that is the subject of a separate investigation or assessment via the usual processes.

The affidavit to accompany the application to the court will identify how the parent(s) meets the s18B (1) criteria and that the assessment was required under s18A (1). The affidavit will also identify the kind of harm inflicted or allowed to be inflicted on the previous child or young person. This sets the context for the analysis of the information gathered in the assessment and the rationale for the type of application made.

The court documents are then created as usual, but it is recommended the practice leader and solicitor have input into the application and affidavit before they are filed in court. If there is any disagreement about the appropriateness of the application being progressed, this should be discussed with the site manager for a final decision.

If the social worker is applying for other orders at the same time, they can ask for the solicitor's assistance with the court document templates, for example an interim custody order or support order. The templates can be adapted by the solicitor to accommodate this.

### Court outcomes



#### ***New - s67 declaration***

The court record will need to remain open while the matter is adjourned as the declaration cannot be made until a FGC has been held (refer to FGC information below).

However, once the declaration is made, this is entered in the court result fields in CYRAS in the usual way.

When a declaration is made, it implies that the care or protection concerns could not be addressed through any other means, so it is likely the social worker will consider applying for another order to ensure the child's safety and well-being.

#### ***Declined - s18A application for declaration***

Where the Judge disagrees with the application for declaration, the court record will record that the court declined the application. 'Declined' is selected as the court result in

CYRAS, and 's18A App for declaration' is selected in the Orders Granted column. This is to enable reporting of court results, and will not display in other parts of CYRAS as an order granted. A discharge date will automatically be generated when the start date is entered. This court record will then be closed.

The s18B flag to show that a person may need to be assessed under s18A must be removed where the court declines an application for declaration. This is because section 18A(7) states that an assessment is not required if the court has been satisfied that the parent is unlikely to inflict, or allow to be inflicted, on the subsequent child the kind of harm that was inflicted on the previous child.

The supervisor will ensure the flag is removed from the parent's person details (demographics tab) in CYRAS.

If the social worker remains concerned for the safety of mokopuna, due to the kind of harm previously inflicted, a consultation between the social worker, supervisor, practice leader and solicitor is recommended to consider other supports available. It may be that there is already another intervention underway in relation to other section 14(1) care and/or protection concerns identified during the assessment/investigation stage.

If no further action is to be taken, the intervention will be closed.

#### ***New - s18C application for confirmation***

Where the Judge is satisfied with the application for confirmation of the decision not to apply for a declaration, they are effectively agreeing that the parent is unlikely to inflict the kind of harm on the subsequent child as was inflicted or allowed to be inflicted on the previous child or young person.

'New' is selected as the court result, and 's18C app for confirmation' is entered as the order granted. The discharge date will automatically populate when the start date is entered. This will display in the legal status field in the CYRAS record for the mokopuna.

The s18B flag to show that a person may need to be assessed under s18A must be removed where the confirm confirms our decision not to apply for a declaration. This is because section 18A(7) states that an assessment is not required if the court has been satisfied that the parent is unlikely to inflict, or allow to be inflicted, on the subsequent child the kind of harm that was inflicted on the previous child.

The supervisor will ensure the flag is removed from the parent's person details (demographics tab) in CYRAS.

If other concerns were identified in the assessment these are dealt with in the usual way, and, if no further action is to be taken, the intervention will be closed.

#### ***Declines to confirm – s18C application for confirmation***

When the Judge is not satisfied that the parents have demonstrated that they are unlikely to inflict, or allow to be inflicted, the kind of harm on the subsequent child that was inflicted or allowed to be inflicted on the previous child or young person, then the application for confirmation is automatically treated as an application for declaration. The court will provide written reasons for its decision.

'Declined' is selected as the court result for this application. In the court preparation field, the 'miscellaneous' order sought is used to generate any further court document templates required.

The application for declaration is treated as having been made by the Chief Executive or their representative. A FGC must then be held and the court is the referrer under s72 (3). The application to the court and the court's written reasons will be treated as a court referral for a FGC. Refer to the section on FGCs below.

The FGC written record, along with any accompanying information required by the court, will be filed and served as usual and the application for declaration will proceed in court as usual.

The court's decision will then be entered as a court result in the record, as either a 'New' 's67 declaration' or, if the court is satisfied that the parents have demonstrated that they are unlikely to repeat their past, or the FGC plans addresses the care or protection concerns, a 'Declined' 's18A application for declaration' is entered.

### ***Dismissed – s18A application for declaration and s18C application for confirmation***

For both types of application, the Judge may dismiss the application because the criteria in s18A (1) are not met.

In these cases, the subsequent child sections of the Act no longer apply and any action taken is as per usual processes. 'Dismissed' is entered as the court result, with the corresponding application identified in the Order Granted column. This is to assist the ability to report on the outcomes of subsequent child applications, but will not display in other legal status fields in CYRAS. The discharge date will automatically populate when the start date is entered. This court record will be closed.

Where the court finds that the parent does not meet the s18B criteria, the supervisor will remove the flag from the parent's person details (demographics tab) in CYRAS. If the court finds that the criteria in s18A(1) are not met, for example that the flagged person did not meet the definition of parent, or does not have, or is not likely to have, care or custody of the subsequent child, then the flag will remain in place.

A child and family consult will assist with decision making about whether concerns remain and what action to take. Where there are concerns, the usual process and practice applies.

If no further action is to be taken, the intervention will be closed.

### ***Adjourn for further information***

After considering the application, the court may adjourn the hearing and require the social worker to provide further information or the court may ask the social worker to reconsider all or any aspect of the assessment and report to court. The court will set the timeframe they expect a response by. The social worker will consult with the solicitor to ensure the further information meets the court's requirements.

## **Care and Protection Family Group Conferences**



There are two occasions where a Care and Protection Family Group Conference (FGC) will be held as part of subsequent child matters:

- When the court has received an application for declaration and is considering making a declaration on the ground contained in s14 (1) (ba).
- when the court declines to confirm an application for confirmation, gives written reasons for the decision, and treats it as an application for declaration.

There is still the option of holding a hui-a-whānau prior to this, if necessary.

The FGC is an opportunity for the family/whānau to make a plan to address the care and protection concerns, and s73 of the CYP&F Act whereby the declaration is not made if the concerns can be addressed by other means. However, the whānau can also decide to disagree with the concerns, and this is treated as non-agreement at FGC.

### ***FGC following an application for declaration***

When the court receives the social workers application for declaration, the court will refer for a FGC. A social worker is not permitted to refer for FGC on the grounds of s14 (1) (ba) but s72 (whereby the court is not to make a declaration unless a FGC is held) still applies.

As is usual practice, the care and protection co-ordinator will consult and work closely with the social worker and supervisor to understand the context for the FGC.

The process for convening the FGC runs as usual. The co-ordinator will be mindful of the context for the FGC; that the court is already involved and it may have already signalled its view that the child is in need of care and/or protection. It will be important to approach this in a positive light as an opportunity for the family/whānau to plan to address the past issues and the court's concerns.

The FGC written record will be filed in court, along with any other supporting documents the court may have requested.

### ***FGC following an application for confirmation being declined***

When the court declines an application for confirmation of the decision not to apply for a declaration, it automatically becomes an application for declaration. Before the court can make any declaration, a FGC must be held. The court will provide written reasons for declining the application, and these should form the basis for presenting the concerns to the FGC.

The FGC will be referred for by the court. The co-ordinator will consult and work closely with the social worker and supervisor to understand the context for the FGC.

The site manager, in consultation with the practice leader and supervisor will decide who is best placed to take on the role of the Chief Executive's representative, and therefore be the applicant for the declaration and entitled to attend the FGC.

This could be the social worker, if they feel confident to do so, or it could be another site staff member or a regional team member. Whoever takes on this role will need to be mindful that, as the applicant for the declaration, they may be required to attend court. If the social worker is not the applicant/Chief Executive's representative, they can attend the FGC in an information giver role but **are not** as an entitled member.

This may be a challenging dynamic for staff to be in, with potentially differing beliefs about the care or protection concerns. It will be important for all involved to work through any difficulties together in advance.

The Chief Executive's representative will be able to assist the co-ordinator in ensuring that the court's written reasons for declining the application are addressed in the conference. It is likely that the Lawyer for Child will also be able to assist, if appointed.

The process for convening the FGC runs as usual. The co-ordinator will be mindful of the context for the FGC; that the social worker had not applied for a declaration, which the family/whānau will also be aware of. Essentially the court has said that it is not satisfied at this point in time that the parent(s) has demonstrated that the past harm will not be repeated with another child. The FGC is being asked to consider the information and to decide if the subsequent child is in need of care and/or protection on the basis of s14(1)(ba).

If there is agreement then the FGC can make decisions and recommendations, and formulate a plan. This then provides an opportunity for the family/whānau to be involved in the decision making.

The FGC written record will be filed in court, along with any other supporting documents that the court may have requested.

### **Concurrent pathways**

It is possible that the social worker will be progressing a s18A application for declaration as well as forming a belief about another 'kind of harm'.

How these potentially concurrent pathways are managed will need to be determined on a case by case basis, through consultation with those involved.

If the pathways align to deal with all matters at one FGC, the differing grounds must still be separated and will require two written records.

### **Other pathways of information coming to Oranga Tamariki**

There are a number of other pathways where Oranga Tamariki receive information about mokopuna and their family/whānau. Regardless of how the information arrives, if Oranga Tamariki become aware of a subsequent child, the assessment and application to court must be undertaken.

#### ***Youth Justice***

If a youth justice referral is made for a child aged 10-14, and a person who has been flagged as meeting the criteria for s18B is a participant, this will trigger the indicator on the intake.

The youth justice co-ordinator will open the Intervention phase as usual to commence their preparation work for the youth justice FGC. Through their initial engagement with the family/whānau, it is expected the co-ordinator will establish if the flagged person is a parent of the child. The co-ordinator will confirm this in the pre-FGC consult, which will include a care and protection supervisor.

Where it is agreed that the subsequent child sections do not apply, the 's18A not required' case note will be added in the phase case notes folder of the Intake phase, and upon approval by a supervisor or practice leader, will automatically remove the indicator.

Where the subsequent child sections do apply, the co-ordinator and care and protection supervisor will agree who will enter a new report of concern to enable the assessment work to take place. When complete, the existing Intervention phase is used for the court record.

It will be agreed locally who is appropriately skilled, experienced, and best placed to undertake the assessment. Youth Justice social workers are not necessarily excluded from undertaking this assessment.

If the flagged person is the victim, the youth justice co-ordinator will attempt to establish whether they are the parent of a subsequent child, and if necessary make a new report of concern.

### ***Contact Records***

When a contact record is being created, and the author notices a flagged person is involved as a family or household member as a participant, this information will be used to form the basis of a report of concern to ensure the subsequent child matters are addressed.

### ***FVIARS***

When a family/whānau which includes a subsequent child, or a child believed to be a subsequent child, is identified at a FVIARS meeting, a report of concern will be made to Oranga Tamariki.

### ***Domestic and International Adoptions, and Surrogacy***

Where an adoption or surrogacy case involves a subsequent child, either as a child already in the family, or one about to be born or adopted, it is recommended a consult take place between the social worker, supervisor, practice leader and solicitor. This will confirm what work is to take place and by whom.

### ***International casework***

Where an enquiry or notification is made and, through a check in CYRAS, it becomes apparent there is a subsequent child, the allocated social worker and their supervisor will consult and agree whether the assessment to address the s18A matters can be undertaken through the existing notification, or whether they need to add a new notification. The process should then proceed as described.

The sections of the CYP&F Act relating to subsequent children apply only to mokopuna residing in New Zealand. If convictions or the removal of a previous child occurred overseas, the criteria for s18B will not be met as s18B(1) refers to convictions under the Crimes Act 1961, and sections of the CYP&F Act only. This does not stop normal processes being taken to assess the risks and safety for the child.