

Departmental Disclosure Statement

Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

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

This disclosure statement was prepared by the Ministry of Social Development.

The Ministry of Social Development certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

8 December 2016.

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Part One: General Policy Statement

This Bill is an omnibus Bill introduced under Standing Order 263(a). That Standing Order provides that an omnibus Bill to amend more than 1 Act may be introduced if amendments deal with an interrelated topic that can be regarded as implementing a single broad policy.

Introduction

The provisions contained in this omnibus Bill cover a wide range of legislative reforms to support the new operating model for the Ministry for Vulnerable Children, Oranga Tamariki. The Bill follows on from the Children, Young Persons, and Their Families (Advocacy, Workforce, and Age Settings) Amendment Bill and will establish the statutory framework required to create a more child-centred operating model to meet the needs of vulnerable children and young persons. Proposals that support the establishment of the new operating model reflect the Government's objectives for a child-centred care and protection system and a balanced youth justice system.

The objectives of this Bill are to support each of the 5 service areas of the new operating model for the Ministry for Vulnerable Children, Oranga Tamariki (namely, prevention, intensive intervention, care support, youth justice services, and transition support) and to support change across the wider system.

Features of the reform programme include—

- updated objects and general principles in the Children, Young Persons, and Their Families Act 1989 (the CYPF Act):
- measures to empower the Ministry for Vulnerable Children, Oranga Tamariki to respond more flexibly to reports of concern:
- revised principles to support an early intervention response and help ensure safe, stable, and loving care for children and young persons at home or in care:
- the development of National Care Standards and provision of financial support for caregivers that is more responsive to the changing needs of children in care:
- amendments to extend the youth justice jurisdiction to include 17-year-olds and strengthen the system's response to serious and recidivist offenders:
- increased legal representation for young persons in the youth justice system and strengthened support for community-based remand options:
- a new entitlement for young persons transitioning out of care to remain or return to living with a caregiver up to age 21:
- measures to help ensure that the transition needs of young persons transitioning out of care or a youth justice facility are addressed:
- a bespoke information sharing framework within the CYPF Act:
- accountability arrangements to ensure the co-ordination of prevention activity across government and to address the needs of children and young persons in need of care or protection (but not in care), in the youth justice system and in care:
- amendments to the purposes and principles in the CYPF Act to recognise mana tamaiti (tamariki), whakapapa, and the practice of whanaungatanga for Māori children and young persons who come to the attention of the department:
- amendments to the duties of the chief executive in the CYPF Act to provide for a practical commitment to the principles of the Treaty of Waitangi.

These changes require amendments to the CYPF Act and the Vulnerable Children Act 2014. The Bill also makes minor amendments to the Criminal Procedure Act 2011, the Income Tax Act 2007, and the Social Security Act 1964.

Context

The Bill is a response to Government decisions following recommendations from the Modernising Child, Youth and Family Expert Panel, which was established in April 2015 to develop a plan for the modernisation of the statutory care, protection, and youth justice systems in New Zealand.

Foundations for child-centred system

Updating purposes of CYPF Act:

The Bill reframes the objects of the CYPF Act as purposes by updating the wording of the existing purposes to reflect the intent of creating a more child-centred system. It gives prominence to preventing vulnerability before it occurs, and to intervening at the earliest available opportunity to support positive life outcomes for those who need the intervention or protection of the State.

New purposes in the Bill also recognise mana tamaiti (tamariki), whakapapa, and whanaungatanga of Māori children and young persons, and promote approaches that support capability building at a whānau, hapū, and iwi level.

Definition of young person:

The Bill updates the definition of young person in the CYPF Act so that young persons who are (or have been) married or in civil unions can access the protections in the CYPF Act when appropriate. This will help to address any inequities that might result from marital status, and increase available protections for victims of forced marriage. It will also prevent unnecessary disadvantage for young persons who may separate from a civil union or marriage and are not able to return to a family home.

Making the general principles of the CYPF Act more child-centred:

The Bill promotes a holistic approach to understanding what is in the interests of the child or young person by replacing “welfare” with “well-being”. General principles of the CYPF Act reflect the following concepts:

- *making the well-being and interests of the child or young person a primary (but not paramount) consideration in youth justice matters*—this recognises the vulnerability of young persons within the youth justice system, as shown by the high rate of neuro-developmental disorders within this sector of the population:
- *updating the general principles to take a more child-centred approach*—this places all children and young persons (including children with disabilities) at the centre of decision-making, considers them within the context of their families, whānau, hapū, iwi, and broader networks and communities, and includes specific recognition and respect for a child’s or young person’s mana tamaiti (tamariki) and the whakapapa and whanaungatanga responsibilities of whānau, hapū, and iwi:
- *having a new and separate principle of child and young person participation*—this clearly recognises the importance of the voice of the child, elevates its status, and more firmly embeds this aspect of child-centred practice. It also provides clear direction for social workers and other practitioners as to what it means to take the child or young person’s voice into account.

Public reporting mechanism:

The Bill creates a legislative requirement on the responsible Minister (or a delegate) to report to Parliament, no later than 1 July 2022 and at least once every 3 years thereafter, on the extent to which accountability settings are meeting the needs of the children and young persons with whom the Ministry for Vulnerable Children, Oranga Tamariki is concerned. This will include reporting specifically on outcomes for Māori, and on whether further legislative change is recommended.

Providing for practical commitment to principles of Treaty of Waitangi:

To better address the over-representation of Māori children and young persons in the care, protection, and youth justice systems, the Bill proposes new duties to ensure that the new operating model realises a child-centred approach that is culturally authentic and successful in delivering improved outcomes for Māori children, young persons and whānau.

The Bill broadens and clarifies the duties on the chief executive to provide a practical commitment to the principles of the Treaty of Waitangi. By requiring measurable outcomes to be set for Māori children and young persons who come to the attention of the Ministry, and reporting publicly on those measures on an annual basis, the new duties explicitly recognise and reinforce accountability for the system's impact on Māori children and young persons.

The duties also provide a requirement to seek to develop strategic partnerships with iwi and Māori organisations to contribute to setting and achieving these expectations and targets. Strategic partnerships that are developed will seek to enable innovation, information exchange, opportunities for delegation of functions, and provision and review of guidance to support cultural competency as a best practice feature of the responsible department's workforce.

Rights of complaint and review:

It is essential to the credibility of responses to vulnerable children and young persons that checks and balances be put in place that promote transparent, effective, and timely consideration of concerns raised about individual cases. The Bill places a duty on the chief executive to ensure that complaint mechanisms are established that enable any child or young person affected by actions taken under the CYPF Act, and family members or caregivers of that child or young person, to raise concerns. The chief executive will be required to ensure that departmental policies and services have regard to the outcomes of cases considered through the complaints process. The Bill also provides for regulations to be made establishing independent mechanisms to review the chief executive's response to complaints.

Prevention

To support the focus of the new operating model on intervening earlier to prevent escalation into the statutory systems, the Bill places a duty on the chief executive to ensure that services to reduce the impact of early risk factors are co-ordinated with government-funded activities (of the kind set out in the vulnerable children's plan) for improving outcomes for children, young persons, and families, or reducing the impact of early risk factors. The social investment approach will be an essential building block of the new operating model. The Bill amends the existing duty to promote the establishment of services in the CYPF Act so that it refers to services to improve the long-term outcomes of children and young persons rather than services to advance welfare.

Responding to concerns

Section 14 of the CYPF Act sets out the definition of a child or young person in need of care or protection, and establishes the threshold for State intervention. The Bill updates and simplifies the wording of the section to make it clearer and easier to apply in practice, without further changing the content and substance of the section. The updated section clarifies that a child or young person is in need of care or protection if they have suffered, or are likely to suffer, serious harm. The Bill also specifically recognises the effect of cumulative harm in this section.

The Bill amends the care and protection principles in the CYPF Act to support an early intervention response, with a focus on safe, stable, and loving care for children and young persons. These principles will help to ensure that interventions properly involve children, young persons, families, and whānau and, as a first step, assist and support families and whānau to nurture and care for their children and young persons. By requiring early consideration and planning for the possibility that alternative care arrangements may be needed for a child, the revised principles aim to reduce the instability and disruption a child or young person can experience when a decision is made to remove them from their home.

There is a new mandate for the department administering the CYPF Act to respond in more flexible ways to reports of concern, which will embed a focus of addressing a child or young person's needs and well-being at an early stage of their contact with the Ministry. The Bill enables a person who has concerns about the well-being of a child or young person (which

allows a broader range of concerns than currently) to report the matter to a constable or the department responsible for discharging functions under the CYPF Act. It also enables the chief executive to respond to reports of concern through a range of service pathways, including, but not limited to, referral to universal or targeted services provided by the Ministry for Vulnerable Children, Oranga Tamariki or any other agency.

In response to a report of concern, the Bill provides that the chief executive may take no further action if they determine that the report discloses no identifiable risk of harm or that appropriate action has already been taken.

The family group conference process is the primary vehicle for family decision-making and planning for any child or young person in need of care or protection. Family group conferences are currently available only where a child or young person is believed to be in need of care or protection. The Bill allows the chief executive to make a family group conference available to any child or young person about whom a report of concern has been received and where the chief executive considers that holding a conference will best assist in formulating a plan to help the child or young person. This makes the family group conference process an option for children, young persons and their families who have support needs, but who do not meet the statutory definition of being in need of care or protection.

The Bill creates a new duty on the chief executive to develop and publish policies and practice standards in relation to the chief executive's role in family group conferences and to give effect to their outcomes. It clarifies that the purpose of care or protection family group conferences is to make recommendations, decisions, and plans that meet the care, protection, or well-being needs of the child or young person.

Care support

The Bill contains new and amended principles for a more child-centred care system, to help practitioners make more child-centred placement decisions by strengthening the requirement for a child's or young person's views to be sought, and focusing on preserving key relationships (including with siblings).

In order to best meet the needs of children and young persons in care, the Bill places an explicit duty on the chief executive to comply with National Care Standards.

There are new provisions that require care standards to be set by regulation. These will set out the rights of children and young persons in care, the standard of care that they can expect, and standards for caregiver training, monitoring, and support. The aim of these standards will be to ensure children and young persons in care and in youth justice residences are cared for in a way that improves their outcomes and meets their needs, expectations, and fundamental rights.

The Bill enables regulations to be made that set out the circumstances in which and the levels at which financial assistance can be paid, so that financial support is responsive to the changing needs of children and young persons and their particular care needs. This will help to provide the foundation for a proactive and transparent financial support system that assists caregiving families to manage through critical times and cope with challenging behaviours.

The tax treatment of foster care payments is not explicit in law, which can give rise to some inconsistencies, particularly when higher discretionary payments are made. The Bill will prevent these inconsistencies by providing that foster care payments made under section 363 of the CYPF Act in respect of the care of children and young persons are exempt income for tax purposes.

Youth justice

Extending youth justice jurisdiction:

The Bill expands the age settings for the youth justice system to include 17-year-olds. However, for 17-year-olds charged with serious offences (such as aggravated robbery, wounding with intent to cause grievous bodily harm, and arson), the Bill requires that they be immediately transferred to an adult court on their first appearance in the Youth Court.

The Bill contains additional provisions to deal with 17-year-olds who present serious risk to the safety of others in the youth justice system. The Bill provides for the Youth Court to be able to cancel a supervision with residence order and substitute it with another order (such as an order for conviction and transfer to the District Court) as a consequence of a 17-year-old's behaviour and failure to comply with the terms of the order or their plan.

The Bill also allows the department responsible for administering the CYPF Act and the Department of Corrections to jointly apply to the Youth Court for a 17-year-old to be detained in a youth unit of an adult facility when necessary to ensure the safety of young persons in youth justice residences.

The existing discretion of Youth Court Judges to transfer serious or recidivist young offenders to an adult court for sentencing will be strengthened, requiring Judges to give priority to the seriousness of the offending, past criminal history, the interests of the victim, and the risk to others.

The Bill also provides for non-imprisonable traffic offences that can result in a conviction to be dealt with in the youth justice system.

Enhancing youth justice provisions:

While there are existing provisions in the CYPF Act to address the causes of the offending behaviour of children and young persons who come to the attention of authorities for alleged offending, it is important that their broader unmet needs are also addressed. The Bill requires a person performing a function or exercising a power under Part 4 to consider whether any child or young person whose offending (whether alleged, admitted or proved) is being resolved through the youth justice system would benefit from being referred to care, protection, or well-being services under the CYFP Act.

The Bill enhances the rights of young persons in the youth justice system by increasing the availability of legal representation to children and young persons before Youth Court proceedings are commenced. State-funded legal representatives must be appointed for those young persons who are alleged to have committed serious offences that carry a penalty of 10 years imprisonment or more at intention to charge family group conferences. This proposal is targeted at those young persons who are most likely to face escalation through the Youth Court.

The Bill also makes several amendments to strengthen the use of community-based options as an alternative to being detained in youth justice residences on remand. The Bill amends principles in the CYPF Act to the effect that children or young persons alleged to have committed offences should be kept in the community so far as is practicable and consonant with the need to ensure public safety. It also requires that the placement of children and young persons who have been detained in custody pending further appearance before the court in youth justice residences be reviewed every 14 days, unless special circumstances apply. It is anticipated that a mandatory review process will help reduce the detention of children and young persons in youth justice residences for long periods. In addition, the court must review orders to detain young persons in Police custody every 24 hours.

The Bill amends the requirements around youth justice family group conferences so that they consider achieving restorative justice outcomes and consider the support needed by children or young persons on completion of a family group conference plan or court order.

Transition support

Young persons leaving care are among the most vulnerable people in New Zealand. The Bill includes a series of amendments to strengthen the system that will support vulnerable young persons to successfully take up the opportunities of adulthood, including new purpose statements and principles to guide decision making.

These proposals will provide strong direction in the CYPF Act to ensure that the new operating model for the Ministry for Vulnerable Children, Oranga Tamariki supports young persons to gradually transition to independence and increasingly lead decision making on matters that are important to them.

For young persons up to age 21 who have been in care, the Bill creates an entitlement to receive support from the chief executive to remain (or return to) living with a caregiver.

This entitlement will have the following components:

- the young person will receive support to decide whether to continue, or return to, living with their former caregiver and negotiate an arrangement with them:
- financial assistance to meet the necessary costs of the ongoing living arrangement:
- the caregiver will assist the young person to gradually become more independent:
- the department responsible for administering the CYPF Act will monitor the living arrangement against specific standards.

Transitions to independence are not linear. Many young adults in their early twenties are in unsettled circumstances, including moving between flats, jobs, and relationships, and entering the labour force. The Bill extends the existing provision to enable the chief executive, where required, to provide transition advice and assistance to young persons leaving care or a youth justice facility up to age 25.

The Bill also requires the chief executive to make reasonable efforts to remain in contact with a young person who has been in care or a youth justice residence up to age 21. Eligibility criteria for this, and other new transition supports, are contained in the Bill.

The Bill allows regulations to be made to cover detailed policy settings for these amendments, in particular to tailor any financial assistance and to focus transition assistance for young persons aged 21 to 25 on those with higher and more complex needs.

Information sharing

The Bill creates a new framework to facilitate the timely and consistent exchange of personal information about individual vulnerable children and young persons to promote their safety and well-being.

The Bill amends the CYPF Act to incorporate the child welfare and protection sector for the specific purpose of collecting, holding, using, and disclosing personal information under Part 2 of the CYPF Act. The sector includes child welfare and protection agencies and independent persons, as defined by the Bill. Provision is made for other organisations or persons, or classes of organisations or persons, to be included by Order in Council.

The Bill makes clear that the welfare and interests of any child or young person take precedence over any pre-existing professional duty of confidentiality (other than legal professional privilege). The Bill also provides immunity from civil, criminal, or disciplinary proceedings to any person or agency disclosing or supplying information in good faith.

The information covered by the new provisions relates to a child or young person, a family member, or someone in a domestic relationship with the child or young person, or someone likely to reside with the child or young person.

The scope of coverage for the mandatory supply of information regarding an individual vulnerable child or young person has been broadened so that information for investigations and statutory responses under the CYPF Act must be provided by a wider range of agencies and individuals. The Bill also extends the powers that the department responsible for administering the CYPF Act will have to require any person or agency, as defined in the Privacy Act 1993, to provide information for investigations and other statutory responses.

Enabling provisions allow any agency or person in the sector to use and share personal information it holds for the specific child welfare and safety purposes specified in Part 2 of the CYPF Act (which covers care and protection).

The Bill includes a presumptive provision that child welfare and protection agencies and independent persons must share personal information about a child or young person when requested to do so by another authorised agency or independent person, unless there are good

grounds for not doing so. This is a key element of the framework designed to shift the behaviour of practitioners towards the active exchange of information.

The new provisions also require agencies that use linked datasets of identifiable personal information to publicly notify, on a website, specified information about the use of this data at least once each year.

The Bill provides that whenever a child welfare and protection agency or independent person intends to disclose personal information about a child or young person, including about a family member or anyone in a domestic relationship with them, that agency or independent person should engage with the child or young person unless impractical or undesirable to do so. Engaging with the child or young person in this instance involves informing them of the intended disclosure, giving the child or young person an opportunity to express views on the intended disclosure, and taking into account any expressed views.

The Bill also allows the responsible Minister to issue codes that provide guidance to child welfare and protection agencies and independent persons about the application of the information sharing provisions of the CYPF Act.

Strengthening cross-agency action

The Ministry for Vulnerable Children, Oranga Tamariki will require services from other agencies to help address the needs of vulnerable children. The Bill amends Part 1 of the Vulnerable Children Act 2014 to place responsibility for co-ordination of the vulnerable children's plan on the chief executive of the department responsible for administering the CYPF Act. It also amends the requirements around the development of a vulnerable children's plan to ensure children's agencies work together strategically around populations of interest to the Ministry for Vulnerable Children, Oranga Tamariki. To create a greater focus on prevention, the vulnerable children's plan will be required to set out outcomes to be achieved with respect to children and young persons with early risk factors for entry into the statutory care, protection, or youth justice systems. The Bill also creates a requirement to report on progress against these outcomes.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p>The policy to be given effect by the Bill forms part of Government's response to the Modernising Child, Youth and Family Expert Panel's (the Expert Panel) Interim Report and Final Report:</p> <ul style="list-style-type: none"> Modernising Child, Youth and Family Expert Panel, Modernising Child, Youth and Family Expert Panel: Interim report (July 2015) – accessible at: https://www.msd.govt.nz/about-msd-and-our-work/work-programmes/cyf-modernisation/ Modernising Child, Youth and Family Expert Panel, Expert Panel Final Report: Investing in New Zealand's Children and their Families (published April 2016) – accessible at: http://www.msd.govt.nz/about-msd-and-our-work/work-programmes/investing-in-children/index.html <p>See Appendix One for more detail, and information on further reviews and reports that informed the policy in the Bill.</p>	

Relevant international treaties

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

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>To inform the main policy decisions taken by the Government relating to the contents of this Bill, the following regulatory impact statements (RISs) were produced:</p> <ul style="list-style-type: none"> <i>Investing in Children: Foundations for a child-centred system</i> – produced by the Ministry of Social Development (MSD) – 7 September 2016, accessible at http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/ <i>Investing in Children: Intensive Intervention</i> – produced by MSD – 7 September 2016, accessible at http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/ <i>Investing in Children: Care Support</i> – produced by MSD – 7 September 2016, accessible at http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/ <i>Investing in Children: Enhancing Youth Justice Provisions</i> – produced by MSD – 19 September 2016, accessible at http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/ <i>Investing in Children: Transition to Independence</i> – produced by MSD – 26 September 2016, accessible at http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/ <i>Investing in Children: Information Sharing</i> – produced by the Ministry of Justice (MoJ) – 26 September 2016, accessible at http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/ <i>Investing in Children: Legislative support for accountabilities in the new operating model</i> – produced by MSD – 17 October 2016, accessible at http://www.msd.govt.nz/about-msd- 	

[and-our-work/publications-resources/regulatory-impact-statements/](http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/)

- *Investing in Children: Legislative support for improving outcomes for Māori children and young people* – produced by MSD – 5 December 2016, accessible at <http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/>
- *Investing in Children: Including 17 year olds and convictable traffic offences not punishable by imprisonment in the youth justice system* – produced by MoJ – 28 November 2016, accessible at <http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/>
- *Investing in Children: Including 17 year olds and convictable traffic offences not punishable by imprisonment in the youth justice system (Addendum RIS)* – produced by MoJ – 28 November 2016, accessible at <http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/>

Certain information from these RISs has been withheld in line with Official Information Act 1982. Brief reasons for these redactions are provided in Appendix One.

These RISs can also be found and downloaded on Treasury's website:
<http://www.treasury.govt.nz/publications/informationreleases/ris>

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?

YES

Most of the RISs outlined above met the threshold for receiving an independent opinion on the quality of the RISs from the RIA Team based in the Treasury. The *Investing in Children: Legislative support for improving outcomes for Māori children and young people* RIS was reviewed by the Chief Policy Analyst for the Ministry of Social Development. Treasury's opinions on the RISs are set out in full in Appendix One of this disclosure statement.

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?

YES

Accountabilities

The new paragraph 7(2)(bac) (inserted by clause 11) in the Bill places a duty on the chief executive to comply with the standards of care prescribed in regulations made under new paragraph 447(fa) (inserted by clause 119). This differs slightly from the closest option in the *Investing in Children: Legislative support for accountabilities in the new operating model* RIS which is a duty to take reasonable steps to ensure the needs of children and young people in care are addressed (pages 38-40).

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?

NO

2.5. For the policy to be given effect by this Bill, is there analysis available on:

(a) the size of the potential costs and benefits?

YES

(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?

NO

(a) Analysis on the size of the potential costs and benefits of the provisions is available in the

relevant Cabinet papers and RISs.

The relevant page numbers in the RISs (accessed through the links above in section 2.3) are provided below:

- *Investing in Children: Foundations for a child-centred system* (pages 18–31)
- *Investing in Children: Intensive Intervention* (pages 12–18)
- *Investing in Children: Care Support* (pages 19–36)
- *Investing in Children: Enhancing Youth Justice Provisions* (pages 16, 19–29, 34)
- *Investing in Children: Transition to Independence* (pages 27–28, 34–35) – analysis on options for transition support up to age 25 can be found in the *Investing in Children: Legislative support for accountabilities in the new operating model* (pages 41–45)
- *Investing in Children: Information Sharing* (pages 12–19)
- *Investing in Children: Legislative support for accountabilities in the new operating model* (pages 19–58)
- *Investing in Children: Legislative support for improving outcomes for Māori children and young people* – produced by MSD – 5 December 2016 (pages 10–17)
- *Investing in Children: Including 17 year olds and convictable traffic offences not punishable by imprisonment in the youth justice system* (pages 15- 26 and 37-60; and pages 3-7 of Addendum RIS)

The RISs generally provide an indication of the relative scope and magnitude of the options' operational implications, as these will be refined during detailed design work being undertaken as part of the business case for the new operating model.

The legislative proposals aim to be enabling so that the development of the new operating model is not constrained. Complementary work is underway to design the operational model supported by these enabling legislative proposals. This includes developing detailed costings of the wider changes and identifying impacts on the workforce.

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>To ensure the benefits of provisions in this Bill are fully realised, other mechanisms are critical (eg service design, guidance and training for staff, and other regulatory effort) to ensure compliance and adherence to the intent of the provisions.</p> <p>See Appendix One for more detail.</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

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

During development of the proposals, the policy to be given effect by this Bill was assessed for its alignment with the United Nations Convention on the Rights of the Child (UNCROC). Where relevant, a child impact assessment was used.

In the following RISs, all of the policy options were assessed by their consistency with the Treaty of Waitangi, UNCROC, and other international obligations:

- *Investing in Children: Foundations for a child-centred system*
- *Investing in Children: Intensive Intervention*
- *Investing in Children: Care Support*
- *Investing in Children: Enhancing Youth Justice Provisions*
- *Investing in Children: Transition to Independence*
- *Investing in Children: Legislative support for accountabilities in the new operating model*

In the RISs covering information sharing and youth justice age-settings, options were assessed using a different set of assessment criteria. However, all of the Cabinet papers included sections addressing consistency with UNCROC (the Cabinet papers are accessible on MSD's website at: <http://www.msd.govt.nz/about-msd-and-our-work/work-programmes/investing-in-children/new-childrens-agency-established.html>). Where relevant, Cabinet papers also addressed consistency with the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).

The treatment of 17-year-olds within the new design of the youth justice system significantly increases the alignment of New Zealand's justice system to UNCROC. It also responds to a recommendation from the United Nations Committee on the Rights of the Child to raise the age of criminal majority to 18 years (recommendation 45 (b) in the Committee's 2016 concluding recommendations on NZ's Fifth Periodic Report).

Repealing sections 141 and 142 of the CYPF Act is relevant to a recommendation by the United Nations Committee on the Rights of Persons with Disabilities that section 141 and 142 should be re-examined to ensure that children with disabilities have the same safeguards as other children when they are placed in out of home care.¹ The recommendation from the United Nations Committee on the Rights of Persons with Disabilities is accessible at:

http://www.ombudsman.parliament.nz/ckeditor_assets/attachments/327/uncrpd_committee_concluding_observations.pdf?1416967104 (page 6).

Consistency with the government's Treaty of Waitangi obligations

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

The proposals included in the Bill respond to the Expert Panel's recommendations, which were developed with input from a Māori Reference Group.

During policy development, officials worked with Te Puni Kōkiri and senior officials from MSD who have expertise in culturally responsible practices for tamariki Māori. Officials also engaged with Crown Law throughout the development of the proposals.

All of the provisions covered in the RISs outlined in section 3.1 were assessed to determine

¹ United Nations Committee on the Rights of Persons with Disabilities. (2014). *Concluding observations on the initial report of New Zealand*.

their consistency with the Treaty of Waitangi.
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Consistency with the New Zealand Bill of Rights Act 1990

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

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	NO
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES
<p>(b)</p> <p>(i) Clause 4 amends section 2(1) of the CYPF Act to extend the definition of a young person in need of care or protection to include 16 and 17-year-olds who are married or in a civil union. As a consequence, the Family Court would be able to make orders for this group of young people under the CYPF Act. The practical impact of this change is expected to be minimal as few 16 and 17-year-olds marry or enter a civil union in New Zealand and very few are likely to be in need of care or protection.</p> <p>(ii) Clause 118 places limitations on proceedings:</p> <ul style="list-style-type: none">• New section 445E(a) requires any matter that may be the subject of a complaint under the chief executive's complaints process to have been through that process, and any available independent review process before any proceedings may be brought.• New section 445E(b) places a limitation on proceedings for breach of duty in respect of a child or young person being brought by any person other than the child or young person affected. <p>(iii) The Bill extends the youth justice jurisdiction to include 17-year-olds, and non-imprisonable traffic offences that can result in a conviction. Existing requirements will also be strengthened to refer serious and recidivist 17-year-old offenders for sentencing under the adult court system.</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>(i) MoJ was consulted on the extension of the definition of a young person in need of care and protection. MoJ raised no concerns.</p> <p>(ii) MoJ was consulted on the draft Bill and vetted the Bill against the Bill of Rights Act 1990, which included provisions that limit proceedings. MoJ have provided advice to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 (see response to question 3.3 above).</p> <p>(iii) MoJ led the policy work on extending the jurisdiction of the youth justice system to include 17-year-olds and non-imprisonable traffic offences.</p>	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
The Bill makes a series of significant changes to provisions relating to the collection, use and disclosure of personal information. These are contained in clause 38, which replaces section 66 of the CYPF Act. More detail on these changes is provided in Appendix Two.	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
The Privacy Commissioner has been consulted on policy proposals in person and in writing. More detail about the nature of this consultation is provided in Appendix Two.	

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
External consultation was undertaken as part of the Expert Panel's development of recommendations to modernise Child, Youth and Family. Some external consultation was also undertaken for particular policy areas and on the draft Bill. Further information is provided in Appendix Two.	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
Policy proposals for accountabilities, Māori outcomes, and references in the principles to UNCROC and UNCRPD were developed in consultation with Crown Law, in particular to ensure that advice on the policy details was informed by an understanding of legal implications for the Crown associated with proposals. In addition, proposals were consulted on with operational staff and key agencies that would have a role in implementing the provisions.	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

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

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

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	YES
<p>The Bill contains the following provisions that create or amend civil or criminal immunity:</p> <ul style="list-style-type: none"> • Clause 16 amends section 16 of the CYPF Act so that the protection against proceedings afforded by section 16 to persons disclosing or supplying information extends to persons doing so under any provision of Part 2. • Clause 118 inserts new section 445F relating to limitations on Crown liability. <p>Further detail is provided in Appendix Three.</p>	

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	YES
<p><u>Care Support</u></p> <ul style="list-style-type: none"> • Clause 62, by inserting a new section 110AA, enables the Family Court to make interim guardianship orders where necessary to respond to immediate concerns, including sole guardianship orders, pending determination of care or protection proceedings. • Clause 68 repeals sections 141 and 142 of the CYPF Act so that children with disabilities who require out-of-home care (including those currently in these placements) will be subject to the same care mechanisms, protections and safeguards as other children in the statutory care system. <p><u>Youth justice age-settings</u></p>	

- The Bill provides for the inclusion of 17-year-olds in the youth justice system. It extends decision-making powers in the youth justice system to include 17-year-olds and non-imprisonable traffic offences (through the change in the definition of 'young person' in section 2(1) amended by clause 4).
- Clauses 102 to 104 specify the circumstances and criteria for decision-making to occur in the youth justice system in the Bill. In addition, the Bill provides direction on circumstances when serious and recidivist young offenders could be addressed within the adult justice system (Clause 107).

Further detail is provided in Appendix Three.

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?

NO

4.8. Does this Bill create or amend any other powers to make delegated legislation?

YES

This Bill includes a number of provisions that provide for delegated legislation. See Appendix Three for detail.

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?

YES

There are a few provisions that may be considered unusual. These are discussed in Appendix Three.

Appendix One: Further Information Relating to Part Two

Published reviews or evaluations – question 2.1

The following reports informed the development of policy for this Bill.

Modernising Child, Youth and Family Expert Panel

The policy to be given effect by the Bill forms part of Government's response to the recommendations made by the Expert Panel. The Expert Panel's reports are:

- Modernising Child, Youth and Family Expert Panel, Modernising Child, Youth and Family Expert Panel: Interim report (July 2015) – accessible at: <https://www.msd.govt.nz/about-msd-and-our-work/work-programmes/cyf-modernisation/>
- Modernising Child, Youth and Family Expert Panel, Expert Panel Final Report: Investing in New Zealand's Children and their Families (published April 2016) – accessible at: <http://www.msd.govt.nz/about-msd-and-our-work/work-programmes/investing-in-children/index.html>

The reports were informed by data on outcomes of those who come into contact with the care, protection and youth justice systems, international comparisons, and the voices of children and young people, parents, caregivers, social workers and other key stakeholders.

These reports provided a detailed analysis of the challenges facing the current system and provided advice on the nature and scale of reform required. They emphasised the need to address a complex set of fundamental issues in the wider system, including changes to the legislation.

Green Paper for Vulnerable Children and White Paper for Vulnerable Children

Close to 10,000 public submissions were received on the Green Paper for Vulnerable Children, which asked New Zealanders to focus on our most vulnerable children: how we care for and protect them, the trade-offs and sacrifices we are prepared to make, and the opportunities we want them to have.

The submissions partly informed policy development for this Bill.

- Green Paper for Vulnerable Children: Complete Summary of Submissions accessible at: <https://www.msd.govt.nz/documents/about-msd-and-our-work/work-programmes/policy-development/green-paper-vulnerable-children/the-green-paper-for-vulnerable-children-submissions.pdf>
- White Paper for Vulnerable Children – accessible at: <http://childrensactionplan.govt.nz/resources/white-paper/>

Other key reviews or evaluations that influenced the policy being given effect by the Bill:

- Smith, M, Report to Hon Paula Bennett, Minister for Social Development and Employment – Following an Inquiry into the serious abuse of a nine year old girl and other matters relating to the welfare, safety and protection of children in New Zealand (published March 2011) – accessible at https://www.beehive.govt.nz/sites/all/files/Smith_report.pdf
- Office of the Children's Commissioner, State of Care 2016 (published June 2016) – accessible at <http://www.occ.org.nz/our-work/state-of-care/>
- Ministry of Social Development, Disabled Children: Voluntary Out-of-home Placement Review, Summary of Consultation Findings (published November 2015) – accessible at <https://www.msd.govt.nz/about-msd-and-our-work/work-programmes/policy-development/disabled-children-project/in-home-support-and-voluntary-out-of-home-placement-review.html>

- Youth Crime Action Plan 2013-2023 Report (published October 2013)
– accessible at: <http://www.justice.govt.nz/assets/Documents/Publications/YCAP-full-report.pdf>
- Inquiry into the identification, rehabilitation, and care and protection of child offenders – accessible at: <https://www.parliament.nz/resource/0000210983>
- Diverted from Counsel: Filling the Rights Gaps in New Zealand's Youth justice Model – accessible at: <http://fulbright.org.nz/publications/diverted-from-counsel-filling-the-rights-gap-in-new-zealands-youth-justice-model>

Regulatory impact analysis – question 2.3

Certain information from the following RISs has been withheld with reference to the Official Information Act 1982. A brief reason for the redactions is provided for each RIS.

- Investing in Children: Intensive Intervention: Accessible at <http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/>
Redactions were made in this RIS under sections 9(2)(f)(iv) and 9(2)(h) of the Official Information Act, due to some of the content containing confidential advice and legally privileged comments.
- Investing in Children: Care Support: Accessible at <http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/>
Redactions were made in this RIS under section 9(2)(f)(iv) of the Official Information Act, due to some of the content containing confidential advice.
- Investing in Children: Enhancing Youth Justice: Accessible at <http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/>
Redactions were made in this RIS under sections 9(2)(f)(iv) and 9(2)(g)(i) of the Official Information Act, due to some of the content containing confidential and free and frank advice.
- Investing in Children: Transition to Independence: Accessible at <http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/>
Redactions were made in this RIS under section 9(2)(f)(iv) of the Official Information Act, due to some content containing confidential advice.
- Investing in Children: Information Sharing: Accessible at <http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/>
Redactions were made in this RIS under sections 9(2)(f)(iv) and 9(2)(g)(i) of the Official Information Act, due to some of the content containing confidential and free and frank advice.
- Investing in Children: Legislative support for accountabilities in the new operating model: Accessible at <http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/>
Redactions were made in this RIS under sections 9(2)(f)(iv) and 9(2)(h) of the Official Information Act, due to some of the content containing confidential advice and legally privileged comments.
- Including 17 year-olds, and convictable traffic offences not punishable by imprisonment, in the youth justice system (and Addendum RIS): Accessible at <http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/>
Redactions were made in these RISs under sections 9(2)(f)(iv) and 9(2)(g)(i) of the Official Information Act, due to some of the content containing confidential and free and frank advice.

Independent opinion on RIS quality – question 2.3.1

All of the RISs met the threshold for receiving an independent opinion on the quality of the RISs from the RIA Team based in the Treasury. Their opinions for Cabinet on these RISs are set out below.

Investing in Children: Foundations for a child-centred system

7 September 2016

“The Regulatory Impact Analysis Team at the Treasury (RIAT) has reviewed the Regulatory Impact Statement (RIS) produced by the Ministry of Social Development. The reviewers consider that the information and analysis summarised in the RIS **partially meets** the quality assurance criteria for regulatory impact analysis.

In particular, the problem definition does not sufficiently identify the root causes of the failure of system actors to take a child-centred approach. The RIS identifies the influence legislation can have on expectations and practice, but does not adequately demonstrate that current legislation is an impediment to system actors taking a child-centred approach and therefore does not establish that legislative change is a necessary response.

It will therefore be important, in the detailed design of the new arrangements, to identify and address factors other than legislative requirements that affect agency and practitioner decision making.”

Investing in Children: Intensive intervention

7 September 2016

“The Regulatory Impact Analysis Team at the Treasury (RIAT) has reviewed the Regulatory Impact Statement produced by the Ministry of Social Development. The reviewers consider that the information and analysis summarised in the RIS **meets** the QA criteria. It makes the case that changes in the legislation are necessary to address possible areas of uncertainty and inadequate guidance.

However, as noted, the actual impact of decisions will largely depend on the detailed design of the new arrangements. It will be important in that design work to identify and address factors other than legislative requirements that affect agency and practitioner decision making.”

Investing in Children: Care support

7 September 2016

“The Regulatory Impact Analysis Team at the Treasury (RIAT) has reviewed the Regulatory Impact Statement produced by the Ministry of Social Development. The reviewers consider that the information and analysis summarised in the RIS **partially meets** the quality assurance criteria for regulatory impact analysis.

In particular, the problem definition is unclear and does not support the conclusion that the real problem with the current care support system is legislation. Furthermore, in the option analysis the positive impacts and benefits of the preferred options are largely based on an assumption of full compliance and optimal operational implementation. However, the RIS does not describe how the preferred options will be implemented and how implementation risks, including non-compliance, will be mitigated.

It will therefore be, important in work on implementation of the new arrangements, to identify and address factors other than legislative requirements that affect agency and practitioner decision making. This will enable a more informed and confident view of the likely impacts in practice.”

Investing in Children: Enhancing Youth Justice Provisions

19 September 2016

“The Regulatory Impact Analysis Team (RIAT) has reviewed the above Regulatory Impact Statement prepared by the Ministry of Social Development and considers that the information

and analysis summarised therein **meets** the quality assurance criteria. It sets out the concerns with the present system, explores non regulatory and regulatory options to address them, and makes the case that changes in the legislation are necessary to direct behavioural change and enable operational development.

However, the actual impact of the proposed changes is highly dependent on the subsequent implementation design, the availability of adequate funding and services, as well as workforce capacity and, ultimately, the responses of the children, young people and families themselves. It will therefore be important carefully to monitor the operation and outcomes of the new approaches.”

Investing in Children: Transition to Independence

26 September 2016

“The Regulatory Impact Analysis Team at the Treasury (RIAT) has reviewed the RIS prepared by the Ministry of Social Development and associated supporting material, and considers that the information and analysis summarised in the RIS **meets** the quality assurance criteria.

The RIS sets out a range of both regulatory and non-regulatory options, and sets out trade-offs between options in a clear and comprehensible manner. In many cases the preferred option appears to address the uncertainty as to whether a new agency can be held accountable for its performance without a clear legislative mandate.

However, as noted, the actual impact of decisions will largely depend on the detailed design of the new arrangements. It will be important in that design work to identify and address factors other than legislative requirements that affect agency and practitioner decision making.”

Investing in Children: Information Sharing

26 September 2016

“The Regulatory Impact Analysis Team at the Treasury (RIAT) has reviewed the Regulatory Impact Statement produced by the Ministry of Justice on behalf of the Ministry of Social Development. The reviewers consider that the information and analysis summarised in the RIS **partially meets** the QA criteria. It makes the case that changes in the legislation are necessary to enable greater information exchange and address areas of uncertainty amongst professionals.

The RIS is also transparent, notably in the Privacy Commissioner's concerns and several findings in the stakeholders' analysis, about the potential risks entailed in mandating (as opposed to enabling and facilitating) information exchange. These risks have not been fully explored or addressed in the RIS due to the lack of consultation with all the agencies and representative professional bodies affected by the proposed framework. It will be important, in the design and implementation stages, to work closely with those agencies to mitigate those risks.”

Investing in Children: Legislative support for accountabilities in the new operating model

17 October 2016

“The Regulatory Impact Analysis Team at the Treasury (RIAT) has reviewed the Regulatory Impact Statement produced by the Ministry of Social Development. The reviewers consider that the information and analysis summarised in the RIS **meets** the QA criteria. It makes the case that legislative along with operational changes are necessary to underpin the accountability structure of the New Ministry for Vulnerable Children and to support the new operating model.

However, the actual impact of decisions will largely depend on the detailed design of the new arrangements. Therefore, it is important to put a comprehensive monitoring and evaluation process in place, to measure the success of the new system and identify any additional changes needed.”

Including 17 year olds, and convictable traffic offences not punishable by imprisonment in the youth justice system

28 November 2016

“The Regulatory Impact Analysis Team at the Treasury (RIAT) has reviewed the Regulatory Impact Statement “Including 17 year olds and convictable traffic offences not punishable by imprisonment in the youth justice system” produced by the Ministry of Justice. The reviewers consider that the information and analysis summarised in the RIS does not meet the quality assurance criteria for regulatory impact analysis.

The RIS does not analyse the impacts of recommendations 8, 10 to 12 and 14 in the Cabinet Paper. Officials have attempted to incorporate these late changes into the analysis, but there are evidence gaps in the consideration of overall impacts and the policy objectives appear to have been applied inconsistently. Based on the stated objectives of the reforms, the proposals have potentially significant implications for vulnerable people and for longer-term justice outcomes.”

Including 17 year olds, and convictable traffic offences not punishable by imprisonment in the youth justice system (Addendum RIS)

28 November 2016

“The Regulatory Impact Analysis Team at the Treasury (RIAT) has reviewed the Regulatory Impact Statement “Including 17 year olds and convictable traffic offences not punishable by imprisonment in the youth justice system” produced by the Ministry of Justice. The reviewers consider that the information and analysis summarised in the RIS meets the quality assurance criteria for regulatory impact analysis.

The initial RIS draws on a wide range of evidence, from both New Zealand and overseas, of the probable benefits of including more young people within the Youth justice system. It also includes a formal cost benefit analysis showing that under reasonable assumptions, quantifiable effects will take some time to show a positive return, but that these are likely to increase over the long term. The addendum analyses additional proposals that generate a greater distinction between 17-year old and younger serious and recidivist offenders. It shows that it is difficult to assess in advance, whether the different impacts of these proposals on the original cost-benefit analysis will cancel each other out. If the proposals are implemented RIAT would recommend provision for a full evaluation of outcomes in practice.”

Effect of compliance and regulator effort – question 2.6

(a)

The size of the costs and benefits of these provisions will depend in large part on the design of the new operating model and its success in designing a high-performing system. The benefits of provisions in the Bill are not likely to be fully realised unless there is effective compliance.

For those provisions that require Ministerial and organisational compliance (eg the requirement on the chief executive to develop and publish policies and practice standards in relation to their role in conducting family group conferences and giving effect to their outcomes (new paragraph 7(2)(baf) as amended by clause 11), the benefits are not considered to be affected by potential for varying levels of compliance. This is because there will be a clear expectation of compliance on the chief executive or Minister to carry out these duties.

For provisions that require compliance from staff (eg the new requirement that a person performing a function or exercising a power in relation to a child or young person who is alleged to have or has committed an offence must, when doing so, consider whether the child or young person would benefit from being referred to care, protection, or wellbeing services (new subsection 208(2) inserted by clause 92), compliance may be more variable if there is not sufficient support and regulation.

(b)

Some of the costs and benefits of new and amended obligations will be affected by the nature and level of regulatory effort put into encouraging compliance.

As mentioned above, provisions that require staff compliance will require more regulatory effort than those that require Ministerial or organisational compliance, if the benefits of those provisions are to be fully realised.

In these cases, it is expected that the development and provision of information, training, guidance and the establishment of new processes will be required to ensure that the responsible persons have the information and skills they need to comply with new duties and standards.

To support compliance, the Bill also includes:

- a new requirement for the chief executive to establish complaints mechanisms (new paragraph 7(2)(bad) inserted by clause 11)
- a regulation-making power to provide for mechanisms independent of the department to review the chief executive's response to complaints (new paragraph 447(gb) inserted by clause 119)
- a requirement for the responsible Minister to appoint an agency or body to monitor compliance with prescribed standards of care and to report on the operation of those prescribed standards to the Minister (new section 447A inserted by clause 120)
- a public reporting mechanism to report back to Parliament by 1 July 2022 (and every three years thereafter) on whether the current accountability settings meet the needs of children and young people, and Māori children and young people in particular, with whom the department is concerned, and whether any legislation should be repealed and any amendments are necessary or desirable (new section 448B inserted by clause 121)

Other mechanisms that support compliance include the oversight responsibilities of the Children's Commissioner and changes to strengthen accountability through the public sector performance management framework (*Investing in Children: Legislative support for accountabilities in the new operating model* RIS, pages 12-13, 20, 25, 29, 33, 37, and 41).

Appendix Two: Further Information Relating to Part Three

Collection and use of personal information – question 3.5

Clause 4 inserts definitions of “child welfare and protection agency” and “independent person” in section 2 of the CYPF Act. These groups are subject to some of the new information sharing proposals.

Clause 38 replaces section 66 in the CYPF Act with a new bespoke information sharing regime. This includes:

- broadening the scope of those required to supply information to the department responsible for administering the CYPF Act or the New Zealand Police to include every agency within the meaning of section 2(1) of the Privacy Act 1993, which therefore includes private persons, and broadening the scope of the purposes for which that information may be required (new section 66)
- a new enabling provision that allows a child welfare agency or person in the sector to use and share personal information it holds for specific child welfare and safety purposes, irrespective of the purpose for which the information was collected (new section 66C)
- a requirement for any child welfare agency or person to supply information about a child or young person, or a class of children or young person, when requested to do so by another child welfare agency, unless the requested agency is not satisfied that information will assist the requestor, or reasonably believes that one of the specified exceptions applies (new sections 66E, 66F and 66G)
- a principle that when considering disclosing personal information, the discloser should engage with the child or young person whom the information relates to, where appropriate, and take their view into account (new section 66I)
- provisions enabling the responsible Minister to issue a code of practice for information sharing (new sections 66J to 66N)
- setting out the relationship with the Privacy Act 1993, the Education Act 1989 and the Official Information Act 1982, and confirming that, if there is any inconsistency between these provisions and the Privacy Act, these provisions prevail (new section 66O)

The framework incorporates a number of important safeguards:

- the power to compulsorily collect information can only be exercised by the department responsible for administering the CYPF Act or the Police for the specific purpose of assessing whether a child or young person is in need of care or protection or assistance under new subsection 17(2A) (inserted by clause 17) or for proceedings under Part 2 of the CYPF Act (new section 66)
- information collected under new section 66 cannot be used to investigate an offence, or in any proceedings other than under Part 2, and cannot be disclosed to other agencies where the information was provided in breach of a duty of confidence and the person who is the subject of the information has not consented to the disclosure (new section 66B)
- the purposes for which information can be used or disclosed are specified, which immediately limits the information of relevance and the uses to which it can be put to (new section 66A and 66C)
- there will be an obligation on any supplier of information to “reasonably believe” that the information will assist the recipient to fulfil any of the specified purposes for which disclosure is permitted, and requires the requestor to provide sufficient information to enable a decision about disclosure to be made (new sections 66C(b) and 66F(a))

- a child welfare and protection agency or an independent person has a number of grounds for declining a request for information, including where disclosure is likely to increase the risk of a child or young person being subject to harm, ill-treatment, abuse, neglect or deprivation, or where disclosure is contrary to the child's or young person's express wishes and is not in their best interests (new section 66G)
- the Information Privacy Principles (IPPs) in the Privacy Act 1993 will continue to apply, notwithstanding that some IPPs will be overridden by these new information-sharing provisions in Part 2 of the CYPF Act. This means important privacy protections will be preserved, including those relating to informing individuals about collection (IPP 3), the storage and security of information (IPP 5), the rights of individuals to access and correct information (IPPs 6 & 7), and the obligation to ensure the accuracy of information before it is used (IPP 8)
- a requirement for any child welfare and protection agency or independent person to annually publish information about the production of combined data sets that involve information relating to a child or young person and how these data sets are used (new section 66D)
- a requirement to have complaints mechanisms so children and young people, parents, families, and caregivers are able to complain about actions taken by the chief executive and his or her delegates under the CYPF Act in relation to children and young persons (including information sharing) (new paragraph 7(2)(bad) inserted by clause 11). This is accompanied by a duty to ensure policies and services take account of outcomes of the complaints process (new paragraph 7(2)(bae) inserted by clause 11).

Privacy Commissioner consultation – question 3.5.1

Information sharing

The Privacy Commissioner was consulted during the policy development process. The Commissioner has serious concerns about the information sharing provisions in clause 38 of the Bill. While the policy intent of the changes was to simplify information sharing for the vulnerable children sector, the Commissioner believes that the information sharing provisions are complex and fragmented, and will be harder, rather than easier, to understand than the current legislative regime. An example raised by the Commissioner is new section 66G (inserted by clause 38), which contains grounds on which agencies can decline requests for information – including that doing so would not be in the best interests of the child – but these do not apply to requests made under new section 66 (inserted by clause 38). The Commissioner considers that this implies that information can be compulsorily acquired even when the holder believes that disclosure is not in the child's best interests.

The Commissioner believes that the process, in which the provisions were developed ahead of a fully designed operating model for the new Ministry for Vulnerable Children, Oranga Tamariki and without consultation with those who will be subject to the regime, has resulted in a Bill that risks being unworkable in practice and may have negative unintended consequences, including deterring those who need help from engaging with support services.

The Commissioner supports the policy intent of the enabling information sharing provision. However, the Commissioner has concerns about the way the purposes for which information may be used and disclosed are drafted in new section 66C(a) of the Bill (inserted by clause 38). The Commissioner's view is that this list is overly broad and therefore difficult to interpret, and should be instead made as similar as possible to the purposes for information use and disclosure contained in recommendation 13.1 of the paper titled "Reform of Family Violence Law, Paper One: Context and Supporting Integrated Responses", submitted to the Cabinet Social Policy Committee by the Minister of Justice, which are more appropriately constrained.

The Commissioner also supports the inclusion of immunity for disclosures made in good faith (clause 16). The Commissioner's view is that this provision, combined with the enabling information sharing provision (modified as per comments above) and existing legislative

provisions that support information sharing, provide a sufficient legal framework to meet all agencies' information sharing needs to identify and support at-risk children.

The Commissioner does not support the extension of new section 66 (inserted by clause 38), and recommends that this section not be amended from the status quo. The Commissioner considers the proposed extension is disproportionate given the breadth and nature of the information that can be obtained and that the information can then be further shared (with few exceptions) with a broad range of agencies. He also believes that section 66 is inconsistent with sections 66E and 66F, to which the withholding grounds in section 66G apply (inserted by clause 38).

The Commissioner opposes the introduction of compulsory information sharing in sections 66E and 66F (inserted by clause 38) on the basis that these provisions may have a negative effect on trust between professionals and with clients, and may therefore result in worse outcomes. He is concerned that the provisions have not been tested with the agencies that will be required to comply with them, noting that developing such a legal framework without involving those in the sector may create risks for children if families in need do not seek services because of the presumption of information sharing.

The Commissioner also raised concerns about having different statutory schemes for information sharing for family violence and care of children. He noted that these schemes may be confusing and complex to implement where the same families and professionals are involved.

The Commissioner considers that new section 66D (inserted by clause 38), which requires public notification about combined data sets, is misleading, as the Bill as drafted does not have the effect of authorising such activity, and what is meant by this activity is not defined. The Commissioner has expressed that this provision appears to be drafted based on an assumption that the "linking and analysing" of datasets is lawful and authorised elsewhere, which is inconsistent with many other statutory provisions which expressly authorise and proscribe information matching regimes. He notes that the more usual model would be for such activity to be expressly defined and authorised, with legislative controls and safeguards.

The views of the Privacy Commissioner were considered in the policy development process.

In response to feedback from the Privacy Commissioner, changes were made to the proposed evaluation of information sharing reforms (see paragraph 80 of the *Investing in Children: Information sharing* RIS). The evaluations will assess whether the information sharing framework has had any unintended adverse effects, such as materially increasing the disengagement of vulnerable children and their families from accessing and using public services.

External consultation – question 3.6

The findings of the Modernising Child, Youth and Family Expert Panel informed the legislative proposals. The Expert Panel undertook a collaborative process with children, young people, families, caregivers, victims of offending, experts and practitioners from across the system, and an extensive review of local and international research and legislation. As part of this process, interviews and workshops were held with system participants, including children, young people, families, victims, caregivers and social workers.

A Practice and Māori Reference Group and a Youth Advisory Panel were also used to test, challenge and refine the Expert Panel's recommendations from the perspectives of key client and stakeholder groups.

The Expert Panel and Secretariat engaged with a number of people with expertise in care, protection and youth justice or analogous sectors both in New Zealand and internationally.

For further details on engagement and consultation refer to the Expert Panel's Final Report, particularly appendices E, F, G and H. See here for the report:

<https://www.msd.govt.nz/documents/about-msd-and-our-work/work-programmes/investing-in-children/investing-in-children-report.pdf>

Further consultation informed the development of specific legislative proposals. A summary of this can be found in the individual RISs:

- *Investing in Children: Foundations for a child-centred system* (page 28)
- *Investing in Children: Intensive intervention* (pages 18 and 19)
- *Investing in Children: Care support* (pages 38 and 39)
- *Investing in Children: Enhancing Youth Justice Provisions* (page 34)
- *Investing in Children: Transition to Independence* (pages 38 and 39)
- *Investing in Children: Information Sharing* (pages 19 – 24)
- *Investing in Children: Legislative support for accountabilities in the new operating model* (pages 59 and 60)
- *Investing in Children: Legislative support for improving outcomes for Māori children and young people* (pages 17 and 18)
- *Including 17 year-olds, and convictable traffic offences not punishable by imprisonment, in the youth justice system* (page 27; and page 7 of the Addendum RIS)

Further to what is discussed in the RISs, consultation was undertaken on the draft Bill with:

- the Principal Youth Court Judge, drawing their attention to provisions of particular interest
- the Children's Commissioner
- the Privacy Commissioner, in relation to information sharing (refer to section 3.5.1).

The Principal Family Court Judge was provided with a copy of the draft Bill.

Appendix Three: Further Information Relating to Part Four

Civil or criminal immunity – question 4.5

Information sharing

Clause 16, in effect, extends the current immunity from civil, criminal, or disciplinary proceedings for disclosure or supply, in good faith, of information concerning a report of ill-treatment or neglect of a child or young person to disclosure or supply of information between child welfare and protection agencies under the new information-sharing provisions.

The protection afforded by this provision is essential to facilitate the sharing of information across the sector. It enables agencies and individuals to share information, where required, confidently and safely, and clearly signals the importance of protecting children in the new system.

Without this amendment, the new information-sharing provisions would likely be ineffectual for fear that disclosing personal information would give rise to legal claims from those whose information is disclosed.

Limitation on Crown liability

New section 445F (inserted by clause 118) clarifies that the Crown, the department responsible for administering the CYPF Act, the chief executive, his or her delegate, and any employee or contractor of the department and caregivers are not liable for anything suffered by a child or young person in care or custody as a consequence of the actions of others.

This section has been included as it would be inconsistent with the policy intent to allow the Crown to be liable for the actions of third parties that are not reasonably within the chief executive's control when discharging functions under the CYPF Act. These provisions are also consistent with existing limitation provisions in the CYPF Act.

Limiting legal risk in this way will not detract from the policy intent, which is to ensure an appropriate standard of care is provided to children and young people.

Significant decision-making powers – question 4.6

Interim guardianship orders

Clause 62 enables the Family Court to make interim guardianship orders where necessary to respond to immediate concerns, including sole guardianship orders, pending determination of care or protection proceedings.

These orders may be made only when the immediate needs of the child or young person cannot be dealt with without making the order. This may occur when final orders have not been made but guardianship decisions are required (ie when there are important decisions that need to be made about the child, including about their health and education) and where the child's guardians are unable or unwilling to make decisions or are wanting to make decisions that are clearly contrary to the wellbeing of the child.

It is appropriate that the court is able to exercise decision making due to its independence and expertise.

The child or young person and family or whanau would be expected to have their views and wishes considered by the court.

The child's or young person's family may use legal representation and may appeal a decision. Judicial review will also apply.

Repeal of sections 141 and 142

Clause 68 repeals sections 141 and 142 of the CYPF Act so that children with disabilities who require out-of-home care (including those currently in these placements) will be subject to the

same care mechanisms, protections and safeguards as other children in the statutory care system.

This is equitable because the same regulatory and administrative framework will apply to all children or young people under the CYPF Act, whether they have a disability or not. In most cases, where out-of-home care is required, this will involve independent decision-making by the court about whether a child is in need of care or protection and how this is to be addressed.

Safeguards on decision-making powers include provision for legal representation and a complaints and review process. The regulatory framework will also include care standards, which are applicable to all children, including children with disabilities.

The ability to appeal decisions or seek judicial review will be available, but are unlikely to arise in this scenario where the parents or caregiver would be seeking care for the child.

Youth justice age-settings

The Bill provides for the inclusion of 17-year-olds in the youth justice system. It extends decision-making powers in the youth justice system to include 17-year-olds as well as non-imprisonable traffic offences (through the change in the definition of 'young person' in section 2(1) amended by clause 4).

Clauses 102 to 104 clearly specify the circumstances and criteria for decision-making to occur in the youth justice system in the Bill. In addition, it provides direction on circumstances when serious and recidivist young offenders could be addressed within the adult justice system (Clause 107).

The youth justice system (including the Youth Court) was established so that young people would be effectively heard, sanctioned and diverted from crime. It delivers accountability and rehabilitation, and includes strong mechanisms for responding to serious and recidivist offending.

The youth justice system is a specialised jurisdiction that uses lay advocates, nominated persons and Youth Advocates as safeguards if a child or young person appears before the Youth Court. In addition, the Office of the Children's Commissioner has powers to review the incarceration of children and young people in residential placements. There are also complaints processes that can be used if there are concerns about the treatment and care of a child or young person placed in the care of the chief executive.

The youth justice system applies principles of natural justice for young offenders and victims. This includes the use of restorative justice principles that actively seek the involvement of victims (where practicable and appropriate) when considering the appropriate response to address the underlying causes of offending.

Powers to make delegated legislation – question 4.8

The Bill strives to strike an appropriate balance between the use of primary and delegated legislation to give effect to policy decisions.

Decisions on which provisions should be given effect in regulations and other delegated legislation were based on the following considerations:

- The level of detail required is unnecessary and cumbersome for primary legislation (such as detail on administration, procedures and specified policies).
- The need for provisions to be flexible and responsive to changes in policy, processes and services (such as to support emerging design of services and other functions in the system, eg, the Office of the Children's Commissioner).
- The issues relate to implementation of a high-level policy or principle (such as financial rules and rates).

New or amended regulation making powers in the Bill are outlined below:

- Clause 119 (new paragraph 447(cb)) allows regulations to prescribe requirements and standards for support arrangements in relation to a young person's entitlement to remain living with a caregiver (as provided for under new section 386AAD inserted by clause 115)
- Clause 119 (new paragraph 447(cc)) allows regulations to prescribe, in relation to the provision of advice and assistance under replaced section 386A and new section 386B (inserted by clause 116) of the CYPF Act:
 - processes and criteria for a needs assessment
 - the types of advice, assistance and services to be available for young people
 - the manner or means of providing advice, assistance, and services to young people
- Clause 119 (new paragraph 447(da)) allows regulations to prescribe the circumstances in which amounts are payable, and the amounts payable, to or on behalf of a child or young person, including advances or reimbursements of reasonable costs and allowances which may vary in accordance with different criteria
- Clause 119 (new paragraph 447(db)) allows regulations to prescribe the eligibility criteria, appointment process and amounts payable for State-funded youth advocates under new section 248A (as inserted by clause 97)
- Clause 119 (new paragraph 447(fa)) requires regulations to prescribe standards of care, in order to meet the reasonable needs of, and provide for loving and stable care for, children and young people in care, including standards about:
 - the standard of care to be provided to children and young people in care arrangements and in residences, including youth justice residences
 - the rights and needs of children and young people (including cultural rights and needs)
 - the training of caregivers
 - the monitoring and support of caregivers
 - the manner in which standards are monitored and reported on
- Clause 119 (new paragraph 447(ga)) allows for regulations to designate organisations or classes of organisations as 'child welfare and protection agencies' and persons or classes of persons as 'independent persons', both of which are referred to in new information sharing provisions
- Clause 119 (new paragraph 447(gb)) allows regulations to provide for mechanisms that are independent of the department to review the chief executive's response to complaints

Safeguards would apply to the regulations as follows:

- Procedural safeguards: Regulations would be made by the Governor-General by Order in Council on the recommendation of the Minister responsible for administering the CYPF Act. All new regulations are also scrutinised by the Regulations Review Committee.
- Specificity: The provisions conferring regulation-making powers are specific about the permissible content of any regulations, rather than being overly broad.
- Accessibility: Regulations would be published and gazetted within a specified time period.

New subsection 447(2) (inserted by clause 119) makes it mandatory for regulations to be set in relation to prescribing standards of care (new paragraph 447(fa) inserted by clause 119). This

will ensure that there are always applicable standards in place, which the chief executive must uphold.

The other regulation-making powers are enabling only.

Other instruments

The Bill enables the responsible Minister to issue Codes that will provide guidance to child welfare and protection agencies and independent persons about the application of the information sharing provisions of the CYPF Act.

The Bill provides that the responsible Minister should not issue a Code unless certain requirements for public notification, consultation on a draft Code and ensuring affected persons are informed have been met. The Code would also be subject to scrutiny by Parliament under the Legislation Act 2012 as a disallowable instrument. The Code would be published.

The provision accords with the principles identified in the Deemed Regulations Report of the Regulations Review Committee as the Codes concern matters of operational detail, will not create criminal sanctions and will apply to a clearly identifiable group (child welfare and protection sector and specified independent persons) rather than to the public at large.

Any other unusual provisions or features – question 4.9

Responding to concerns

Extension to the use of family group conference:

Clause 18 inserts new section 18AAA to allow the chief executive, if they are not satisfied that a child or young person is in need of care or protection but believe that holding a family group conference would best assist in formulating a plan to help the child or young person, to refer a case to a care and protection co-ordinator to convene a family group conference.

This supports an approach, and principles in the CYPF Act, to ensure that best efforts are made to provide assistance to parents, whānau or usual caregivers to enable them to continue to provide a safe, stable and loving home for their child or young person.

This provision is necessary to enable a broader group of children and young people to access the support provided through family group conferences' co-ordination, planning and engagement functions – helping families and agencies or individuals without the situation having met the care or protection threshold.

Information sharing powers

Scope of sector for the purpose of information sharing:

Clause 4 amends section 2 to provide a definition of the sector described as 'child welfare and protection agencies and independent persons'. This is unusual because statutory obligations will be applied to a broad range of agencies (including non-Crown agencies) and independent persons.

A broad definition of 'child welfare and protection agencies' and 'independent persons' is necessary to support the sharing of information between those who hold it. It acknowledges that information about the wellbeing and safety of children and young people may be held by a wide range of organisations, including non-government organisations, schools, and housing providers, and a number of individuals who may or may not be directly employed by a 'child welfare and protection agency', such as mental health workers and early childhood teachers.

Officials considered whether a narrower definition of 'child welfare and protection agencies' should be used due to concerns about the ability of some non-government agencies to be part of the new framework. Officials concluded that the appropriate response is to offer guidance and training for all agencies rather than restrict the types of agencies to which the definition applies.

Power to request information:

The Bill authorises 'child welfare and protection agencies and independent persons' to request information relating to the safety, welfare or wellbeing of children, young people and their families from other 'child welfare and protection agencies and independent persons' (new section 66E inserted by clause 38). The provisions also require the 'child welfare and protection agencies and independent persons' that the information is requested from to supply the information unless they believe one of the reasons to decline set out in the Bill applies (new sections 66F and 66G inserted by clause 38).

It is intended to promote the sharing of information about the wellbeing and safety of children and young people between those who have information and those who need it, among government and non-government agencies, without being restricted by barriers in the Privacy Act.

The provisions are necessary because, without them, there is no requirement or express authority to supply requested information, therefore potentially preventing information reaching those who need it.

Options discussed in the *Investing in Children: Information sharing* RIS, such as codes of practice or Approved Information Sharing Agreements provided an alternative to this approach but were considered to be less effective than a presumption in favour of sharing information.

Role of caregivers

New section 386AAF (inserted by clause 115) of the Bill sets out the role of caregivers for young people aged up to 21 who have left care and are living in support arrangements.

Although the role will be broadly set out in legislation, elements of the role will not be directly enforceable against caregivers. The provision has been included so that the legislation provides clarity as to how the key elements of the support arrangement will function.

The chief executive will be required to monitor the support arrangement, and it is the intention that the chief executive could withdraw support for the arrangement (and find another suitable caregiver) if they consider that living with the caregiver would be detrimental to the wellbeing of young person.

Inclusion of Māori concepts in legislation:

The provisions in the Bill draw upon Māori concepts (and terms), including 'mana tamaiti (tamariiki)', 'whanaungatanga', and 'whakapapa' (sections 4(k) (clause 6), 5(d) (clause 8), 7A(2)(b) (clause 12), and 13(3) (clause 13)). It is novel for Māori concepts to appear in legislation and there is a risk that these will be interpreted and applied in different ways.

This risk has been mitigated by defining the terms in clause 4.

These concepts have been included to assist with a clearer articulation of how to give effect to a child-centred approach in relation to Māori children and young people. This is required to better focus the care, protection and youth justice systems on effectively reducing disparities for Māori children and young people.