

Regulatory Impact Statement

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

Ministry of Social Development

4 October 2016

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Social Development (MSD). It provides an analysis of options for establishing accountabilities to support the new operating model for responding to vulnerable children and young people.

In March 2016, the Government, having considered the Modernising Child, Youth and Family Expert Panel's final report, agreed major legislative reform is required to support the new operating model. Legislative changes are being progressed in two stages:

- Stage One is the Children, Young Persons, and Their Families (Advocacy, Workforce, and Age Settings) Amendment Bill (Bill 1). Bill 1 was introduced on 1 June 2016 and referred to the Social Services Committee on 15 June 2016.
- Stage Two consists of a more complex and wide-ranging set of legislative reforms to support the new operating model. These are to be included in a second Bill (Bill 2) expected to be introduced in November 2016.

These legislative changes will be reinforced by significant non-legislative reforms, including the establishment of new non-legislative accountability and performance mechanisms for the new operating model and, where appropriate, other agencies.

The proposals in this RIS cover:

- clarifying accountability for the co-ordination of prevention activity by the new Ministry, and provision of targeted preventative and early intervention services by social sector agencies
- empowering the provision of a response to children and young people with high needs but who do not meet the care and protection threshold
- updating and clarifying the threshold for care and protection needs
- empowering the chief executive (CE) of the Ministry for Vulnerable Children, Oranga Tamariki (the new Ministry) to address the needs of the most vulnerable children and young people receiving a care and protection, youth justice or transition support response from the new Ministry, or who are in care
- strengthening the accountabilities of the Ministries of Social Development, Health, Education and Justice and the New Zealand Police to support the new Ministry to address the needs of vulnerable children and young people
- requiring complaints mechanisms to be established and enabling review bodies to be created to review the CE's responses to complaints
- updating and clarifying the definition of 'young person' in the legislation.

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.

The key constraints around the analysis presented in this paper are:

- The analysis has been undertaken in parallel with the detailed design work of the operating model. This increases the risk of creating unnecessary degrees of flexibility; however, the options considered are enabling provisions, which can be adapted over time.
- Agency consultation has been undertaken on the impacts on Government agencies as part of the development of this RIS, but within limited timeframes.
- The proposals set out in the Final Report of the Modernising Child, Youth and Family Expert Panel (the Expert Panel) were developed independently as part of a process that included broad consultation and expert input. Some proposals outlined in this RIS, which have been developed in response to the Expert Panel's proposals, have only been subject to limited, targeted external consultation.
- A general indication only of the relative scope and magnitude of the options' operational implications has been provided, as this will be refined during detailed design work being undertaken as part of the business case for the new operating model.

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Executive summary

- 1 On 30 March 2016, the Cabinet Social Policy Committee (SOC) agreed to establish a new operating model for working with vulnerable children, young people and their families and whānau.
- 2 The new Ministry for Vulnerable Children, Oranga Tamariki (the new Ministry) will be accountable for this operating model and charged with improving outcomes with vulnerable children and young people.
- 3 In order to support the new operating model, a range of accountability mechanisms will be required. SOC has directed a report-back on areas for possible legislative reform, including:
 - creating clear accountability within the new operating model for prevention activity, including prevention of youth offending, and strengthening responsibilities and accountabilities for other agencies and Crown entities to ensure availability of enhanced services for vulnerable children and families
 - establishing a single point of accountability for assessing the needs of vulnerable children, young people and families, including those who have significant unmet needs but do not yet require a care and protection or youth justice response, and accountability for addressing the assessed needs of vulnerable children, young people and families requiring intensive intervention
 - introducing new and amended provisions to support stable and loving care from the earliest opportunity, including:
 - new, enforceable obligations to meet the identified recovery, growth and developmental needs of children in care
 - creation of mandatory National Care Standards
 - ensuring the needs of vulnerable young people exiting care and in transition are identified and met, up to age 25, and establishment of 'community parenting' [SOC-16-MIN-0024 refers].
- 4 This RIS therefore covers legislative and non-legislative proposals to:
 - complement and underpin the accountability and performance framework for the new Ministry
 - clarify and simplify the definition of a child or young person with care or protection needs
 - remove the exclusion of young persons who are married or in a civil union from the protections of the Children, Young Persons, and Their Families Act 1989 (the CYPF Act)
 - extend transition advice and assistance services up to age 25, and ensure young people are proactively offered assistance after they have left care or a youth justice residence up to the age of 21.

- 5 The options discussed in this RIS were assessed against their likely effectiveness in addressing the following objectives:
- *support the provision and co-ordination of prevention services* for children and young people
 - *meet the needs of individual children and young people* to whom the new Ministry is providing a response, including by providing opportunities and support for care-experienced children and young people
 - *ensure clear and transparent standards of service* for children and young people, including rights of review
 - *provide clarity and public transparency about the overall mandate and role of the new Ministry* as a single point of accountability for vulnerable children and young people, including its system leadership role.
- 6 The options were also assessed against their:
- legal risk
 - compatibility with an investment approach
 - durability
 - fiscal and operational impact
 - fairness and equity
 - interaction with other legislative provisions and planned reforms
 - consistency with the principles of the Treaty of Waitangi and other domestic or international obligations, including the United Nations Convention on the Rights of the Child (UNCROC)
 - compatibility with related Government objectives.
- 7 These proposals are intended to support and complement a wider suite of policies and practices aimed at improving outcomes for vulnerable children and young people.

The case for legislative change

- 9 Underpinning the accountability structure for the new Ministry and other social sector agencies through legislative change would provide a number of benefits:
- it will act as a strong signal and driver of behavioural change for CEs, staff and the sector
 - it will help to sustain change over time
 - legislation provides clarity and transparency for the public, and for affected children, young people and their families.
- 10 Clear and transparent standards set by legislation can in turn be supported by mechanisms to provide a remedy for children, young people and families who do not consider that their expectations have been met.
- 11 Legislative underpinning for accountabilities can range from less prescriptive provisions, such as principles or objectives, to duties, which are more specific.

- 12 Particular considerations include:
- the extent to which existing arrangements (enhanced under the new operating model) will themselves enhance accountability, and any additional benefits that legislation may provide
 - the need for any legislation to provide flexibility, given that the design of the operating model is under development, and to support an investment approach
 - the legal risks associated with creating duties in legislation.
- 13 This RIS therefore considers a range of legislative and non-legislative measures to support the new operating model.

Policy context

Embedding and enacting a child-centred approach

- 14 Government has determined that a far-reaching reform of care and protection and youth justice services is required to achieve better outcomes for vulnerable children through an unequivocally child-centred approach.
- 15 The changes proposed represent a fundamental shift, driving the most significant and comprehensive changes since the CYPF Act was passed in 1989.
- 16 Nearly 30 years ago, the CYPF Act sought to reset the model from the previous one, relying solely on professional determination, to one with much greater involvement of families in decision-making.
- 17 While the family group conference (FGC) model introduced by the CYPF Act has been recognised internationally, overall outcomes, however, have not been as envisaged. For example 20 per cent of children are now known to Child, Youth and Family (CYF) by age 17, with many cycling through the system from notification to re-notification, statutory care and, in some cases, arrest and entry to the youth justice system.
- 18 Long-term outcomes for children and young people across the system have been generally poor, at considerable individual, societal and fiscal cost. Children and young people who have had care and protection contact are more likely to leave school without a Level 2 NCEA qualification, be referred to Police due to youth offending, and spend time on a benefit or receive an adult community or custodial sentence by the age of 21.
- 19 As the Expert Panel identified, such issues have led to CYF being reviewed and restructured 14 times. This has occurred without major legislative reform to support practice and accountability change and, notably, without fundamental improvements for vulnerable children and young people.
- 20 To address this situation, Government has endorsed the most far-reaching reforms since the CYPF Act was enacted in 1989 to embed and enact a child-centred and investment approach-focused care and protection and youth justice system.

Signalling and driving fundamental and wide-ranging reform

- 21 The CYPF Act sought to establish a new model of social work, with a much stronger focus on family participation and decision-making than under the earlier Children and Young Persons Act 1974.

- 22 It set the direction of social work action, service delivery and performance monitoring, through legislated objects, principles, duties and powers.
- 23 The principles of the CYPF Act seek to inform and underpin all aspects of practice, including judicial decision-making about matters such as the removal and placement of children.
- 24 Alongside setting the practice framework, the CYPF Act informs public understanding and expectations of the role of the care and protection system, in particular, critical decision making regarding if, when and how to report suspected abuse and neglect, the level of harm at which such reporting is expected, and the role of the agency in areas such as prevention. Legislative change in a number of comparable jurisdictions has been used to reset these decisions and expectations.
- 25 Significant reform to the 27-year-old CYPF Act offers an approach to support and strongly signal the changes expected from practitioners, organisations, Courts, departments and the public. In doing so, this creates an opportunity to send a clear message and change the behaviour of actors within the care and protection and youth justice system.
- 26 In addition, legislative reform offers an opportunity to clearly articulate that the changes occurring will support children and young people who come into contact with the system to better understand their rights, have a voice in decisions, and establish reasonable expectations of the service.
- 27 With this in mind, legislative options seek to direct behavioural change and enable operational development, rather than tightly prescribe practice where this is not seen as necessary to achieve policy intent. Non-legislative options have been developed and are proposed where this best achieves Government's policy intent.
- 28 The reform programme, including proposals in this RIS, involve significant cultural shifts to put children and young people at the centre of the system, legislative and policy change, enhancements to service provision, greater engagement of New Zealanders and a wide range of partners, new investment, as well as significant changes to the operating model at the heart of the system.
- 29 There are two parts to the legislative reform programme:
 - Stage One is the Children, Young Persons, and Their Families (Advocacy, Workforce, and Age Settings) Amendment Bill (Bill 1). Bill 1 extends the care and protection provisions of the CYPF Act to 17 year-olds, makes better provision for children's and young persons' participation and views in processes and proceedings under the CYPF Act and enables a wider range of professionals to perform functions under the CYPF Act.
 - Stage Two consists of a more complex and wide-ranging set of legislative reforms to give effect to the proposed new operating model, as part of a second Bill (Bill 2).
- 30 This RIS is part of the second stage of reforms and focuses on accountabilities of the new Ministry and, where relevant, other agencies under the new operating model.
- 31 Proposals in this RIS have been considered as to whether:
 - the option best supports the policy intent

- the option provides the strongest signal and foundation to achieve intent
- the option provides sufficient flexibility and durability to support the finer detail of the operating model and future developments.

Status quo

32 This section covers the status quo in relation to:

- accountability arrangements for children and young people
- other issues covered in this RIS.

Accountability arrangements

33 In this RIS, we use the term ‘accountabilities’ to describe arrangements and mechanisms that underpin the responsibilities of organisations or persons. These are important because they can be used to:

- signal roles and responsibilities
- support the achievement of government priorities
- add transparency
- enforce responsibilities if they are not delivered.

34 Accountabilities may be set through legislative or non-legislative arrangements.

35 Legislative accountability for the following groups is primarily set out in the CYPF Act.

Prevention and early intervention services

36 There are a range of services provided by Government that identify and reduce early risk factors of vulnerability to help to prevent children and young people from requiring statutory intervention. These can include:

- primary prevention programmes, such as Strategies for Kids, Information for Parents, funded by MSD
- targeted intervention services, such as the Family Start parenting programme funded by MSD.

37 There are no accountability mechanisms within the CYPF Act that explicitly aim to ensure the co-ordination of targeted prevention services across Government.

Children and young people who have high needs but are below the care and protection threshold

38 If a child or young person is not believed to be in need of care or protection following investigation, there is currently no accountability for the CE to address the needs of the child or young person or their family or whānau.

39 However, the CYPF Act specifies some general duties that may be met through a range of actions, one of which might be through making services available to children with significant levels of need.

40 In practice, children and young people who are at risk or have high needs but do not meet the care and protection threshold may be able to access the range of

prevention and early intervention services specified in the previous section, but there is no entitlement or assurance of access.

- 41 Children's Teams have recently begun operating in a number of district health board (DHB) regions and are aimed at providing a response to this group of children with a high level of unmet need but who do not meet the care and protection threshold. They are currently operating in 10 of the 20 DHB regions in New Zealand.
- 42 Children's Teams bring together professionals from the health, education and social services sectors, as well as iwi and Māori groups, to identify the needs of vulnerable children and young people and provide them with support. While they are not bound by statutory obligations, Children's Teams are subject to governance through the Vulnerable Children's Board.

Children and young people who meet the care and protection threshold but are not in care

- 43 When it is determined that a child or young person is in need of care or protection, the CYPF Act requires the CE to take actions and steps to address their needs as specified by an FGC plan. In these instances, the CE has specific duties to:
 - give effect, through the provision of resources and services, to decisions, recommendations and plans of the FGC (section 34), unless the CE considers it is impracticable, unreasonable, or clearly inconsistent with the principles set out in sections 5, 6 and 13 of the CYPF Act
 - provide services and assistance as may be specified in an order from the Family Court (section 86).
- 44 The CE has discretion to make grants or provide financial assistance necessary to give effect to the child's or young person's FGC plan.

Young people involved with the youth justice system

- 45 In practice, youth justice FGCs focus on addressing the criminogenic needs of the young person. There is currently a duty on the CE to give effect to the FGC plan for this group unless it is unreasonable, impracticable or clearly contrary to the objects and principles of the Act.
- 46 This is similar to the duty held by the CE towards children and young people who meet the care and protection threshold.

Children and young people in care

47 [Section 9(2)(h) OIA]

- 48 Section 387 of the CYPF Act enables the CE to provide financial or other assistance to meet the reasonable needs of these children and young people. Section 388 provides for certain other assistance to persons or organisations providing care to child or young person under the Act, and for financial assistance to young people.

49 In addition, a separate *Care Support* RIS, included as part of this legislative reform, considers the option of creating a regulation-making power to enable the setting of national care standards.

Children and young people in permanent care

50 Sections 388A and 389 of the CYPF Act enable the CE to provide financial and other assistance to permanent caregivers of a child or young person who has left the care of the CE, and require the CE to provide financial and other assistance in specific circumstances.¹

Young people transitioning out of care

51 The CYPF Act contains two provisions intended to support young people as they move out of care into independence. These were introduced through amendments to the CYPF Act in 2014:

- Section 140(1)(d) enables the CE to place a young person in the extended care of a specified person for the purpose of assisting the young person to achieve independence. This extended care agreement ends once the young person reaches the age of 17 years.²
- Section 386A includes further measures to assist young people leaving care to achieve independence. This section places a duty on the CE of MSD or an approved organisation to:
 - consider what advice and assistance a young person in care will need to move into adulthood, and ensure this is provided at a reasonable time before that person leaves care
 - provide any further advice and assistance, after a young person who has left care requests it, that the CE considers necessary to enable that person to achieve independence, up to the age of 20. This includes financial assistance.³

52 In addition, guardianship orders made under the CYPF Act or the Care of Children Act 2004 (CoCA) set specific enforceable rights and obligations for a guardian towards a child or young person.⁴

53 Many young people leaving the care and protection or youth justice systems are also able to receive support through the benefit system and other social services, such as the Youth Service.

¹ These circumstances are specified in section 388A(2).

² Under the Children, Young Persons, And Their Families (Advocacy, Workforce, and Age Settings) Amendment Bill that is currently being considered by the Social Services Committee, this age would be raised to 18 years.

³ Proposals considered in a separate *Transition to Independence* RIS would extend this section to cover young people who have been in a youth justice residential placement, an adult custodial sentence or under the guardianship of the Court (where the CE has been appointed as an agent of the Court), and up to the age of 21.

⁴ Guardianship refers to duties, powers, rights and responsibilities in relation to the upbringing of a child, including deciding or helping the child to make decisions on important matters affecting the child such as religion, schooling and medical consents. The CoCA defines a child as being under the age of 18 so will include young persons within the meaning of the CYPF Act. In contrast, custody (under the CYPF Act) is the equivalent of responsibility (under CoCA) for day-to-day care of a child or young person.

Cross-agency accountability and collaboration

- 54 There are some provisions in the legislation that require or promote co-operation and collaboration between agencies delivering services to children and young people:
- Section 4(g) of the CYPF Act specifies, as an object of the Act, encouraging and promoting co-operation between organisations engaged in providing services for the benefit of children and young persons and their families and family groups.
 - Provisions for ensuring joint accountability at a system level are included in the Vulnerable Children Act 2014 (VCA), which requires CEs from the Ministries of Education, Health, Social Development, Justice and the New Zealand Police to jointly develop and report against a vulnerable children's plan. To date, a vulnerable children's plan has not been developed.
- 55 Service availability is dependent on the decisions of government agencies and, at a regional or local level, by bodies such as school and district health boards.

Wider accountability mechanisms

- 56 The current public sector performance management framework provides a variety of mechanisms for achieving government priorities:
- Programmes and services are allocated funding through the Budget process, with auditing of any related performance measures by the Office of the Auditor General.
 - Departmental Strategic Intentions documents can provide detail on how a department intends to manage its functions and operations.
 - Performance measures are set out in departmental Estimates and reported in a department's annual report.
 - CEs hold statutory responsibility under the State Sector Act 1988 for performing functions imposed on their departments by legislation or government policy.
 - The State Services Commission reviews the performance of Public Sector CEs in light of Government's stated priorities and the organisation's performance measures.
- 57 For Crown entities such as DHBs, the following arrangements can be used:
- regular engagement with the Chair or Board on expectations for entity performance
 - input into the Crown entity's Statement of Intent
 - input into the Statement of Performance Expectations
 - subject to Cabinet consideration, adjustment of funding for the entity via appropriations, fees, levies, grants and, for DHBs, the Crown Funding Agreement
 - formal direction to Crown agents to give effect to, or to autonomous Crown entities to have regard to, government policy

- published reporting on achievement of government targets, as in the Better Public Services Results.

Complaints mechanisms

- 58 At present, there is no duty on the CE to create or maintain a formal complaints process for children subject to decisions or actions under the CYPF Act.
- 59 There is an existing complaints process which allows children and young people (and others) to make a complaint about a service they have received directly from CYF. If they are unhappy with a decision on a complaint, they can ask for it to be reviewed by the Chief Executive’s Panel, an independent body supported by a secretariat that sits in MSD. Children and young people in CYF residences may also take a grievance to an independent grievance panel.
- 60 In addition, the Office of the Children’s Commissioner has a statutory responsibility to monitor and assess the policies and practices of CYF under the CYPF Act. It also holds authority to investigate and respond to a complaint.

Other issues

Definition of a child or young person in need of care or protection

- 61 Section 14 of the CYPF Act sets out the criteria of a child in need of care or protection. It currently specifies the threshold for state intervention and includes cases where a child has been, or is likely to be, physically, emotionally or sexually harmed or their development impaired or neglected.

Eligibility under the CYPF Act for young people who are married or in a civil union

- 62 Currently, section 2 of the CYPF Act defines a young person under the Act as a boy or girl of or over the age of 14 years but under 17 years.⁵ This definition does not include any person who is or has been married or in a civil union.

Issues with current arrangements

- 63 In March 2016, SOC noted that an overhaul of the care, protection and youth justice system is required as the current system is overly complex and fragmented, making it difficult for children and families, whānau and caregivers to navigate. The Committee also noted that the system is not meeting the needs of vulnerable children and young people to help them grow into flourishing adults [SOC-16-MIN-022].
- 64 This may be in part due to the legislative accountability framework, which does not create mechanisms to ensure that the right type and level of services are delivered.
- 65 When it was first introduced, the CYPF Act was seen to be a world-leading piece of legislation. Fundamental to the Act is the promotion of the interests and wellbeing of children, young people and their families and whānau. While this focus has not changed, data on outcomes for children and young people who come into contact with the system shows that outcomes have not improved as desired.

⁵ Under the Children, Young Persons, and Their Families (Advocacy, Workforce, and Age Settings) Amendment Bill that is currently being considered by the Social Services Committee, this definition would be changed to include a “person” of or over the age of 14 years but under 18 years.

- 66 We have identified a number of specific issues relating to accountabilities for:
- the provision and co-ordination of targeted prevention activities
 - children and young people who have high needs but do not meet the care and protection threshold
 - children and young people who are in need of care and protection but are not in care
 - young people involved with the youth justice system
 - children and young people in care
 - young people transitioning to independence
 - cross-agency co-operation and collaboration.
- 67 We have also identified issues in relation to the inclusion of young people who are married or in a civil union under the CYPF Act.
- 68 The following sections summarise these issues.

Issues relating to accountabilities

Prevention activity

- 69 It is estimated that by age 17, one in five New Zealand children will come into contact with Child, Youth and Family. Data shows that an increasing proportion of these children and young people are experiencing repeat referrals, likely due to unmet need.⁶
- 70 This suggests that there is a much greater opportunity for more effective prevention, early intervention and intensive intervention activity before concerns reach the statutory threshold. While there are a range of such initiatives funded across the social sector, there is limited co-ordination of these activities. Targeted prevention and early intervention services for vulnerable children tend to be fragmented, inconsistent and lack a clear focus on those most at risk of poor life outcomes.
- 71 There are significant groups of children who are not sufficiently prioritised for early response, such as those in families where there are early signs of family violence, or whose parents experienced care during their own childhood and are beginning to struggle with their own parenting role.
- 72 While CYF holds an established role towards children and young people who require a care and protection or formal youth justice response, there is less clarity about responsibilities in relation to services that address early risk factors that may lead to entry into statutory care, protection or youth justice services. This is likely to be a key contributor to the high number of repeat engagements with the system.

Children and young people who have high needs but do not meet the care and protection threshold

⁶ In 2014, 60 percent of children notified to CYF had previous involvement with the agency. These children had on average three previous contacts with CYF. See Expert Panel. (2015). *Modernising Child, Youth and Family Interim Report*. <https://www.msd.govt.nz/documents/about-msd-and-our-work/work-programmes/cyf-modernisation/interim-report-expert-panel.pdf>

- 73 Children and young people who become known to the agency and have significant wellbeing needs, but who are not deemed to be in need of care or protection, are not currently covered by a clear statutory obligation to have their needs addressed.
- 74 As identified in the section above, evidence on outcomes and the high rates of re-notification for children who come into contact with Child, Youth and Family suggests that earlier and more comprehensive action is needed.
- 75 As Children's Teams are further rolled out and able to be evaluated, the policy aim is for these statistics to begin to improve. Critical to this intended success will be clear accountability and assurance of continued resourcing for the response.

Children and young people who meet the care and protection threshold but are not in care

- 76 While there is an existing duty on the CE to give effect to the FGC plan, unless unreasonable or impracticable or clearly contrary to the principles of the Act, for this group of children and young people, this has not provided sufficient assurance that they will receive a successful response.
- 77 It is likely that the lack of clear and transparent standards in relation to the CE's role in FGCs is contributing to the poor outcomes mentioned above.

Young people involved with the youth justice system

- 78 In practice, the existing accountabilities towards young people who offend are focused on addressing their criminogenic needs through implementing the youth justice FGC decisions, recommendations, and plans, and Court orders.
- 79 This has enabled youth justice responses to be timely, proportionate and designed to limit formal responses to young people's offending wherever possible. However, it has also meant that many young people who offend and have unmet needs, particularly complex needs, may not be able to access the support needed to address these.

Children and young people in care

- 80 Children and young people in care are reliant on the Crown to provide them with stability and to meet their basic needs, as well as specific needs arising from the experiences that have caused them to be in need of care.

81 [Section 9(2)(h) OIA]

While there are a range of provisions for discretionary financial support to caregivers of children in care under the Act, the child's entitlement to have their needs met is not well articulated or widely understood. Apart from these broad enabling provisions, there is a lack of clarity on:

- how the CE should respond to the needs of children in care in relation to the resources available to him or her
- the priority that should be given to the different needs of children, such as health, education and other key needs.

- 82 In addition, there is an opportunity to address the following issues:

- There is insufficient focus on identifying and meeting the full range of needs of children and young people in care, including their emotional needs.

- The current system lacks transparency for children and young people about their rights and entitlements and effective systems for reviewing the provision of services and decision-making.

Young people transitioning to independence

83 There is an opportunity to enhance direction on the State to offer transition support to young people who have been in care or a youth justice residence up to the age of 25.

Proactive support

84 Once a young person has left a care arrangement, he or she must request assistance in order to receive it. This requirement appears problematic based on feedback we have received from members of the Youth Advisory Panel.

Extending advice and assistance to the age of 25

85 At present, section 386A allows a young person to receive advice and assistance up to the age of 20,⁷ although the CE may continue to provide grants or contributions to a course of education for a young person beyond this age. As a result, a young person who has left care is likely to stop receiving support at the age of 20.

86 This upper age limit does not align the experience of young people leaving care with that of their age-equivalent peers, whose parents are likely to support their children well into their twenties as they navigate employment, education, or housing matters.

Cross-agency co-operation and collaboration

87 Many children, families and whānau may have complex needs that require a response from multiple organisations.

88 Services provided by the social sector are aimed at broad populations and are often inaccessible or insufficient for vulnerable children, families and whānau. CYF also lacks a clear mandate to direct services from the wider sector towards particular children, families and whānau, which means that many are not able to access the services they need in a timely manner. Children with complex needs (including disability-related needs) can face particularly difficult barriers to accessing support.

89 Many young people who have been in care or a youth justice residence or prison require a range of additional supports as they move into adulthood.⁸ There is an opportunity to clarify accountabilities on different agencies towards these young people to help to address their needs.

Accountability across the new operating model

90 As noted in the Policy Context section of this RIS, SOC has agreed to the establishment of a new operating model for working with vulnerable children and young people.

91 There is an opportunity to create a mechanism to monitor and review the policy and legislative settings of this system and assess whether further changes are needed, including changes to the legislation.

⁷ Proposals considered in a separate *Transition to Independence* RIS extend the coverage of section 386A to the age of 21.

⁸ For example, see the Office of the Provincial Advocate for Children and Youth (2012). *25 is the New 21: The Costs and Benefits of Providing Extended Care & Maintenance to Ontario Youth in Care Until Age 25*. Author: Toronto, Ontario.

Complaints mechanisms

- 92 There is currently no obligation on the CE to ensure that child-centred complaints mechanisms are in place, or that an independent process is in place to review the CE's response to any complaints.⁹
- 93 While there is an existing complaints mechanism, this is not sufficiently child-centred and is not supported by sufficient levels of accountability. This is likely to be a key contributor to the very low number of children who use the mechanism each year.
- 94 Placing an obligation on the CE towards this mechanism would help to ensure that children and young people are provided with more effective, child-centred responses, and that complaints are not delayed to the point where resolutions have no value to the child.

Other issues

Definition of a child or young person in need of care or protection

- 95 Section 14 of the CYPF Act sets out the definition of a child or young person in need of care or protection. It establishes the threshold for state intervention. It is framed in broad terms to include cases where a child has been, or is likely to be, physically, emotionally, or sexually harmed and nine other situations.
- 96 This means that section 14 does not reflect contemporary understandings of child development, impairment and harm, including its causes and impact on children and young people.
- 97 There is an opportunity to clarify and simplify section 14 to better reflect the harm that can be caused from accumulated experiences over time, including prolonged exposure to family violence, emotional abuse or a pattern of low-level neglect. Updating and simplifying the wording in section 14 will make it clearer and easier to apply in practice.

Eligibility under the CYPF Act for young people who are married or in a civil union

- 98 New Zealand is unique in excluding young persons who are or have been married or in a civil union from the definition of a young person in the CYPF Act.
- 99 The act of marriage is not synonymous with attaining majority in New Zealand. For example, marriage does not allow a person to buy alcohol or vote in a general election. These acts cannot be completed until one turns 18 years old. Excluding young people who are married or in a civil union from the CYPF Act may therefore be considered an unfair distinction.

Objectives and criteria

- 100 The key objectives for the proposals considered in this RIS are that they assist to:
- *support the provision and co-ordination of prevention services* for children and young people, including to address the needs of those with early risk factors and help them achieve better long-term outcomes

⁹ Although the Children's Commissioner has wide-ranging statutory powers to investigate matters under the CYPF Act, the Commissioner does not report on the number of statutory investigations into individual cases the Office undertakes.

- *meet the needs of individual children and young people to whom the new Ministry is providing an intensive intervention, care, youth justice or transition support response, including by providing community parenting*
- *ensure clear and transparent standards of service for children and young people, including rights of review*
- *provide clarity and public transparency about the overall mandate and role of the new Ministry as a single point of accountability for vulnerable children and young people, including its system leadership role.*

101 Options will be assessed according to the following criteria:

- **Likely effectiveness** – the extent to which the proposals are likely to meet the relevant objectives identified above, and align with the intent of the Government’s reform decisions.
- **Legal risk** – the extent to which proposals create legal risk for the Crown.
- **Compatibility with an investment approach** – the extent to which the proposals are likely to support the implementation of an investment approach to improve services for vulnerable children.¹⁰
- **Durability** – the extent to which proposals are likely to achieve sustained change in the direction sought without constraining options that can be considered in the design and implementation of the new transition service.
- **Fiscal and operational impact** – the extent to which proposals achieve the objectives above while minimising the compliance costs and the operational implications of implementing the proposal.
- **Fairness and equity** – the extent to which proposals promote fairness and treat similar cohorts in a consistent way.
- **Interaction with other legislation and planned reforms** – the extent to which proposals align with, and do not hinder, legislation or planned reforms.
- **Consistency with the principles of the Treaty of Waitangi and other domestic or international obligations** – the extent to which proposals meet New Zealand’s domestic and international obligations, including those specified in the Treaty of Waitangi, UNCROC and the United Nations Convention on the Rights of Disabled Persons.

102 As the design of the operating model is occurring in parallel, options that include a high level of specificity in the primary legislation about the functions of different agencies have been excluded from detailed consideration.

103 Compatibility with other government objectives has not been specifically included for options considered in this RIS, as it is considered that there are not any significant distinctions to be made between proposals on the basis of this criterion.

104 Fairness and equity has not been included in the options analysis table for the co-ordination and provision of prevention services (Table One), because it is considered that all options would provide equal ability to ensure fairness and equity.

Impact

¹⁰ SOC has agreed that the new operating model will adopt a formal social investment approach to funding and service provision. [SOC-16-MIN-0022 refers].

- 105 The impact of these proposals depends to a large degree on the detailed design of the new operating model, which will determine details of future roles, responsibilities, services and investment. As this design work has not yet been completed, the proposals are intended to be enabling.
- 106 The service design process will work through the impacts of particular changes on the different individuals, agencies and processes involved. Note that for all options, there would be costs associated with the development of the new operating model.
- 107 Overall, Māori whānau, children and young people demonstrate higher indicators of vulnerability than the general population.¹¹ The package of proposals in this RIS, which strengthen the level and availability of support provided to young Māori through prevention, intensive intervention, care support, youth justice and transition services, as well as through improving complaints mechanisms, are likely to be of significant benefit to young Māori and their whānau.

Feasible options

- 108 Detailed option analysis to meet the objectives and criteria outlined above is set out in the following tables:
- Table One sets out options relating to the co-ordination and provision of targeted prevention services
 - Table Two sets out options relating to children and young people below the care and protection threshold
 - Table Three sets out options relating to children and young people who meet the care and protection threshold but are not in care
 - Table Four sets out options relating to youth justice
 - Table Five sets out options relating to children and young people in care
 - Table Six sets out options relating to transition advice and assistance
 - Table Seven sets out options relating to cross-agency accountabilities
 - Table Eight sets out options to enhance the Ministry's accountability across the system
 - Table Nine sets out options to extend eligibility under the CYPF Act to include young people who are or have been married or in a civil union.
- 109 The options considered in these tables are not mutually exclusive.

¹¹ See p35 - Expert Panel. (2015). *Modernising Child, Youth and Family Interim Report*. <https://www.msd.govt.nz/documents/about-msd-and-our-work/work-programmes/cyf-modernisation/interim-report-expert-panel.pdf>

Table One – co-ordination and provision of targeted prevention services

Option	Features	Impact	Benefits	Issues/Risks
Non-regulatory option				
<p>Option 1</p> <p>Clarify and improve the CE’s accountability for prevention using existing accountability mechanisms, in the context of amended purposes.</p> <p>Non-regulatory option</p> <p>Preferred option</p>	<p>This option would not change existing requirements in legislation.</p> <p>Accountability for prevention activity would be created through the proposed changes to the object of the CYPF Act to create a purpose relating to prevention (as proposed in the <i>Foundations for a Child-centred System</i> RIS).</p> <p>The performance management framework for the new operating model will show how the new Ministry and other organisations will be accountable for outcomes.</p> <p>Those accountabilities will be given effect as appropriate through the vulnerable children’s plan, Budget and Strategic Intentions documents, and SSC’s performance management of relevant CEs.</p>	<ul style="list-style-type: none"> <i>Children, young people and families</i> would be able to access co-ordinated prevention services in the new operating model. However, this service provision and the new Ministry’s role would be subject to changes in policy and priorities. <i>Stakeholders and the public</i> could refer to the new Ministry’s strategic documents and the vulnerable children’s plan to understand the Ministry’s prevention role. 	<ul style="list-style-type: none"> <i>Likely effectiveness</i> – This option will help ensure the provision and co-ordination of prevention services in the new operating model. <p>[Section 9(2)(h) OIA]</p> <ul style="list-style-type: none"> <i>Compatibility with an investment approach</i> – This option provides wide flexibility to target resources to achieve outcomes and apply an investment approach. <i>Fiscal and operational impact</i> – There may be significant cost implications for the new Ministry and other agencies associated with extending existing services or creating new services. However, there is flexibility as the fiscal implications will be determined under the new operating model and future Budget bids backed by cost-benefit analysis, and not through legislation. <i>Interaction with other legislation provisions and planned reforms</i> – This option provides a high degree of flexibility for the operating model to develop. <i>Consistency with relevant obligations</i> – This approach is consistent with relevant obligations and the new operating model is consistent with UNCROC. 	<ul style="list-style-type: none"> <i>Likely effectiveness</i> – This option provides only a limited level of transparency and clarity about the new Ministry’s role and the roles of other agencies. <i>Fiscal and operational impact</i> – There would be costs associated with the prevention service under the new operating model. <i>Durability</i> – The co-ordination and provision of services, and the role of the new Ministry, would be subject to changes in policy and priorities.
Regulatory options				
<p>Option 2</p> <p>In addition to the changes proposed in Option 1, this option includes legislative changes to:</p> <ul style="list-style-type: none"> place a duty on the CE of the new Ministry to co-ordinate prevention services amend existing requirements for the vulnerable children’s plan under the 	<p>In addition to the changes proposed in Option 1, this option includes the following components:</p> <ul style="list-style-type: none"> require key agencies’ prevention actions to be included in the vulnerable children’s plan by requiring the plan to set out outcomes to be achieved to prevent entry into the statutory system, and the steps to be taken to achieve these place responsibility for the co-ordination of the vulnerable children’s plan on the CE of the new Ministry require the CE of the new 	<ul style="list-style-type: none"> <i>Children, young people and their families</i> would be able to access prevention services in the new operating model, and could benefit from action to improve outcomes provided by other agencies. <i>Stakeholders and the public</i> could refer to agencies’ strategic documents and the vulnerable children’s plan to understand agencies’ roles in the provision of prevention services. The vulnerable children’s plan would provide more clarity about prevention activities than under Option 1. Prevention services would be co-ordinated around a set of shared outcomes. This would help to avoid 	<ul style="list-style-type: none"> <i>Likely effectiveness</i> – This option goes further to ensure the provision and co-ordination of prevention services. The requirement to specify the steps to be taken to achieve outcomes provides clarity about the roles of the new Ministry and other agencies, and provides greater transparency and accountability through the requirement to report on progress. <p>[Section 9(2)(h) OIA]</p> <ul style="list-style-type: none"> <i>Compatibility with an investment approach</i> - This option provides wide flexibility to target resources to achieve outcomes and apply an investment approach. <i>Durability</i> – The new Ministry would have an enduring role in co-ordinating prevention activity, and the new Ministry and other children’s agencies would have a core role in the provision of prevention services. <i>Interaction with other legislation and planned reforms</i> – This option is in line with the general direction set 	<ul style="list-style-type: none"> <i>Fiscal and operational impact</i> – There are no further direct fiscal implications except administrative costs for the new Ministry to co-ordinate services, and some administrative costs for other agencies in ensuring the vulnerable children’s plan covers required matters.

Option	Features	Impact	Benefits	Issues/Risks
<p>Vulnerable Children Act 2014 (VCA) to provide stronger direction on prevention activity.</p> <p>Regulatory option</p> <p>Preferred option</p>	<p>Ministry to ensure that prevention services funded by the new Ministry are co-ordinated with those provided across Government.</p> <p>Reporting on compliance with the latter two duties could be achieved through reporting on implementation of the vulnerable children's plan under Part 1 of the VCA.</p>	<p>gaps or duplication in service provision and enhance the efficiency of these services across the system.</p>	<p>by Government for the new operating model, and is unlikely to constrain service design.</p> <ul style="list-style-type: none"> • <i>Consistency with relevant obligations</i> – This option is consistent with relevant obligations. In particular, the explicit legislative recognition of prevention is aligned with Article 19 of UNCROC. 	
<p>Option 3</p> <p>In addition to the changes proposed in Option 1, this option places a duty on the CE of the new Ministry to ensure the provision of prevention services.</p> <p>Regulatory option</p> <p>Non-preferred option</p>	<p>A legislative duty on the CE of the new Ministry to provide, or arrange for the provision of, a range and level of services that in the opinion of the CE are appropriate to reduce the impact of early risk factors in the general population of children and young people, having regard to resources available, likelihood of improved long-term outcomes and return on investment, and the groups at greatest risk.</p> <p><i>Monitoring and enforcement:</i> The CE would be held to account via existing public sector performance management arrangements. A requirement to report in the new Ministry's annual report could be included. It is not intended that the requirement be enforceable by individual children or young people in a private law action.</p>	<ul style="list-style-type: none"> • <i>Children, young people and families</i> would be able to access prevention services in the new operating model. Beyond a certain minimum, the level and type of provision would be subject to changes in policy and priorities. • <i>Stakeholders and the public</i> could refer to the new Ministry's strategic documents, the annual report and the vulnerable children's plan to understand the Ministry's prevention role. 	<ul style="list-style-type: none"> • <i>Likely effectiveness</i> – This option will help to ensure the provision of prevention services. • <i>Compatibility with an investment approach</i> – Flexibility is built into the scope of the duty to enable an investment approach. Further, the explicit consideration required of return on investment supports the investment approach. However, this option may not provide the same degree of flexibility as other options. • <i>Consistency with relevant obligations</i> – This approach is consistent with relevant obligations, and the new operating model is consistent with UNCROC. • <i>Durability</i> – The new Ministry would have an enduring role in prevention activity. However, the level and type of service provision would still be subject to changes in policy and priorities beyond a certain minimum. 	<p>[Section 9(2)(h) OIA]</p> <ul style="list-style-type: none"> • <i>Fiscal and operational impact</i> – Unlike Options 1 and 2, this option requires a minimum level of service provision to be undertaken or arranged. This would possibly involve some additional costs to the new Ministry. No additional costs are likely for other agencies. • <i>Interaction with other legislation provisions and planned reforms</i> – Because this option requires some level of service provision to be undertaken or arranged, there is a risk that it limits flexibility. This risk may be mitigated by the discretion available to the CE.

Discussion of options – co-ordination and provision of targeted prevention services

- 110 The options under consideration focus on the role of the new Ministry in ensuring provision and co-ordination of services that identify early risk factors in order to support families to meet the needs of children and young people, to prevent further escalation into services operated by the new Ministry.
- 111 The revised purpose and principles of the CYPF Act, as agreed by Cabinet on 12 September 2016, go some way towards creating clear accountability for prevention activity, and include specific reference to the need to prevent and respond to the risk of future harm (including to development and wellbeing). However, further clarity about the new Ministry's role is needed to ensure the system-wide, co-ordinated and effective prevention response required under the new operating model.

Non-preferred option

- 112 Option 3 is non-preferred

[Section 9(2)(h) OIA]

- 113 It has been considered whether this option could be more prescriptive to manage this issue. However, this would risk constraining future service design and flexibility to adapt the operating model over time.
- 114 We have also considered the option of creating duties towards individual children receiving prevention services. Emerging work from service design has identified the need for prevention services to include individualised service responses that take an early intervention approach. We consider that there needs to be flexibility about which groups this kind of response should apply to in order to respond to changing circumstances and developments in evidence and data. We have therefore not considered it appropriate to legislate for such duties at this stage.
- 115 As the design of the operating model is still underway, options that require a high degree of specificity in the primary legislation about the functions of different agencies have been excluded from consideration. This includes options that would involve the roles of other agencies in providing specific targeted prevention activities set out in regulations or in primary legislation.

Preferred options

- 116 Options 1 and 2 are preferred. Analysis shows that Options 1 and 2 together would make the most contribution to the desired objectives, because they:
- create a durable mechanism for ensuring the provision and co-ordination of prevention services
 - set clear roles for the new Ministry and other agencies in relation to these services
 - provide wide flexibility to target resources to achieve outcomes and support an investment approach
 - support the general direction set by Government for the new operating model.

- 117 This would be supported by new and amended purpose statements in the *Child-Centred System* RIS, which would guide decision-making under the CYPF Act to:
- ensure children have a safe, stable and loving home from the earliest opportunity
 - prevent and respond to children and young people who are suffering or at risk of harm (including to their wellbeing and development), ill-treatment, abuse, neglect, deprivation, and being at risk of offending.
- 118 Option 1 provides a non-regulatory expectation that a response would be provided to this group. This would be captured in the performance agreement for the CE of the new Ministry, which provides accountability for outcomes.
- 119 Option 2 requires legislative amendments to place a duty on the CE of the new Ministry to co-ordinate prevention activities across Government. This will include ensuring, where practicable, that any services to reduce the impact of early risk factors funded by the new Ministry are co-ordinated with government-funded activities (of the kind set out in the vulnerable children's plan) for improving outcomes of children, young people and families, or reducing identified early risk factors, to ensure that services:
- are unified under a shared strategy and set of outcomes with respect to children and young people with early risk factors for future involvement in the statutory care, protection or youth justice systems
 - adopt a common approach to evaluating those outcomes and, where possible, determining return on investment
 - are available to meet the needs of children and young people of different ages and developmental stages, and include processes to support children and young people to move between service types as their age and developmental stage changes.
- 120 Option 2 also requires amendment to existing requirements for the vulnerable children's plan under the VCA to provide stronger direction on prevention activity.
- 121 This option alone may not provide enough clarity about the role of the new Ministry in relation to this group. It only provides a limited level of transparency and clarity about the new Ministry's role and the roles of other agencies.
- 122 **[Section 9(2)(h) OIA]** There are no direct financial implications for this option except for administrative costs for the new Ministry to co-ordinate services and for other agencies in ensuring the vulnerable children's plan covers required matters.
- 123 Both of these options would be supported by a Parliamentary reporting mechanism see Option 2 in Table Eight of this RIS), whereby the Minister (or a delegate) would be required to report to Parliament on the extent to which current accountability settings are meeting the needs of this group, including as to whether legislative change is recommended. This would create further accountability for prevention by creating a clear and public mechanism for signalling and evaluating the new Ministry's role towards children and young people who have early risk factors for involvement in the statutory system.

Table Two – intensive intervention – children and young people below the care and protection threshold

The following table identifies and considers the impact of each of the potential options. Please note: all options should be considered as being in addition to the use of existing accountability arrangements to help achieve the desired outcomes.

Option	Features	Impact	Benefits	Issues/Risks
Non-regulatory options				
<p>Option 1</p> <p>Clarify and improve accountability for the CE of the new Ministry for children and young people below the care and protection threshold using existing accountability mechanisms, in the context of the amended purposes and principles and requirements on the CE to address and respond to reports of concern about a child’s wellbeing.</p> <p>Non-regulatory option</p> <p>Preferred option</p>	<p>This option would not change existing requirements in legislation.</p> <p>The performance management framework for the new operating model will show how the new Ministry and other organisations will be accountable for outcomes.</p> <p>Those accountabilities will be given effect as appropriate through the vulnerable children’s plan, Budget and Strategic Intentions documents, and SSC’s performance management of relevant CEs.</p> <p>This would be carried out in the context of amended purposes and principles and revised requirements on the CE to address and respond to reports of concern about a child’s wellbeing through a range of actions.</p>	<ul style="list-style-type: none"> • <i>Children and young people</i> may have some assurance that they will receive a response if they have high needs but fall below the care and protection threshold. • <i>The new Ministry</i> is able to target a response as needed and in line with an investment approach. • <i>The CE</i> is held accountable through performance expectations. • <i>Stakeholders and the public</i> could refer to the new Ministry’s strategic documents, the annual report and the vulnerable children’s plan to understand the Ministry’s role in delivering this response. 	<ul style="list-style-type: none"> • <i>Likely effectiveness</i> – This option supports the objective to ensure the needs of children and young people below the care and protection threshold are addressed. <p>[Section 9(2)(h) OIA]</p> <ul style="list-style-type: none"> • <i>Compatibility with an investment approach</i> – Compatible with an investment approach by providing maximum flexibility. If resources are unavailable in the future, or a decision is made to prioritise elsewhere (eg to universal services), services could be reduced more easily to respond to changing circumstances. • <i>Fiscal and operational impact</i> – There may be significant cost implications for the new Ministry and other agencies associated with extending existing services or creating new services under the new operating model. However, there is flexibility as the fiscal implications will be decided under the new operating model and not through legislation. No direct costs for other agencies. • <i>Interaction with other legislation and planned reforms</i> – Aligns with proposed reforms to provide a clear mandate for the CE to address reports of concern and act to address concerns about a child or young person where there is an identified risk. This option is in line with the general direction set by Government for the new operating model, and is unlikely to constrain service design. • <i>Consistency with relevant obligations</i> – Consistent with UNCROC and the Treaty of Waitangi. 	<ul style="list-style-type: none"> • <i>Likely effectiveness</i> – This option alone may provide limited level of transparency about the new Ministry’s role and the service standards that can be expected • <i>Fairness and equity</i> – This option may not create any mechanisms to ensure that services are provided fairly or equitably among this group. • <i>Durability</i> – The provision of services, and the role of the new Ministry, would be subject to changes in policy and priorities. This means there is a higher risk that a group of high-needs children could be left without adequate services in the future due to prioritisation decisions or reduced focus.
Regulatory options				
<p>Option 2</p> <p>Provide the CE with discretion to deliver a service response to children and young people who are not in need of care or protection, in care or in the youth justice transition service.</p>	<p>This option would create an explicit discretion for the CE to provide services to this group of children and young people.</p> <p>The service response must have regard to the purposes and principles of the CYPF Act and any matters set out in regulation relating to:</p>	<ul style="list-style-type: none"> • <i>Children and young people</i> may receive a response if they have high needs but are below the care and protection threshold. • <i>The new Ministry</i> is able to target or ration a response as needed and in line with an investment approach. • <i>The CE</i> is held accountable through performance expectations. 	<ul style="list-style-type: none"> • <i>Likely effectiveness</i> – Sets an expectation and is in step with the role of the new Ministry. However, changes in Government priorities may result in a reduced response for this group. • <i>Compatibility with an investment approach</i> – Compatible with an investment approach by providing flexibility. If resources are unavailable in the future, or a decision is made to prioritise elsewhere (eg to universal services), services could be reduced more easily to respond to changing 	<p>[Section 9(2)(h) OIA]</p> <ul style="list-style-type: none"> • <i>Durability</i> – This group of high-needs children could be left without adequate service in the future due to prioritisation decisions or reduced focus. • <i>Fiscal and operational impact</i> – There may be some additional fiscal risks to the new Ministry if the exercise of discretion is challenged through judicial review.

Option	Features	Impact	Benefits	Issues/Risks
Regulatory option Non-preferred option	<ul style="list-style-type: none"> procedural requirements in respect of any services to be provided how the needs (including cultural needs) of these groups will be addressed arrangements for the monitoring, reporting on, and enforcement of the matters above. <p>This option could be accompanied by a regulation-making power to create clearer requirements and potentially enforceable standards, if desirable, when service design is more progressed in future.</p>	<ul style="list-style-type: none"> <i>Stakeholders and the public</i> could refer to the new Ministry's strategic documents, the annual report and the vulnerable children's plan to understand the Ministry's role in delivering this response. CE discretion provides control over the operational and fiscal impacts 	<p>circumstances.</p> <ul style="list-style-type: none"> <i>Interaction with other legislation and planned reforms</i> - Aligns with proposed reforms to provide a clear mandate for the CE to address reports of concern and act to address concerns about a child or young person where there is an identified risk. This option is in line with the general direction set by Government for the new operating model, and is unlikely to constrain service design. <i>Consistency with relevant obligations</i> - Consistent with UNCROC and the Treaty of Waitangi. 	<ul style="list-style-type: none"> <i>Fairness and equity</i> - The discretion created by this option may not be sufficient to ensure that services are provided fairly and equitably to children and young people in this group. However, regulations could mitigate this.
Option 3 Place a duty on the CE to provide services to children and young people below the care or protection threshold who may have significant unmet needs. Regulatory option Non-preferred option	<p>This option would place a requirement on the CE to provide a response to children who have high needs but who are below the care and protection threshold, where currently there is no obligation to do so.</p>	<ul style="list-style-type: none"> <i>Children and young people</i> who have high needs but below the care and protection threshold have certainty that they will receive services to meet their needs. <i>The new Ministry</i> is required to provide a response to this group, regardless of what resources are available at any given time. <i>The CE</i> is held accountable through a legislative duty. 	<ul style="list-style-type: none"> <i>Likely effectiveness</i> - Sets a clear expectation that a response will be provided to this group and clearly signals the role of the new Ministry towards this group. <i>Durability</i> - The new Ministry would have an enduring responsibility to provide a response to this group. <i>Fairness and equity</i> - This option may go the furthest in ensuring that services are provided fairly and equitably to children and young people in this group. <i>Interaction with other legislation and planned reforms</i> - Aligns with proposed reforms to provide a clear mandate for the CE to address reports of concern and act to address concerns about a child or young person where there is an identified risk. 	<p>[Section 9(2)(h) OIA]</p> <ul style="list-style-type: none"> <i>Compatibility with an investment approach</i> - Reduced flexibility as services must be provided, even if resources are limited in the future or if there is desire to prioritise elsewhere (eg to universal services). <i>Fiscal and operational impact</i> - Potentially increased costs for the new Ministry, which are difficult to quantify given the need for further service design. <i>Interaction with other legislation provisions and planned reforms</i> - This option specifies a role for the new Ministry in ensuring service provision ahead of resource allocations being confirmed. While it is in line with the general direction set by Government for the new operating model, providing a specific duty without knowing more about the group and what effective responses look like could constrain service design.

Discussion of options – children and young people below the care and protection threshold

Non-preferred options

124 Options 2 and 3 are not preferred.

125 Option 2 would provide the CE of the new Ministry with discretion to provide services to children and young people below the care or protection threshold who may have significant unmet needs.

126 Option 3 would require the CE to provide services to these children and young people through a legislative duty, which would provide certainty that services would be provided to address the needs of this group. However, as service design for the intensive intervention service is still being developed, this would involve ensuring service provision ahead of resource allocations being confirmed, in turn creating fiscal risk. There is also a risk that the drafting of legal obligations may not align with the ultimate service design, eg in defining the target cohort.

127 Option 2 mitigates some of these risks while still supporting an expectation of service **[Section 9(2)(h) OIA]**

Given that an explicit discretion in legislation is not necessary to enable service provision, this risk outweighs the potential benefits of option 2 at this time.

128 While regulations could further define the parameters of this cohort to mitigate concerns around constraining service design, it is considered that such matters should be provided for in primary legislation.

Preferred options

129 To set accountabilities for children and young people below the care and protection threshold, Options 1 is recommended.

130 Overall, the benefits of Options 1 is that it:

- is compatible with an investment approach by providing maximum flexibility
- provides wide flexibility for alignment with the design and implementation of the operating model and for resources to be targeted to achieve outcomes.

131 Under this option, any expectation of a response would be captured in the performance agreement of the CE of the new Ministry, which provides accountability for outcomes.

132 **[Section 9(2)(h) OIA]** the CE would have discretion over the level and type of response provided. This flexibility is also consistent with the investment approach, where decisions can be made to reprioritise resources to respond to changing circumstances.

133 There may be significant cost implications for the new Ministry and other agencies associated with extending existing services or creating new services for this group. However, there is flexibility with this option as the fiscal implications will be decided under the new operating model and Budget processes.

134 This option alone may not provide enough clarity about the role of the new Ministry in relation to this group. Moreover, this role would be subject to changes in policy

and priorities, which means that a group of high-need children could be left without adequate service in the future due to prioritisation decisions or reduced focus.

- 135 However, this risk is mitigated by other proposed options. For example, amended principles outlined in the *Intensive Intervention RIS* (option 1B) place a focus on intervening early and making best efforts to provide assistance to parents, guardians, whānau or usual caregivers to enable them to continue to provide a safe, stable and loving home for their child.
- 136 Other proposed options in the *Intensive Intervention RIS* provide a clear mandate (including potential to use an FGC to assist in decision-making) for the CE to address concerns about a child or young person early where there is an identified risk (options 2B, 2C, and 2D).
- 137 This option could also be supported by a parliamentary reporting mechanism (Option 2, Table 7), whereby the Minister (or a delegate) would be required to report to Parliament on the extent to which current policy settings are meeting the needs of this group, including as to whether legislative change is recommended.

Table Three – intensive intervention – children and young people who meet the care and protection threshold but are not in care

The following table identifies and considers the impact of each of the potential options. Please note: all options should be considered as being in addition to the use of existing accountability arrangements to help achieve the desired outcomes.

Option	Features	Impact	Benefits	Issues/Risks
Non-regulatory options				
<p>Option 1</p> <p>Clarify and improve accountability for children and young people in need of care or protection using existing accountability mechanisms, in the context of amended purposes and principles, to promote and underpin better outcomes for this group.</p> <p>Non-regulatory option</p> <p>Preferred option</p>	<p>This option would not change existing requirements in legislation.</p> <p>The performance management framework for the new operating model will show how the new Ministry and other organisations will be accountable for outcomes.</p> <p>Those accountabilities will be given effect as appropriate through the vulnerable children’s plan, Budget and Strategic Intentions documents, and SSC’s performance management of relevant CEs.</p> <p>This would be carried out in the context of amended purposes and principles.</p>	<ul style="list-style-type: none"> • <i>Children and young people</i> have assurance that they will receive some response (beyond what is already provided through the current functions of an FGC) if they are in need of care or protection. • <i>The new Ministry</i> is able to target a response as needed and in line with an investment approach. • <i>The CE</i> is (and CEs of other agencies may be) held accountable through performance expectations. • <i>Stakeholders and the public</i> could refer to the new Ministry’s strategic documents, the annual report and the vulnerable children’s plan to understand the Ministry’s role in delivering this response. • <i>Other agencies</i> may have clearer accountabilities towards this group. 	<p>[Section 9(2)(h) OIA]</p> <ul style="list-style-type: none"> • <i>Compatibility with an investment approach</i> – Compatible with an investment approach by providing maximum flexibility. If resources are unavailable in the future, or a decision is made to prioritise elsewhere (eg to universal services), services could be reduced more easily to respond to changing circumstances. • <i>Interaction with other legislation and planned reforms</i> – This option is in line with the general direction set by Government for the new operating model, and is unlikely to constrain service design. 	<ul style="list-style-type: none"> • <i>Durability</i> – The provision of services and the role of the new Ministry would be subject to changes in policy and priorities. This means there is a higher risk that a group of high-needs children could be left without adequate service in the future due to prioritisation decisions or reduced focus. • <i>Fiscal and operational impact</i> – There may be significant cost implications for the new Ministry, Police, and other agencies associated with extending existing services or creating new services under the new operating model. However, there is flexibility as the fiscal implications will be decided under the new operating model and not through legislation. • <i>Likely effectiveness</i> – If progressed alone, this option provides only a limited level of transparency and clarity about the new Ministry’s role and the roles of other agencies.
Regulatory options				
<p>Option 2</p> <p>Strengthen legislative accountabilities on the Crown so that its obligations to meet the needs of children in need of care or protection are not limited by the obligation to take into account practicability or available funding.</p> <p>Regulatory option</p> <p>Non-preferred option</p>	<p>This option would create a duty for the CE to give effect to every decision, recommendation and plan of a FGC without any qualifiers as to whether they consider it impracticable or unreasonable.</p> <p>These must still be consistent with the principles set out in sections 5, 6 and 13 of the CYPF Act.</p>	<ul style="list-style-type: none"> • <i>Children and young people</i> have certainty that they will receive a comprehensive response if they are in need of care or protection. • <i>The CE</i> is required to give effect to decisions, recommendations and plans from care and protection FGCs, regardless of what resources are available at any given time. 	<ul style="list-style-type: none"> • <i>Durability</i> – the new Ministry would have an enduring responsibility to carry out this duty, regardless of what resources are available to them at that time. This option goes the furthest to ensure that the needs of those in need of care or protection are met. • <i>Likely effectiveness</i> – Is in step with the role of the new Ministry and sets a clear expectation that the needs of vulnerable children are at the centre of decision-making. • <i>Fairness and equity</i> – This option may lead to a greater duty being placed on the CE for this group than for children in care, which would not be in keeping with the CE’s role in relation to children in care. 	<p>[Section 9(2)(h) OIA]</p> <ul style="list-style-type: none"> • <i>Compatibility with an investment approach</i> – Virtually no flexibility as decisions, recommendations and plans from FGCs must be given effect to, even if resources are limited in the future or if there is desire to prioritise elsewhere (eg to universal services). • <i>Fiscal and operational impact</i> – Potentially significantly increased costs for the new Ministry, which are difficult to quantify given the need for further service design. • <i>Interaction with other legislation provisions and planned reforms</i> – Strengthening a duty without knowing more about the available funding mechanisms could constrain service design.
<p>Option 3</p> <p>Require the CE to</p>	<p>This option would maintain the scope of existing legislative</p>	<ul style="list-style-type: none"> • <i>Children, young people and their families and whānau</i> know what 	<ul style="list-style-type: none"> • <i>Interaction with other legislation provisions and planned reforms</i> – Aligns well with other proposed 	<ul style="list-style-type: none"> • <i>Fiscal and operational impact</i> – Fiscal implications of service provision are dependent on what is decided under

Option	Features	Impact	Benefits	Issues/Risks
<p>develop and publish policies and practice standards in relation to their role in FGCs and giving effect to their outcomes, and clarify that the purpose of FGCs is to make recommendations, decisions and formulate plans that meet the care, protection and wellbeing needs of the child or young person.</p> <p>This option only applies to care or protection FGCs.</p> <p>Regulatory option Preferred option</p>	<p>functions and accountabilities imposed on the Crown in regards to care or protection FGCs.</p> <p>This option would involve:</p> <ul style="list-style-type: none"> requiring the CE to develop and publish policies and practice standards in relation to their role in FGCs and giving effect to their outcomes enabling the review processes for children in care to be provided to this group by regulation clarifying that the purpose of FGCs is to make recommendations, decisions and formulate plans that meet the care, protection and wellbeing needs of the child or young person. 	<p>they can expect from the CE in regards to an FGC. They can also review decisions that affect them.</p> <ul style="list-style-type: none"> <i>Children and young people</i> have their care, protection and wellbeing needs addressed by being placed at the centre of recommendations, decisions and plans. <i>The CE and frontline staff</i> have clear practice standards and policies applicable to FGC processes and giving effect to their outcomes, which drives more consistent and transparent practice. 	<p>reforms.</p> <ul style="list-style-type: none"> <i>Likely effectiveness</i> – This option would support more consistent and transparent practice around FGCs, and make recommendations, decisions and plans more child-centred. <i>Durability</i> – The new Ministry would have an enduring responsibility to develop and publish policies and practice standards in relation to their role in FGCs and giving effect to their outcomes. A child-centred approach would endure as a result of new wording to ensure recommendations, decisions and plans address the care, protection and wellbeing needs of the child or young person. <i>Compatibility with an investment approach</i> – By not extending the scope of duties and functions in this area, this option maintains the status quo. <p>[Section 9(2)(h) OIA]</p>	<p>the new operating model. There will be costs for the new Ministry in establishing internal complaints and independent review mechanisms. These costs are not yet quantified.</p>
<p>Option 4</p> <p>Update and clarify section 14 definitions of a child or young person in need of care or protection.</p> <p>Regulatory option Preferred option</p>	<p>Grounds in section 14 of the CYPF Act better reflect modern understandings of child development and harm – both the causes and impact of it.</p> <p>Wording of specific types of harm or impairment is updated and simplified to be clearer and easier to apply in practice; deleting confusing or unnecessary detail:</p> <ul style="list-style-type: none"> The current ‘likely’ neglect is expressed better through the modern concept of accumulated harm and chronic need. The range of sub clauses are clarified and simplified to enable easier application in practice, for both Courts and social workers/practitioners. <p>Aligns the CYPF Act with care and protection legislation in similar jurisdictions.</p>	<ul style="list-style-type: none"> <i>Children and young people</i> who are experiencing accumulated harm or have chronic need will receive a care or protection response and have an opportunity to have their needs addressed through the FGC process. <i>The CE and frontline staff</i> have clearer direction on how to establish whether a child or young person is in need of care or protection, and can mobilise an earlier response if required. 	<ul style="list-style-type: none"> <i>Likely effectiveness</i> - Adding cumulative harm to the description will help clarify the types of neglect that can occur through experiences such as prolonged exposure to emotional harm, and impairment through low-level neglect. <i>Legal risk</i> – Courts and practitioners are enabled to respond more effectively because of clearer identification and understanding of the nature of the care or protection need. <i>Fiscal and operational impact</i> – Timely intervention is better enabled. There are no fiscal implications related to this option as it is about updating, clarifying and simplifying current provisions. <i>Compatibility with an investment approach and durability</i> – New wording brings section 14 into line with contemporary understandings for greater durability and supports the aims of the new Ministry. <i>Interaction with other legislation and planned reforms</i> – Supports the needs of the new operating model, particularly the intensive intervention service. <i>Consistency with relevant obligations</i> – This approach is consistent with relevant obligations. The new operating model is consistent with UNCROC. 	<ul style="list-style-type: none"> <i>Likely effectiveness</i> – This option is reliant on practice guidance to ensure frontline staff understand and interpret the new wording in a way that is consistent with its intent. Moreover, a lack of appropriate service or programme provision limits the effectiveness of this legislative clarity. <i>Legal risk</i> – There may be an added risk if evidentiary purposes of sub-clauses are lost in an effort to simplify this section.

Discussion of options – children and young people who meet the care and protection threshold but are not in care

Non-preferred options

138 Option 2 is non-preferred.

139 This option would strengthen the new Ministry's obligations towards children and young people who meet the care and protection threshold, and ensure that these obligations are sustained over time. However, strengthening these obligations **[Section 9(2)(h) OIA]** may also constrain service design and the application of an investment approach under the new operating model.

140 This option may also have the perverse outcome of placing stronger obligations on the Crown towards these children and young people than it holds towards children and young people in care.

Preferred options

141 Options 1, 3, and 4 are preferred.

142 Together, the benefits of these options are that they:

- ensure that there is clarity around the roles of the CE and the new Ministry towards this group of children and young people
- ensure these roles are durable and sustained over time
- provide flexibility for services to be provided to this group in line with an investment approach.

143 Option 1 provides a non-regulatory expectation that a response would be provided to this group. This would be captured in the CE's performance agreement, which provides accountability for outcomes.

144 **[Section 9(2)(h) OIA]** the CE would have discretion over the level and type of response provided. This flexibility is also consistent with the investment approach, where decisions can be made to reprioritise resources to respond to changing circumstances.

145 This option alone may not provide enough clarity about the role of the new Ministry in relation to this group. The new Ministry's role would be subject to changes in policy and priorities, which means that a group of high-need children could be left without adequate service in the future due to prioritisation decisions or reduced focus.

146 However, this risk is mitigated by other options proposed as part of this broader legislative reform. For example, amended principles outlined in the *Intensive Intervention* RIS (Option 1B) place a focus on intervening early and addressing a child's unmet needs while supporting them to remain with their usual caregiver.

147 Other proposed options in this table seek to strengthen accountability towards this group. Option 3 requires the CE to develop and publish policies and practice standards in relation to their role in FGCs and giving effect to their outcomes, and clarify that the purpose of a FGC is to make recommendations, decisions and

formulate plans that meet the care, protection and wellbeing needs of the child or young person. This option would support more consistent and transparent practice around FGCs, and make recommendations, decisions and plans more child-centred.

- 148 **[Section 9(2)(h) OIA]** While it is likely that there will be fiscal implications associated with both of these options, these are not yet quantified as they rely on service design.
- 149 Option 3 involves amending section 14 of the CYPF Act to better reflect the harm that can be caused by accumulated experiences over time. This option is likely to better support practitioners and Courts to make decisions about the care or protection needs of children and young people and provide a more timely response to address their needs. In addition, simplifying confusing references in the section would enhance practitioners' and Courts' interpretations and support an improved responsiveness to children, young people and families receiving intensive intervention.
- 150 These options could be supported by a Parliamentary reporting mechanism (see Option 2 in Table Eight in this RIS), whereby the Minister (or a delegate) would be required to report to Parliament on the extent to which current policy settings are meeting the needs of this group, including as to whether legislative change is recommended. This would create further accountability towards this group by creating a clear and public mechanism for signalling and evaluating the new Ministry's role towards this group.

Table Four – intensive intervention – youth justice

The following table identifies and considers the impact of each of the potential options.

Option	Features	Impact	Benefits	Issues/Risks
Non-regulatory options				
<p>Option 1</p> <p>Clarify and improve accountability for children and young people in need of care or protection (including those engaging in a formal youth justice process) using existing accountability mechanisms, in the context of amended purposes and principles, to promote and underpin better outcomes for this group.</p> <p>Non-regulatory option</p> <p>Preferred option</p>	<p>This option would not change existing requirements in legislation.</p> <p>The performance management framework for the new operating model will show how the new Ministry and other organisations will be accountable for outcomes.</p> <p>Those accountabilities will be given effect as appropriate through the vulnerable children’s plan, Budget and Strategic Intentions documents, and SSC’s performance management of relevant CEs.</p> <p>This would be carried out in the context of amended purposes and principles.</p>	<ul style="list-style-type: none"> • <i>Children and young people</i> have assurance that they will receive a response (beyond what is already provided through the current functions of a FGC) if they have care, protection or wellbeing needs. • <i>The new Ministry</i> is able to target a response as needed and in line with an investment approach. It may be better able to address the criminogenic needs of children who may offend. • <i>The CE</i> is held accountable through performance expectations. • <i>Stakeholders and the public</i> could refer to the new Ministry’s strategic documents, the annual report and the vulnerable children’s plan to understand the Ministry’s role in delivering this response. 	<p>[Section 9(2)(h) OIA]</p> <ul style="list-style-type: none"> • <i>Compatibility with an investment approach</i> – Compatible with an investment approach by providing maximum flexibility. If resources are unavailable in the future, or a decision is made to prioritise elsewhere (eg to universal services), services could be reduced more easily to respond to changing circumstances. • <i>Fiscal and operational impact</i> – There are likely to be cost implications for the new Ministry and Police in improving the service they provide to this group. However, there is flexibility as the fiscal implications are dependent on the new operating model and not through legislative change. • <i>Interaction with other legislation and planned reforms</i> – This option is in line with the general direction set by Government for the new operating model, and is unlikely to constrain service design. 	<ul style="list-style-type: none"> • <i>Durability</i> – The provision of services and the role of the new Ministry would be subject to changes in policy and priorities. This means there is a higher risk that a group of high-needs children could be left without adequate service in the future due to prioritisation decisions or reduced focus. • <i>Likely effectiveness</i> – This option provides only a limited level of transparency and clarity about the new Ministry’s role and the roles of other agencies.
Regulatory options				
<p>Option 2</p> <p>Require the CE and the New Zealand Police to consider whether a young person who offends should be treated as a young person with care or protection or wellbeing needs under Part 2 of the Act and that youth justice FGCs can be held in tandem with Part 2 FGCs for this purpose.</p> <p>Regulatory option</p> <p>Preferred option</p>	<p>This option would place a legal obligation on the CE to consider whether a child or young person who offends should receive intervention and support from other parts of the system (such as prevention or intensive intervention) to meet their care, protection or wellbeing needs.</p> <p>In order to establish these needs, a Part 2 FGC may be held in tandem with a youth justice FGC.</p>	<ul style="list-style-type: none"> • <i>Children and young people</i> have an opportunity to have their care, protection or wellbeing needs met through other avenues not in the youth justice system. • <i>The new Ministry</i> may mobilise its other service areas to address the care, protection or wellbeing needs of a child or young person who offends. • <i>The CE</i> must consider whether a child or young person should be treated as a child or young person with care, protection or wellbeing needs. If so, these children would be treated as other vulnerable children and thus be covered by other service areas. 	<ul style="list-style-type: none"> • <i>Interaction with other legislation provisions and planned reforms</i> – Aligns well with other proposed reforms, such as a new power for youth justice FGCs to recommend ongoing support to young people. • <i>Likely effectiveness</i> – Children and young people who offend are particularly vulnerable and many are likely to have other care or protection needs. This option provides an opportunity to address these needs through intervention and support from other parts of the system. • <i>Durability</i> – the new Ministry would have an enduring responsibility to consider whether a child or young person has care or protection needs that should be addressed through other parts of the system. 	<ul style="list-style-type: none"> • <i>Fiscal and operational impact</i> – It is expected that there would be fiscal and operational impacts associated with more care and protection FGCs and increased uptake of services from other parts of the system (eg prevention and intensive intervention). It is likely that costs for considering referral can be managed within existing baselines. <p>[Section 9(2)(h) OIA]</p>

Option	Features	Impact	Benefits	Issues/Risks
<p>Option 3</p> <p>Amend the existing obligations to meet the criminogenic needs of children and young people so they are less limited by practicability or funding consideration.</p> <p>Regulatory option</p> <p>Non Preferred option</p>	<p>There is currently a duty on the CE for this group to implement the FGC plan for the child or young person unless unreasonable or impracticable or clearly contrary to the objects and principles of the CYPF Act, but only if the plan involves any action on the part of the CE.</p> <p>The CE does not need to directly deliver all the services required to meet those needs but must ensure those needs are met.</p>	<ul style="list-style-type: none"> • <i>Children and young people</i> have their needs met in more flexible ways. What must be provided is driven by the unmet needs of the specific child and there is flexibility to explore a range of avenues for ensuring those needs are addressed. The level of service provision for each child will therefore vary greatly according to their needs. • <i>The new Ministry</i> has the function of addressing the needs of children and young people entering the youth justice system. This would be set out in the objects/purpose of the CYPF Act, and the existing duty to implement the FGC plan would remain. • <i>The CE</i> is held accountable through performance expectations. • <i>Stakeholders and the public</i> could refer to the new Ministry's strategic documents, the annual report and the vulnerable children's plan to understand the Ministry's role in delivering this response. 	<ul style="list-style-type: none"> • <i>Likely effectiveness</i> - This proposal is likely to promote better early intervention responses to child and youth offending. The existing system has a strong focus on addressing the needs of children and young people, but only once they have offended. However, it would not be sufficient to provide a focus on responding to a young person's non-criminogenic needs. • <i>Consistency with the Treaty of Waitangi, UNCROC and other relevant international obligations</i> - This option furthers NZ's commitment to UNCROC; particularly Article 3 (best interests of the child) and Article 40 (juvenile justice). • <i>Compatibility with other Government objectives</i> - This proposal supports the objectives of the Youth Crime Action Plan. 	<ul style="list-style-type: none"> • <i>Likely effectiveness</i> - This option may not provide sufficient assurance that children's and young people's needs will be addressed. Access is not an entitlement, so not all children or young people receiving an alternative action would automatically access the proposed new intensive intervention response. • <i>Fiscal and operational impact</i> – Potentially increased costs, which are difficult to quantify given the need for further service design. No direct costs for other agencies.

Discussion of options – intensive intervention – youth justice

Non-preferred options

151 Option 3 is non-preferred.

152 While this option is likely to help to address the criminogenic needs of young people who offend, it may not be sufficient to provide a focus on responding to their non-criminogenic needs. In addition, extending the existing obligations on the Crown towards this group, so that they are no longer limited by practicability or funding considerations, may result in considerable fiscal risk to the Crown.

153 We have also considered the option of reforming the youth justice system, through legislative or non-legislative means, to provide a focus on meeting the broader unmet needs of young people who offend.

154 We did not provide further analysis on this option because:

- this would require a fundamental redesign of the youth justice system which may not align with reforms to other parts of the operating model
- this is contrary to evidence about the prevention of reoffending, which shows that a focus should be on diverting young people away from the justice system as early as possible¹²
- this may be inconsistent with the youth justice principles specified in sections 208(b) and 208(f) of the CYPF Act.

Preferred options

155 Options 1 and 2 are preferred.

156 Option 1 provides a non-regulatory expectation that a response would be provided to this group. This would be captured in the CE's performance agreement, which provides accountability for outcomes.

157 **[Section 9(2)(h) OIA]** the CE would have discretion over the level and type of response provided. This flexibility is also consistent with the investment approach, where decisions can be made to reprioritise resources to respond to changing circumstances.

158 This option alone may not provide enough clarity about the role of the new Ministry in relation to this group. The new Ministry's role would be subject to changes in policy and priorities, which means that a group of high-need children could be left without adequate service in the future due to prioritisation decisions or reduced focus.

159 However, this risk is mitigated by other options proposed as part of this broader legislative reform. For example, amended principles outlined in the *Intensive Intervention* RIS (Option 1B) place a focus on intervening early and addressing a child's unmet needs while supporting them to remain with their usual caregiver.

¹² Advisory Group on Conduct Problems (2009). Conduct Problems: Best Practice Report <http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/research/conduct-problems-best-practice/>

- 160 Option 2 involves a requirement for the new Ministry and the Police to consider whether a young person who offends should be referred to prevention or intensive intervention services. This provides an opportunity to address the wellbeing and criminogenic needs of young people who offend, as evidence shows that they are particularly vulnerable and many are likely to have other care or protection needs.
- 161 **[Section 9(2)(h) OIA]** While it is likely that there will be fiscal implications associated with this option, these are not yet quantified as they rely on service design.

Table Five – children and young people in care

The following table identifies and considers the impact of each of the potential options.

Option	Features	Impact	Benefits	Issues/Risks
Non-regulatory options				
<p>Option 1</p> <p>Clarify and improve accountability for children and young people in care using existing accountability mechanisms, in the context of amended purposes and principles, to promote and underpin better outcomes for this group.</p> <p>Non-regulatory (or regulatory) option</p> <p>Preferred option</p>	<p>This option would not change existing requirements in legislation. The current legislative framework enables the CE to provide support, including financial support, to children and young people in care.</p> <p>This includes the options considered in the <i>Care Support</i> RIS to:</p> <ul style="list-style-type: none"> • amend the purposes and principles of the CYPF Act relating to children in care • create a power to make regulations setting out national care standards. <p>In addition, the performance management framework for the new operating model will show how the new Ministry and other organisations will be accountable for outcomes.</p> <p>Those accountabilities will be given effect as appropriate through the vulnerable children’s plan, Budget and Strategic Intentions documents, and SSC’s performance management of relevant CEs.</p> <p>If the regulation-making power considered in the <i>Care Support</i> RIS is progressed, national care standards could be set to specify that certain needs of the child or young person should be addressed, eg adequate food, clothing, shelter and emotional care.</p>	<ul style="list-style-type: none"> • There is greater assurance that <i>children and young people</i> in care will have their needs addressed. • National care standards would provide <i>caregivers</i> and <i>the new Ministry</i> with clarity around their roles and the behaviours expected from them. 	<p>[Section 9(2)(h) OIA]</p>	<ul style="list-style-type: none"> • <i>Likely effectiveness</i> – May not be effective, as questions could still arise about the duties on the CE to individual children in care. Effectiveness depends on regulations being thorough. • <i>Durability</i> – May not be sufficiently durable. There is a risk of policy and practice lapsing as priorities change, due to the absence of a statutory benchmark. • <i>Fiscal and operational impact</i> – There are likely to be cost implications for the new Ministry in improving the services it provides to this group and in order to comply with the care standards. Costing will be developed alongside development of the standards. Could have some impacts on staff in terms of meeting the needs of children in care, although these impacts will not be known until the standards are developed. There are no direct costs for other agencies.

Option	Features	Impact	Benefits	Issues/Risks
Regulatory options				
<p>Option 2</p> <p>Make the setting of regulations for national care standards mandatory.</p> <p>May be combined with options 1 or 3.</p> <p>Regulatory option</p> <p>Preferred option</p>	<p>This option builds on the regulation-making power to set national care standards that is considered in the separate <i>Care Support</i> RIS.</p> <p>This option places an obligation on the Governor-General to make regulations for national care standards and an obligation on the CE to keep those regulations under regular review.</p>	<ul style="list-style-type: none"> • <i>Children, young people, caregivers, frontline workers and the new Ministry</i> will have certainty about the standards and behaviours expected for care. 	<ul style="list-style-type: none"> • <i>Likely effectiveness</i> – Will ensure that the new children’s entity is driven to meet the National Care Standards. Provides clarity over the actions the CE needs to take and what resources are needed. • <i>Interaction with other legislation and planned reforms</i> – Interacts well with proposals to introduce National Care Standards. • <i>Interaction with other legislation and planned reforms</i> – Aligns well with planned reforms and with the proposed role of the new Ministry. • <i>Consistency with relevant obligations</i> – Consistent with relevant obligations. Depending on content of standards, this option is likely to improve medium to long-term outcomes for Māori in care. 	<p>[Section 9(2)(h) OIA]</p> <ul style="list-style-type: none"> • <i>Compatibility with an investment approach</i> – Setting national care standards may constrain the application of an investment approach. • <i>Durability</i> – May not be sufficiently durable alone. There is a risk of policy and practice lapsing as priorities change, due to the absence of a statutory benchmark. • <i>Fiscal and operational impact</i> – There are likely to be cost implications for the new Ministry in improving the services it provides to this group and in order to comply with the care standards. Costing will be developed alongside development of the standards. Could have some impacts on staff in terms of meeting the needs of children in care, although these impacts will not be known until the standards are developed. There are no direct costs for other agencies.
<p>Option 3</p> <p>Place a duty on the CE to take reasonable steps to ensure the needs of children and young people in care are addressed.</p> <p>Regulatory option</p> <p>Preferred option</p>	<p>A new duty would be created in the CYPF Act.</p> <p>This could include a duty on the CE to ensure that each child and young person in care has the best opportunity to receive safe, stable, loving care as soon as possible and receives care in line with the national care standards.¹³</p>	<ul style="list-style-type: none"> • <i>Children and young people</i> will have certainty that they can receive the support they need while in care. • <i>Caregivers</i> will have certainty around the support the new Ministry is expected to provide. • <i>Frontline workers</i> will have clarity around their role and the behaviours expected of them towards children and young people in care. • <i>The CE</i> will have a clearly mandated role towards children and young people in care. • <i>The new Ministry</i> will be clearly positioned as the single point of accountability towards children and young people in care. 	<ul style="list-style-type: none"> • <i>Likely effectiveness</i> – This option goes the furthest towards meeting the desired objectives, particularly ensuring the needs of children and young people in care are addressed. • <i>Durability</i> – This option goes the furthest to set an enduring role for the new Ministry in ensuring the needs of children and young people in care are addressed. • <i>Interaction with other legislation and planned reforms</i> – Aligns well with planned reforms and with the proposed role of the new Ministry. • <i>Consistency with relevant obligations</i> – Consistent with relevant obligations. Is the option most likely to improve medium to long-term outcomes for Māori in care. 	<p>[Section 9(2)(h) OIA]</p> <ul style="list-style-type: none"> • <i>Fiscal and operational impact</i> – Although this is an existing common law duty, putting it in primary legislation means that sufficient Budget allocation to meet the needs of this group is likely to be subject to closer scrutiny in future. There will also be costs for the new Ministry in establishing internal complaints and review mechanisms – these have not yet been quantified. There are no direct costs for other agencies.

¹³We have considered a duty to children and young people who have moved from the care of the chief executive or other organisations to care under Care of Children Act 2004 orders (permanent care). This is not considered necessary as the needs of children and young people in this category are addressed through sections 388A, 389A and 389B as of 1 July 2016.

Discussion of options – children and young people in care

Preferred options

- 162 Options 1, 2 and 3 are preferred. These options are intended to complement and support the recommended options in the *Care Support* RIS, particularly the proposals to:
- amend the care and protection principles of the CYPF Act to ensure that they are child-centred and take a focus on the need for safe and stable care and on the preservation of key relationships
 - create a power in the CYPF Act to develop regulations that set out national care standards and detail how these are monitored and reviewed.
- 163 Option 1 would use existing accountability mechanisms to enhance the new Ministry's accountability for meeting the needs of children in care. This could be built on through setting regulations for care standards and other means, such as establishing a robust internal complaints process.
- 164 By making the setting of national care standards mandatory and providing for regular reviews of these, there is assurance that there are clear and pertinent care standards in place at all times.
- 165 There are precedents for this in other pieces of New Zealand legislation, where the Governor-General is required to agree on regulations covering certain matters.
- 166 Option 3 would provide further clarity for those performing functions under the CYPF Act as to the extent of the CE's obligations towards children in care. Specifying this duty in primary legislation also provides a reference point for the regulations that set out the care standards. This option could include emphasising particular components of the duty in the legislation, such as a requirement to take reasonable steps to address physical, educational, health and therapeutic needs.
- 167 While obligations already exist towards children in care, making this duty explicit in the legislation would:
- send a clear signal about the roles and behaviours expected from the CE and the new Ministry towards this group
 - enable explicit standards to be set in relation to this duty
 - place the CE in greater control over the expected standard of services to be provided for children and young people in care, rather than allowing this to be determined by the Courts.
- 168 There is a need to consider rights of review available to children and young people. Mechanisms available through the courts may not constitute effective and accessible enforcement mechanisms for children and young people to have their rights enforced if any concerns arise. The complaints mechanism considered as Option 3 in Table Eight in this RIS may help to address this.
- 169 Together, Options 2 and 3 would create a clear and enduring mechanism for ensuring that national care standards are developed, and that the CE is accountable for meeting the needs of children in care in line with these standards.

- 170 These options would clearly signal that the new Ministry is the single point of accountability for meeting the needs of children and young people in care. Children and young people in care would have assurance about the support that they are able to receive, and families, whānau and members of the public would have assurance about the standards to which the new Ministry has committed.
- 171 These options would be complemented by the Parliamentary reporting mechanism proposed in this RIS (see Option 2, Table Eight), whereby the Minister (or a delegate) would be required to report to Parliament on the extent to which current policy settings are meeting the needs of this group, including as to whether legislative change is recommended.

Table Six – transition advice and assistance

The following table identifies and considers the impact of each of the potential options. Please note: all options should be considered as being in addition to the use of existing accountability arrangements to help achieve the desired outcomes.

Option	Features	Impact	Benefits	Issues/Risks
Non-regulatory options				
<p>Option 1</p> <p>Use existing mechanisms to create accountability for addressing needs.</p> <p>No legislative change beyond those already agreed by Cabinet on: the purposes and principles for transition support, extending section 386A to 21 and a regulation-making power to provide detail on aspects of transition advice and assistance.</p> <p>All changes proposed in the <i>Transition to Independence</i> RIS.</p> <p>Non-regulatory option</p> <p>Non-preferred option</p>	<p>Section 386A of the CYPF Act provides the CE with a discretionary power to provide advice and assistance (including financial assistance), up to the age of 20, to those who have been in care for a minimum of three continuous months after the age of 14 years and 9 months.¹⁴</p> <p>This is to be extended to up to the age of 21 in accordance with amendments already agreed.</p> <p>In addition, the performance management framework for the new operating model will show how the new Ministry and other organisations will be accountable for outcomes.</p> <p>Those accountabilities will be given effect as appropriate through the vulnerable children’s plan, Budget and Strategic Intentions documents, and SSC’s performance management of relevant CEs.</p> <p>This would be carried out in the context of amended purposes and principles.</p> <p>Operational guidance could be developed to add further detail on these decisions, eg on the provision of financial assistance.</p> <p>Many care leavers will also be able to access other supports, including through the Youth Service and the benefit system.</p>	<ul style="list-style-type: none"> • <i>The CE</i> will retain some discretion over the provision of advice and assistance. • <i>Young people</i> may receive more consistent transition support. This support will continue to be available until age 21. • <i>Frontline workers</i> may have more certainty than currently about considerations in the provision of assistance through any regulations that have been set. 	<ul style="list-style-type: none"> • <i>Compatibility with an investment approach</i> – Likely to be more compatible with an investment approach than Option 4. Retains wide flexibility to target support if needed. • <i>Fiscal and operational impact</i> – Retaining the discretion available to the CE means that costs could be rationed or targeted as needed. Since this option does not extend the ability to provide assistance past 21, implementing this option alone would have the lowest operational impact on the new Ministry and wider sector. • <i>Consistency with relevant obligations</i> – Dependent on regulations, but is likely to improve medium to long-term outcomes for Māori leaving care or a youth justice residential placement. Enhances support for young adults with disabilities to live independently. Consistent with UNCROC. 	<ul style="list-style-type: none"> • <i>Likely effectiveness</i> – this option will not be effective in enabling the provision of support to those care leavers over the age of 21. <p>[Section 9(2)(h) OIA]</p>

¹⁴ Proposals considered in a separate *Transition to Independence* RIS expand the eligibility criteria for section 386A to include young people who have spent this minimum period in a youth justice residential placement or placed with an approved care provider under the guardianship of the Court, where the chief executive has been appointed as the agent of the Court.

Option	Features	Impact	Benefits	Issues/Risks
Regulatory options				
<p>Option 2</p> <p>Amend section 386A to place more proactive obligations on the CE of the new Ministry towards eligible young people.</p> <p>Regulatory option</p> <p>Preferred option</p>	<p>Section 386A would be amended so that the CE is required to maintain contact with the young person and proactively offer support up to the age of 21.</p> <p>This requirement is most likely to be useful in the first few years after a young person has left care and could be tailored to particular age groups.</p>	<ul style="list-style-type: none"> • <i>Young people</i> would have certainty that they are able to access this support if they need it once they leave care or a youth justice residential placement. • <i>Frontline workers</i> and the <i>new Ministry</i> would have a clear mandate to actively maintain a relationship with the young person once they have left care, up to the age of 21. This would not be intended to be invasive. 	<ul style="list-style-type: none"> • <i>Likely effectiveness</i> – Supports objectives to ensure young people’s needs are met and clarify the role of the new Ministry, but could go further. • <i>Compatibility with an investment approach</i> – Compatible with an investment approach. Since this option retains CE discretion in the provision of advice and assistance, there is flexibility to target support in line with an investment approach. • <i>Durability</i> – Reasonably flexible because detailed policy settings would be provided in regulations (and would be relatively easy to update). • <i>Fiscal and operational impact</i> – Relatively minor fiscal and operational requirements for the new Ministry to deliver on these obligations. • <i>Consistency with the Treaty of Waitangi, UNCROC and other obligations</i> – Given the above considerations, it is likely be more aligned than other options • <i>Interaction with other legislation and planned reforms</i> – Regulations could be designed to align with the implementation of the new operating model. 	<p>[Section 9(2)(h) OIA]</p> <ul style="list-style-type: none"> • <i>Fairness and equity</i> – This option may be inequitable, as only eligible young people in the system would benefit from it. • <i>Ease of application</i> – Would require further work to develop policy settings in regulations. • <i>Operational impact</i> – May be difficult to ensure the process connects to and aligns with other services delivered by other agencies
<p>Option 3</p> <p>Amend section 386A to extend the upper age of transition advice and assistance to the 25th birthday.</p> <p>Regulatory option</p> <p>Preferred option</p>	<p>Section 386A would be amended to extend the existing discretionary power to provide transition advice and assistance up to the age of 25, with a particular focus on those with higher or more complex needs.</p>	<ul style="list-style-type: none"> • <i>Young people and their (former) caregivers</i> will know that if necessary they may be able to receive transition support for longer into their adulthood as they move into independence. • <i>Frontline workers</i> will have more discretion to propose extending support to young people where they believe this is necessary. • May remove some pressure from <i>other social services</i>, such as the benefit system, that young adults may use. 	<ul style="list-style-type: none"> • <i>Likely effectiveness</i> – Supports objectives to ensure a young person’s needs are addressed. <p>[Section 9(2)(h) OIA]</p> <ul style="list-style-type: none"> • <i>Compatibility with an investment approach</i> – Compatible with an investment approach. Retains discretion currently available to CE in provision of advice and assistance. • <i>Fairness and equity</i> – This option is fair and equitable, since it extends the age at which eligible young people are able to receive support at a vulnerable stage in their lives. • <i>Durability</i> – This option creates an enduring mandate 	<ul style="list-style-type: none"> • <i>Fiscal and operational impact</i> – This option is likely to be associated with modest costs. It expands the population eligible for advice and assistance under section 386A, but maintaining the discretionary nature of the provisions means costs can be controlled. <p>[Section 9(2)(h) OIA]</p> <p>However, costs associated with this option may be managed under the current levels of discretion in section 386A. There are no direct costs for other agencies.</p>

Option	Features	Impact	Benefits	Issues/Risks
			<p>for assistance to be provided to young people up to the age of 25.</p> <ul style="list-style-type: none"> • <i>Interaction with other legislation and planned reforms</i> – Regulations could be designed to align with the implementation of the new operating model. • <i>Consistency with relevant obligations</i> – This approach is consistent with relevant obligations, and the new operating model is consistent with UNCROC. 	
<p>Option 4</p> <p>Amend section 386A to place a duty on the CE to provide financial assistance to a young person leaving care or a youth justice residential placement.</p> <p>Regulatory option</p> <p>Non-preferred option</p>	<p>Section 386A would be amended so that the CE <i>must</i> provide or arrange the provision of such financial assistance as they consider necessary to enable a young person to achieve independence.</p>	<ul style="list-style-type: none"> • <i>Young people</i> will have more certainty, compared with all other options, that they may receive financial assistance while moving into independence. • Compared with other options, <i>frontline workers</i> will have a stronger mandate to provide financial assistance to ensure young people’s needs are addressed. • This option would go the furthest in signalling that <i>the new Ministry</i> is the single point of accountability for addressing the needs of vulnerable children and young people. • This option would support the direct purchasing of services from <i>partner agencies and organisations</i>. 	<ul style="list-style-type: none"> • <i>Likely effectiveness</i> – Likely to go the furthest of all options in ensuring that the needs of young people transitioning to independence are addressed. Also supports the objective to clarify the new Ministry’s role towards this group. • <i>Durability</i> – This option creates an enduring role for the new Ministry towards young people transitioning to independence. • <i>Consistency with relevant obligations</i> – This approach is consistent with relevant obligations, and the new operating model is consistent with UNCROC. 	<ul style="list-style-type: none"> • <i>Compatibility with an investment approach</i> – May not be as compatible with an investment approach as the other options, since this option places a stronger duty on the CE to ensure financial assistance is provided, and is likely to limit the discretion currently available to the CE. <p>[Section 9(2)(h) OIA]</p> <ul style="list-style-type: none"> • <i>Fairness and equity</i> – This option may be inequitable, as only eligible young people in the system would benefit from it. • <i>Fiscal impact</i> – This option is likely to be associated with increased costs, as it increases the new Ministry’s obligations to provide financial assistance to this group. • <i>Interaction with other legislation and planned reforms</i> – This option specifies a role for the new Ministry in ensuring the needs of young people in transition are addressed ahead of budget allocations being confirmed.

Discussion of options – transition advice and assistance

Non-preferred options

- 172 Option 1 is non-preferred as it provides no mechanism for making assistance available to care leavers over the age of 25. Whilst care leavers in this age group are less likely to require assistance, there may be cases where extra support is needed.
- 173 Option 4 is non-preferred. It may go the furthest in setting a clear role for the new Ministry towards young people transitioning to independence. However, this option may be associated with significant costs, since it strengthens the duties on the new Ministry to financially support this group. This may also limit the extent to which transition support can be delivered in line with an investment approach, since the new Ministry may require discretion to target certain types or levels of support to particular population groups.

174 [Section 9(2)(h) OIA]

Preferred options

- 175 Options 2 and 3 are preferred. These options are intended to complement the legislative proposals that are considered in a separate *Transition to Independence* RIS, including the proposed principles to guide decision-making that enables young people to successfully take up the opportunities of adulthood.
- 176 Together, these options build on the accountabilities set out in section 386A of the CYPF Act to clarify the role of the new Ministry towards young people transitioning to independence. These options would help to ensure that the new Ministry continues to proactively offer support once a young person has left care or a youth justice residential placement, and that discretion to provide support continues up to the age of 25.
- 177 Legislative amendment is required to increase the upper age of transition advice and assistance to 25. Discretion to provide support to young people from the age of 21 to 25 would take a particular focus on those with high or complex needs, but there would be discretion to provide short-term support where this would make a difference for those with less complex needs.
- 178 Enabling young people to receive support to this age would align with the experiences of many young people, as parents are increasingly likely to support their children well into their twenties.¹⁵ Providing transition support into the mid-twenties has been shown to have positive impacts on crime, health, housing and education outcomes¹⁶ and would also bring New Zealand into line with comparable jurisdictions.¹⁷

179 [Section 9(2)(h) OIA]

¹⁵ Government has set some expectations for New Zealand parents to continue to support their children into young adulthood. This is reflected, for example, in the student allowance parental income test, which extends up to age 24.

¹⁶ Valentine, E., M. Skemer & M. Courtney (2015). *Becoming Adults: One-year Impact Findings from the Youth Villages Transitional Living Evaluation*. MDRC: New York, USA.

¹⁷ Transition support is provided up to the age of 25 in Wales and New South Wales, and 26 in Scotland.

- 180 Additional legislative amendment is desirable to remove any doubt or ambiguity that the new Ministry should maintain contact with the young person as they transition to independence, up to the age of 21. Although legislative change would not be required for the new Ministry to maintain contact with a young person who has been in their care, creating a statutory obligation for this provides a clear signal as to its importance. It also sets a strong and durable mandate for the Ministry to do so.
- 181 This approach is consistent with the approach taken in England and Wales, where the care agency is responsible for 'keeping in touch' and continuing to assess and provide tailored transition support after the young person leaves care.
- 182 In addition to these legislative changes, the regulation-making power proposed in a separate *Transition to Independence* RIS could be used to develop policy settings relating to advice and assistance provided under section 386A. For example, regulations could be used to provide further detail on the provision of financial assistance.
- 183 The transition service will complement rather than duplicate other services that the young person might be eligible to receive. For example, a young person may receive case management or financial support through the Youth Service. The transition service would assess the supports a young person is receiving and would be able to provide further financial or non-financial supports to meet the young person's needs.
- 184 The detail of how transitional services will complement these existing services will be worked out during the service design process.
- 185 These options would be complemented by the Parliamentary reporting mechanism proposed in this RIS (see Option 2, Table Eight), whereby the Minister (or a delegate) would be required to report to Parliament on the extent to which current policy settings are meeting the needs of young people transitioning out of care or a youth justice residential placement, including as to whether legislative change is recommended. This would create a clear and public mechanism for signalling and evaluating the new Ministry's role towards this group.

Table Seven – cross-agency accountabilities

The following table identifies and considers the impact of each of the potential options.

Option	Features	Impact	Benefits	Issues/Risks
Non-regulatory options				
<p>Option 1</p> <p>Clarify and improve cross-agency accountabilities using existing accountability mechanisms.</p> <p>Non-regulatory option</p> <p>Preferred option</p>	<p>This option would not change existing requirements in legislation. Rather, it would clarify and improve accountability for the collaborative actions needed to address the needs of children and young people through existing accountability arrangements and collaboration mechanisms within and across each of the relevant sectors. These include:</p> <ul style="list-style-type: none"> Common expectations on public service CEs Setting of Government priorities and developing a cross-agency vulnerable children’s plan under Part 1 of the VCA. <p>For Crown entities, such as DHBs:</p> <ul style="list-style-type: none"> regular engagement with the Chair or Board on expectations for entity performance input into the Crown Entity’s Statement of Intent input into the Statement of Performance Expectations subject to Cabinet consideration, adjustment of funding for the entity via appropriations, fees, levies, grants, and, for DHBs, the Crown Funding Agreement formal policy directions, such as published targets (eg Better Public Services) 	<ul style="list-style-type: none"> <i>Children, young people and families</i> would expect improved access to services under the new operating model. However, this service provision would be subject to changes in policy and priorities. <i>Stakeholders and the public</i> could refer to the vulnerable children’s plan to understand cross-agency arrangements. <i>Agencies</i> would have to deliver and report on priorities under a vulnerable children’s plan or via other accountability mechanisms eg, statements of intent. 	<ul style="list-style-type: none"> <i>Likely effectiveness</i> – this option may go some way towards ensuring agencies work together. There would be some clarity about what agency priorities are and how services provided work together to achieve outcomes. <p>[Section 9(2)(h) OIA]</p> <ul style="list-style-type: none"> <i>Fiscal and operational impact</i> – Costs associated with this option could be rationed or targeted. <i>Compatibility with an investment approach</i> – This option provides wide flexibility to target resources to achieve outcomes and apply an investment approach. <i>Interaction with other legislation provisions and planned reforms</i> – This option provides a high degree of flexibility for the operating model to develop. Children’s agencies have significant flexibility about services and supports they provide, including for care-experienced children <i>Consistency with relevant obligations and objectives</i> – This approach is likely to be consistent with other government objectives and could make progress towards obligations under UNCROC. 	<ul style="list-style-type: none"> <i>Likely effectiveness</i> – This option may not provide sufficient visibility or mandate around addressing children’s and young people’s needs, and it may not provide clear assurance to the public and other stakeholders that services will be delivered for children. This could be partially mitigated through setting priorities at a policy level. <i>Fiscal and operational impact</i> – There would be costs associated with the implementation of the new operating model. <i>Durability</i> – the priorities and actions and under the vulnerable children’s plan and expectations for Crown Entities would be subject to changes in policy and priorities.
Regulatory options				
<p>Option 2</p> <p>Strengthen joint working arrangements under the Vulnerable Children’s Plan.</p> <p>Regulatory option</p> <p>Preferred</p>	<p>This option would amend the requirements around the development of a vulnerable children’s plan, currently specified in Part 1 of the Vulnerable Children Act 2014, to ensure children’s agencies work together strategically around populations of interest to the new Ministry, by:</p> <ul style="list-style-type: none"> requiring the vulnerable children’s plan to apply to the specific populations of children and young 	<ul style="list-style-type: none"> <i>Children, young people and families</i> would expect improved access to services under the new operating model. However, this service provision would be subject to changes in policy and priorities. <i>Stakeholders and the public</i> could refer to the vulnerable children’s plan to understand cross-agency arrangements, with more specificity than in Option 1. 	<ul style="list-style-type: none"> <i>Likely effectiveness</i> – This option provides more certainty that over time, priority will be given to certain groups and signals the activity required. <p>[Section 9(2)(h) OIA]</p> <ul style="list-style-type: none"> <i>Fiscal and operational impact</i> – Costs associated with this option could be rationed or targeted. <i>Compatibility with an investment approach</i> – This option provides wide flexibility to target resources to achieve outcomes and apply an investment approach. <i>Durability</i> – Creates a durable commitment to 	<ul style="list-style-type: none"> <i>Likely effectiveness</i> – As the option does not require services to be provided, it may not provide sufficient assurance that services required by other agencies will be delivered for children. This could be partially mitigated through setting priorities at a policy level. <i>Fiscal and operational impact</i> – there would be costs associated with the implementation of the vulnerable children’s plan. A monitoring mechanism may be required. <i>Durability</i> –The priorities and actions under the vulnerable children’s plan would be subject to changes in policy and priorities.

Option	Features	Impact	Benefits	Issues/Risks
	<p>people receiving intensive intervention, youth justice, care and transition support services from the new Ministry</p> <ul style="list-style-type: none"> requiring the plan to specify the steps that will be taken to improve the wellbeing of these groups, including arrangements for agencies' participation in assessment, planning and decision-making and for the provision of services to these groups requiring the vulnerable children's plan to apply to care-experienced children and young people (ie children and young people up to age 21 who are or have been in care), so that children's agencies provide opportunities and support for care-experienced children and young people that helps improve their wellbeing. <p>The existing accountability and reporting requirements under the Vulnerable Children Act 2014 will apply.</p>	<ul style="list-style-type: none"> <i>Agencies</i> would have to deliver and report on priorities under a vulnerable children's plan, including on arrangements for service provision to specific groups of children and young people. 	<p>agencies working together to address the needs of specific groups of children. However, the priorities and actions under the vulnerable children's plan would be subject to changes in policy and priorities.</p> <ul style="list-style-type: none"> <i>Interaction with other legislation provisions and planned reforms</i> – This option provides a high degree of flexibility for the operating model to develop while focusing on core populations. Children's agencies have significant flexibility around the steps they set out in the plan to improve the wellbeing of vulnerable children, including for care-experienced children. <i>Consistency with relevant obligations</i> – This approach is consistent with New Zealand's obligations. It could make progress towards obligations under UNCROC. 	
<p>Option 3 Place obligations on specified State sector agencies. Regulatory option Non-preferred</p>	<p>This option would amend the legislation to require the Ministries of Education, Health, Justice and Social Development, the New Zealand Police, District Health Boards and school boards to, where needed:</p> <ul style="list-style-type: none"> participate in assessment, planning and decision-making around children and young people receiving a response from the new Ministry work with the new Ministry to help ensure services are provided to these children and young people. <p>Legislative amendments would also be made to:</p> <ul style="list-style-type: none"> require the specified agencies to take steps to ensure the provision of services to this group enable the CE of the new Ministry to request services from the specified agencies to address a child's or young person's needs, or to support 	<ul style="list-style-type: none"> <i>Children and young people</i> will have more assurance that they can access the services they need. <i>Stakeholders and the public</i> will have more certainty about the roles of different agencies towards children and young people receiving a response from the new Ministry. 	<ul style="list-style-type: none"> <i>Likely effectiveness</i> – Supports the objectives to ensure the needs of vulnerable children and young people are addressed and to clarify the roles of other agencies towards these groups. <i>Compatibility with an investment approach</i> – Provides broad flexibility to support the application of an investment approach. <i>Durability</i> – Creates a durable commitment to agencies working together to address the needs of specific groups of children. <i>Consistency with relevant obligations</i> – This approach is likely to be consistent New Zealand's obligations. It could make progress towards obligations under UNCROC. 	<p>[Section 9(2)(h) OIA]</p> <ul style="list-style-type: none"> <i>Fiscal and operational impact</i> – Could create considerable fiscal risk. It will be difficult to determine the extent of this ahead of resource allocations being determined under the new operating model. <i>Interaction with other legislation provisions and planned reforms</i> – This option may create issues in the implementation of the operating model, as it places duties on agencies ahead of resource allocations being determined.

Option	Features	Impact	Benefits	Issues/Risks
	<p>the delivery of a core service line of the new Ministry, and place a corresponding duty on agencies to comply with the request.</p> <p>These duties would be subject to the qualifications that they must be given effect so far as they are not clearly impracticable for the agency and do not unreasonably affect the discharge of that agency's functions in relation to others.</p> <p>Each agency would be required to report in its annual report on compliance with these obligations.</p>			

Discussion of options – cross-agency accountabilities

Non-preferred options

186 While Option 3 is likely to provide clarity and transparency around the roles of different agencies towards children and young people receiving a response from the new Ministry, it is non-preferred for the following reasons:

- potential legal risk
- there may be risks associated with placing legislative duties on other agencies ahead of resource allocations for the new operating model being determined
- it may carry considerable fiscal risk, though the extent of this would be difficult to determine ahead the allocation of funding for the new operating model.

187 There are additional options for enhancing cross-agency accountabilities that we have considered but have not provided further analysis on, for the reasons below:

- A broad duty to co-operate in primary legislation with details of the duty to be provided in regulations - This option enables the details of the duty to be determined alongside the development of the operating model. We consider, however, that this option has similar benefits and risks to Option 3 and would duplicate the existing mechanism of the Vulnerable Children's Plan.
- Enable the Family Court to make a services order or support order against another agency without its consent – Consent is currently required to make such an order from anyone other than the CE of MSD. This option creates a risk of inappropriate service selection unless there is assurance of appropriate clinical input and assessment. It may not be appropriate for children who require a service but may not be subject to processes requiring Family Court oversight (eg some children receiving intensive intervention or youth justice services will not be subject to court orders).
- A duty to safeguard and promote the welfare of children, or principles to support joint working – We have determined that these would not provide the required specificity, nor create a sufficiently clear obligation.

Preferred options

188 For cross-agency accountabilities, the following options are recommended:

- Option 1 – use existing accountability and collaboration mechanisms to create cross-agency accountability for the actions needed to address the needs of children and young people
- Option 2 – strengthen joint working arrangements under the vulnerable children's plan (currently required under Part 1 of the VCA).

189 Together, the benefits of Options 1 and 2 are that they:

- help to ensure that specified agencies work together to address the needs of children and young people
- do not create additional legal risk

- provide flexibility to ration or target costs in line with an investment approach.

190 Option 2 would require legislative amendment to introduce greater specificity into the joint working arrangements already specified under Part 1 of the VCA.

191 These options are intended to promote a collaborative approach to assessing children's and young people's needs and identifying and securing the services required to address those needs.

192 As part of the community parenting responsibilities proposed in Option 2, it is intended that agencies provide opportunities and support that help to improve the wellbeing of care-experienced children and young people. Some examples could include subsidised services, employment opportunities, and opportunities to participate in the design of services.¹⁸ Members of the Youth Advisory Panel have identified that the types of support that may be useful for care-experienced young people could include subsidised transport, paid internships, and assistance with obtaining driver licenses. It is intended that there be a wide degree of flexibility for agencies to determine the type of support or opportunities they could provide, rather than the details being prescribed in legislation.

¹⁸ Children's agencies could work with other agencies and non-government organisations to identify suitable support and opportunities.

Table Eight – enhancing the new Ministry’s accountability across the system

The following table identifies and considers the impact of each of the potential options.

Option	Features	Impact	Benefits	Issues/Risks
Non-regulatory options				
<p>Option 1 Status quo. Non-regulatory option Non-preferred option</p>	<p>This option makes no legislative changes other than those proposed through the other options in this RIS. As a result, accountability would be clarified and improved in relation to the following areas or groups:</p> <ul style="list-style-type: none"> • the co-ordination and provision of prevention services (see Table One) • children and young people who have high needs but do not meet the care and protection threshold (see Table Two) • children and young people who meet the care and protection threshold but are not in care (see Table Three) • children and young people who are in care (see Table Four) • young people who are transitioning out of care or a youth justice residential placement (see Table Five) • cross-agency collaboration and co-operation (see Table Six). <p>No additional mechanisms to enhance the new Ministry’s accountability across the system would be put in place.</p> <p>Note that accountability for the provision of services to different populations of children and young people would also be created at a general level through proposed changes to the objects and principles of the CYPF Act (see the objects and principles proposed in the accompanying <i>Foundations for a Child-centred System RIS</i>, the <i>Care Support RIS</i> and the <i>Transition to Independence RIS</i>).</p>	<ul style="list-style-type: none"> • <i>Children and young people</i> have some assurance that they will receive services to meet their needs. • <i>The Minister and the new Ministry</i> have a moderately clear role in responding to the needs of each of these groups. • <i>Stakeholders and the public</i> have a moderately clear understanding of the new Ministry’s role in meeting the needs of these groups, and are able to see the extent to which it is doing so. 	<ul style="list-style-type: none"> • <i>Likely effectiveness</i> – Supports the objective of ensuring the needs of different populations of children and young people are addressed. <p>[Section 9(2)(h) OIA]</p> <ul style="list-style-type: none"> • <i>Compatibility with an investment approach</i> – Depending on other options in this RIS that are progressed, the status quo would have sufficient flexibility to support an investment approach. • <i>Fiscal and operational impact</i> – There may be significant cost implications for the new Ministry and other agencies associated with extending existing services or creating new services. However, there is flexibility as the fiscal implications will be decided under the new operating model and not through legislation. • <i>Durability</i> – This would vary depending on the other options in this RIS that are progressed. • <i>Interaction with legislation and planned reforms</i> – Depending on other options in this RIS that are progressed, the status quo would provide flexibility for alignment with the design and implementation of the new operating model. • <i>Consistency with relevant obligations</i> – Consistent with UNCROC and the Treaty of Waitangi. 	<ul style="list-style-type: none"> • <i>Fairness and equity</i> – There is wide discretion over the type, level and provision of services. The status quo may not provide a sufficiently strong mechanism for ensuring that services are provided fairly and equitably. However, the fairness and equity of services provided would vary depending on other options in this RIS that are progressed.

Option	Features	Impact	Benefits	Issues/Risks
Regulatory options				
<p>Option 2</p> <p>Require the Minister (or a delegate) to evaluate current accountability settings towards the population groups covered by the new operating model through a Parliamentary reporting mechanism.</p> <p>Regulatory option</p> <p>Preferred option</p>	<p>In addition to the legislative changes proposed through other options in this RIS, a legislative requirement would be placed on the Minister (or a delegate) to report to Parliament, once the operating model has been in place for five years, on the extent to which current policy settings are meeting the needs of specific groups under the new operating model, including as to whether legislative change is recommended.</p> <p>The Minister (or delegate) would be required to report on the extent to which current policy settings are meeting the needs of:</p> <ul style="list-style-type: none"> • children and young people who have early risk factors of vulnerability • children and young people who have high needs but are below the care and protection threshold • children and young people who meet the care and protection threshold but are not in care • children and young people who are in care • young people who are transitioning out of care or a youth justice residence and moving into adulthood. <p>Following the initial report, subsequent reports would be required every three years.</p> <p>This option is intended to complement the other proposals in this RIS to increase the accountability of the new Ministry towards all population groups covered by the new Ministry.</p>	<ul style="list-style-type: none"> • <i>Children and young people</i> have greater assurance that they will receive effective and evidence-based responses to meet their needs. • <i>The Minister and the new Ministry</i> regularly consider the performance of the system and have a mandate to consider policy or legislative change in response to evidence. • <i>Stakeholders and the public</i> have a clearer understanding of the new Ministry's role in addressing the needs of these groups, and have a clear and public means of seeing the extent to which it is doing so. 	<ul style="list-style-type: none"> • <i>Likely effectiveness</i> – Supports the objective of ensuring the needs of different populations of children and young people are addressed, which is consistent with a child-centred approach. Creates a clear and public mechanism for signalling and evaluating the new Ministry's role towards these groups. <p>[Section 9(2)(h) OIA]</p> <ul style="list-style-type: none"> • <i>Compatibility with an investment approach</i> – Compared with Option 1, this option would provide added support for an investment approach. The reporting mechanism would require the new Ministry to evaluate new evidence and consider whether policy and legislative settings should be modified in response to this evidence. The CE would also have discretion over how it responds to this evidence, which provides flexibility to target resources in line with an investment approach. • <i>Durability</i> – More durable than Option 1. Creates an enduring mechanism for holding the Minister (or delegate) and the new Ministry accountable towards these groups of children and young people. • <i>Fiscal and operational impact</i> – Low fiscal and operational impact. The wide discretion available to the CE provides some control over costs and implementation as manageable. • <i>Interaction with legislation and planned reforms</i> – Provides wide flexibility for alignment with the design and implementation of the operating model. • <i>Consistency with relevant obligations</i> – Consistent with UNCROC and the Treaty of Waitangi. 	<ul style="list-style-type: none"> • <i>Likely effectiveness</i> – The Minister (or delegate) has wide discretion over whether and how to respond to evidence on the effectiveness of current policy and legislative settings. As a result, this option alone may not provide a strong mechanism for ensuring that services are effectively addressing the needs of these groups. However, this option is intended to complement other proposals in this RIS, which help to provide direction over the provision of services to each population group. Moreover, Parliament would be able to exercise scrutiny over the Minister's response. <p>There is a concern that the Minister (or delegate) is not independent, and thus cannot objectively report on the effectiveness of current accountability settings. This is mitigated by the Parliamentary scrutiny discussed above.</p>
<p>Option 3</p> <p>Place a duty on the CE to ensure that complaint mechanisms are established for children and</p>	<p>The duty would specify that the complaint mechanisms must enable any child or young person, and family members or caregivers of that child or young person, to raise concerns about any action taken by the CE (or another organisation under delegation from the CE, or within the CE's accountabilities).</p>	<ul style="list-style-type: none"> • <i>Children, young people, family members and caregivers</i> have more certainty about the processes available to them if they wish to raise concerns, and what can be expected through these processes. • <i>The CE</i> has a clear role in relation to ensuring child-centred complaints 	<ul style="list-style-type: none"> • <i>Likely effectiveness</i> – Supports the objective to clarify the role of the new Ministry towards vulnerable children and young people. Goes some way towards ensuring that their needs are addressed when raising concerns about actions, decisions or services. Helps to ensure that the voices of children and young people are effectively heard. • <i>Compatibility with an investment approach</i> – This 	<p>193 <i>Fiscal and operational impacts</i> – There may be costs associated with the development of a reformed complaints mechanism. [Section 9(2)(h) OIA] depending on the scale and model of changes taken. However, there may be benefits and efficiencies from this that cannot accurately be estimated at this time.</p>

Option	Features	Impact	Benefits	Issues/Risks
<p>young people.</p> <p>Create a power for regulations to be made that set up such independence review mechanisms that may be necessary.</p> <p>Regulatory option</p> <p>Preferred option</p>	<p>The mechanisms must provide a reasonable opportunity for such concerns to be resolved in a timely, fair and child-centred manner.</p> <p>To ensure that the mechanisms are both fit for purpose and credible, the Chief Executive must consult with the State Services Commissioner when establishing or amending the complaints mechanism.</p>	<p>processes are available and that independent mechanisms are in place to review these.</p> <ul style="list-style-type: none"> • <i>Frontline workers</i> have a clear understanding of these processes. 	<p>option supports an investment approach. Depending on the complaint mechanism that is developed, this could establish a strong investment approach feedback loop that drives practice improvements, reducing service issues and complaints over time.</p> <p>[Section 9(2)(h) OIA]</p> <ul style="list-style-type: none"> • <i>Durability</i> – This option places enduring accountability on the CE in relation to child-centred complaint mechanisms, and independent review processes for these mechanisms. • <i>Interaction with other legislation and planned reforms</i> – Same as for Option 2. • <i>Consistency with relevant obligations</i> – This option would provide strong support for New Zealand’s obligations, particularly Article 12 of UNCROC (the right to express views and be heard in proceedings). 	

Discussion of options – enhancing the new Ministry’s accountability across the system

Non-preferred options

194 Option 1 is non-preferred.

195 This option consists of the ‘status quo’ as set by the other options progressed in this RIS. Depending on the options that are progressed, this would mean that accountability is enhanced in relation to:

- the co-ordination and provision of prevention services (see Table One)
- children and young people with high needs below the care and protection threshold (see Table Two)
- children and young people who meet the care and protection threshold (see Table Three)
- children and young people in care (see Table Four)
- young people who are transitioning from care or a youth justice residential placement into adulthood (see Table Five)
- cross-agency co-operation and collaboration (see Table Six).

196 While this option goes some way towards improving the new Ministry’s accountability across the system as a whole, Option 2 goes even further to support the other proposals in this RIS and creates a stronger mandate, if necessary, for changing policy settings or legislation to meet these groups’ needs.

Preferred options

197 To enhance the new Ministry’s accountability for vulnerable children and young people across the system, Options 2 and 3 are preferred.

198 Option 2 is intended to complement the other options recommended in this RIS by establishing a Parliamentary mechanism through which the Minister (or a delegate) is required to report to Parliament on the extent to which current policy settings are meeting the needs of the following groups:

- children and young people who have early risk factors of vulnerability
- children and young people who have high needs but are below the care and protection threshold
- children and young people who meet the care and protection threshold but are not in care
- children and young people who are in care
- young people who are transitioning out of care or a youth justice residence and moving into adulthood.

199 As part of the reporting mechanism, the Minister (or a delegate) would be required to report on whether further legislative change is needed to enable the system to meet the needs of these groups.

- 200 The Minister (or a delegate) would also be required to consider recent evidence around outcomes and the effectiveness of services for vulnerable children and young people and whether this evidence should inform any modifications to the policy settings or the legislation.
- 201 This option is preferred because it provides an added mechanism for enhancing the new Ministry's accountability towards each of these specific groups. Compared with Option 1, Option 2 goes further towards ensuring the needs of these groups are addressed, and clearly signposts the new Ministry as the single point of accountability towards these groups.
- 202 **[Section 9(2)(h) OIA]** In addition, it retains broad flexibility around the provision of services, which would enable the new operating model to be progressed in line with an investment approach if needed. Further, the requirement for the Minister to consider recent evidence and reflect this in the policy or legislation would provide support for the application of an investment approach towards vulnerable children and young people.
- 203 Option 3 requires the CE to ensure that complaints mechanisms are established that enable children, young people, family members and caregivers to raise concerns about any action taken by the CE (or by a person or organisation under delegation from the CE, or within the CE's accountabilities). It creates a power to set regulations around the development of independent review mechanisms for these processes. This option would complement the independent advocacy service that will be established as part of the new operating model.
- 204 This option is preferred because it:
- provides clarity on the new Ministry's responsibilities towards children and young people subject to an action or decision taken under the CYPF Act
 - goes some way towards ensuring the needs of these children and young people are addressed when raising concerns
 - helps to ensure the voices of children and young people are effectively heard
 - may provide strong support for an investment approach by responding to service issues and driving practice improvements over time
 - enables the review mechanism to interact with the Children's Commissioner's powers.
- 205 Estimated costs for a reformed complaint resolution structure range **[Section 9(2)(h) OIA]** or a model more akin to the approach taken by the Accident Compensation Corporation or the Independent Police Conduct Authority.
- 206 The new mechanism may create benefits and efficiencies that cannot accurately be estimated at this time.
- 207 Further policy work would need to be done to determine:
- the nature of a review body that might be established and, during implementation, interaction with the proposed advocacy service and the Office of the Children's Commissioner
 - the powers such a body will be granted
 - the range of people who can ask for review

- the obligations that should be imposed on the CE to respond to the findings of the review.

Table Nine – extending eligibility under the CYPF Act to include those under 17 years of age who are or have been married or in a civil union

The following table identifies and considers the impact of each of the potential options.

Option	Features	Impact	Benefits	Issues/Risks
Non-regulatory options				
<p>Option 1</p> <p>Status quo.</p> <p>Non-regulatory option</p> <p>Non-preferred option</p>	<p>The current definition of a “young person” for the purposes of the CYPF Act includes any boy or girl over the age of 14 years but under 17 years; but does not include any person who is or has been married or in a civil union.</p>	<ul style="list-style-type: none"> A <i>young person</i> who has been or is married or in a civil union would not be eligible to receive intervention or support from the care, protection and youth justice arms of the state. There is no reasonable non-regulatory option that can ensure these <i>young people</i> receive equitable treatment under the CYPF Act. 	<p>[Section 9(2)(h) OIA]</p> <ul style="list-style-type: none"> <i>Compatibility with investment approach</i> – No impact. <i>Durability</i> – No impact. <i>Fiscal and operational impact</i> – No impact. 	<ul style="list-style-type: none"> <i>Likely effectiveness</i> – This option does not meet the objective to ensure young persons who are or have been married or in a civil union are included in the protections provided by the CYPF Act. <i>Fairness and equity</i> – Some young people would continue to be excluded from receiving services and interventions under the CYPF Act based on their relationship status. <i>Interaction with other legislation and planned reforms</i> – May create fairness or equity issues for other aspects of the reform, such as eligibility for the new transition service. <i>Consistency with relevant obligations</i> – This option is inconsistent with the definition of a young person under UNCROC.
Regulatory options				
<p>Option 2</p> <p>Update the definition of a young person under section 2 of the CYPF Act to include those under 17 years of age who are, or have been, married or in a civil union.</p> <p>Regulatory option</p> <p>Preferred option</p>	<p>Including those who are under 17 years who are or have been married or in a civil union in the legislation would align New Zealand with comparable jurisdictions.</p>	<ul style="list-style-type: none"> <i>Young people</i> who are or have been married or in a civil union will be able to receive the same services and supports under the CYPF Act as those who have not. 	<ul style="list-style-type: none"> <i>Likely effectiveness</i> – Updated definition will align with a more child-centred focus proposed by the Expert Panel and sought by Cabinet. <p>[Section 9(2)(h) OIA]</p> <ul style="list-style-type: none"> <i>Durability</i> – No impact. <i>Fairness and equity</i> – This option would help to address any inequities that might result from any arbitrary distinctions based on living arrangements. <i>Compatibility with investment approach</i> – No impact. <i>Interaction with other legislation and planned reforms</i> – Through the Children, Young Persons, and Their Families (Advocacy, Workforce, and Age Settings) Amendment Bill, the upper age for the definition of a young person (for the purposes of care and protection) would be increased to 18 years. Should this proposed reform be implemented, this option would apply to the new definition. <i>Consistency with relevant obligations</i> – Prevents discrimination based on relationship status and protects young people who may be forced into marriage. Brings New Zealand in line with UNCROC. 	<ul style="list-style-type: none"> <i>Fiscal and operational impact</i> – There are very few, if any, young people who marry or enter a civil union at age 16 or 17 each year, therefore the impact of this change will be minimal. Some staff training will be required. An application will need to be made to court to enable a response under the CYPF Act where the involvement of a parent/guardian is needed. Staff training and development of guidelines to assist provision of services to a child or young person in this cohort will be needed.

Discussion of options – extending eligibility under the CYPF Act to include those under 17 years of age who are or have been married or in a civil union

Non-preferred option

- 208 Option 1 is non-preferred. This option retains the status quo definition of 'young person' in the CYPF Act.
- 209 This option does not meet the objective to ensure that young persons who are or have been married or in a civil union are included in the protections provided by the CYPF Act. This option would also continue to place the definition of 'young person' in the CYPF Act at odds with that provided under UNCROC, as well as comparable jurisdictions to New Zealand.

Preferred option

- 210 Option 2 is preferred. This option amends the definition of 'young person' in the CYPF Act to include those under 17 years who are or have been married or in a civil union. The exclusion reflects outdated assumptions about marriage and arbitrarily denies young people the rights of care and protection based on marital status. The change will bring New Zealand into line with many comparable jurisdictions in relation to care and protection legislation, and will better align New Zealand with UNCROC.
- 211 There are very few young people who marry or enter a civil union at age 16 or 17 each year in New Zealand.¹⁹ The anticipated practical impact of this change will therefore be minimal. Practice guidelines will be needed to address these circumstances on a case-by-case basis. Development of the service design for the operating model for the new Ministry will take any legislative changes into account.
- 212 This issue has arisen in previous policy work. The Vulnerable Children Bill: Departmental Report (January 2014) disclosed that some submissions concerning the age of a child mentioned removing the marital status aspect of the definitions of 'child' in the Bill and also 'young person' in the CYPF Act. In its submission on the Vulnerable Children Bill, UNICEF argued that "marriage or entering a civil union does not confer instant maturity on a 16 year old," and Save the Children New Zealand maintained that "while the marriageable age with parental consent is 16, there is possible cause for concern and need to minimise abuse through child marriage".
- 213 It was also claimed that the exclusion of young people who are, or have been, married or in a civil union is not inconsistent with UNCROC. UNCROC defines a child as a human being who is under age 18 unless under the law applicable, the child has earlier attained the age of majority. It was argued that under New Zealand law, a person who is or has been married is treated as an adult for most purposes, which is the same treatment as if he or she had attained the age of majority.
- 214 In many comparable jurisdictions, care and protection legislation does not make reference to marriage or civil union other than in relation to parents or caregivers.

¹⁹ Data is currently only reported on marriages or civil unions by young people who are aged between 16 and 19. However, in 2015, 126 males and 312 females aged 16 to 19 married or entered a civil union.

In these cases, a child or young person is typically defined as being a person under 18 years old. In jurisdictions that do include instruction around marriage (such as some Canadian states and Ireland), a specific subsection is used in legislation to identify when the act of marriage has implications. The act of marriage is not included in these Acts' definition of a child or young person.

215 In order to provide adequate protections to young New Zealanders, a change to the definition of a young person to include those who may be married or in a civil union is required. This will prevent unnecessary discrimination for those who may marry and divorce or separate, or those who may marry and become excluded under the CYPF Act, while those in long-term or de facto relationships are not.

Consultation

Expert Panel Final Report

216 The Expert Panel's Final Report, which included the first phase of analysis leading to these proposals, was informed by a collaborative process drawing on the views of children, young people, families, caregivers, victims, experts from across the system, and an extensive review of international research.

217 As part of this process, interviews and workshops were held with a range of young people who had personal experience with CYF.

218 In the workshops and interviews described above, people were not consulted specifically on the proposals in this RIS.

These proposals

219 Throughout the development of the proposals contained in this RIS, we have sought and incorporated feedback from:

- the Ministry of Education
- the Ministry of Health
- the Ministry of Justice
- the Children's Action Plan Directorate
- the Department of Corrections
- the New Zealand Police
- Te Puni Kōkiri
- the Treasury
- the State Services Commission.

220 In addition:

- we discussed proposals based on the preferred options with the Office of the Children's Commissioner
- we discussed the proposal on community parenting (Option 2 in Table Seven) with members of the Youth Advisory Panel

- we discussed the option of placing specific duties on school boards with the president of the New Zealand School Trustees Association at an early point in the work.

Conclusions and recommendations

221 The current proposed legislative reforms are taking place at the same time as the development of the detailed operating model that sits under the CYPF Act.

222 With this in mind, we have considered legislative and non-legislative options to direct behavioural change and enable the design and implementation of the new operating model.

223 The legislative options recommended in this RIS will need to be accompanied by changes in policy and practice to ensure that improvements in accountabilities are achieved. However, where we have recommended legislative changes, we consider that these are necessary to clearly signal the desired behaviour and ensure these changes are enduring.

224 Following our analysis, we recommend the following options:

Co-ordination and provision of targeted prevention services

- Option 1 – use existing accountability mechanisms to clarify and improve accountability for prevention activity
- Option 2 – amend the legislation to:
 - require the CE of the new Ministry to co-ordinate prevention services
 - amend existing requirements for the vulnerable children’s plan under the Vulnerable Children Act 2014 to provide stronger direction on prevention activity

Intensive intervention – children and young people below the care and protection threshold

- Option 1 – use existing accountability mechanisms to clarify and improve accountability for this group

Intensive intervention – children and young people who meet the care and protection threshold but are not in care

- Option 1 – use existing accountability mechanisms to clarify and improve accountability for this group
- Option 3 – require the CE to develop and publish policies and practice standards in relation to their role in FGCs and giving effect to their outcomes, and clarify that the purpose of FGCs is to make recommendations, decisions and formulate plans that meet the care, protection and wellbeing needs of the child or young person
- Option 4 – update and clarify section 14 definitions of a child or young person in need of care or protection

Intensive intervention – youth justice

- Option 1 – use existing accountability mechanisms to clarify and improve accountability for this group
- Option 2 – require the CE and the New Zealand Police to consider whether a young person who offends should be treated as a young person with care, protection or wellbeing needs under Part 2 of the Act, and enable youth justice FGCs to be held in tandem with Part 2 FGCs for this purpose

Children and young people in care

- Option 1 – use existing accountability mechanisms to clarify and improve accountability for this group
- Option 2 – make the setting of regulations for national care standards mandatory
- Option 3 – place a duty on the CE to take reasonable steps to ensure the needs of children and young people in care, or who have moved to permanent care arrangements, are addressed

Transition advice and assistance

- Option 1 – use existing accountability mechanisms to clarify and improve accountability for this group
- Option 2 – use the regulation-making power proposed in the *Transition to Independence* RIS to provide detail on aspects of transition support
- Option 3 – amend section 386A of the CYPF Act to place more proactive obligations on the CE of the new Ministry towards young people up to the age of 21
- Option 4 – amend section 386A of the CYPF Act to extend the upper age of transition advice and assistance to the 25th birthday

Cross-agency accountabilities

- Option 1 – use existing accountability mechanisms to enhance cross-agency accountabilities for children and young people
- Option 2 – strengthen joint working arrangements under the vulnerable children's plan

Enhancing the new Ministry's accountability across the system

- Option 2 – require the Minister (or a delegate) to evaluate current settings through a Parliamentary reporting mechanism
- Option 3 – place a duty on the CE to ensure that complaint mechanisms, and independent review processes, are established for children and young people

Extending eligibility under the CYPF Act to include those under 17 years of age who are or have been married or in a civil union

- Option 2 – update the definition of a young person under section 2 of the CYPF Act to include those under 17 years of age who are or have been married or in a civil union.

Implementation

225 These proposals form part of a larger reform to the operating model for responding to vulnerable children and families.

226 SOC agreed that the governance arrangements for the Transformation Programme would include:

- the CE of the Ministry of Social Development, who would be responsible for establishing and managing the Transformation Programme
- a reconstituted Vulnerable Children's Board, which would provide advice on the establishment and management of the programme of work and then provide the Minister for Social Development and the Ministerial Oversight Group with advice on an ongoing basis
- the Ministerial Oversight Group, which would comprise the Minister for Social Development and the Ministers of Finance, Health, Justice, Education, Corrections, Police, Whānau Ora and Māori Development, and which will oversee and direct the reform process [SOC-16-MIN-0023 refers].

227 Detailed work on service design is underway. This will be a multi-year process, with the first year focusing on the end-to-end design of the service. Other government agencies and non-governmental organisations will be involved in this process, alongside young people, caregivers, and families and whānau.

228 Funding to meeting additional costs associated with the full business case will be sought in subsequent budgets.

Monitoring, evaluation and review

229 These proposals form part of a large set of reforms to develop a new operating model for responding to vulnerable children, young people and their families. The success of the new system will be measured in a variety of ways by the agency responsible for the new operating model. Further work will be required with the Treasury and the State Services Commission to build a detailed performance framework. On 30 March 2016, SOC noted that the Minister for Social Development expects that the performance management framework for the operating model will include the following dimensions [SOC-16-MIN-0022 refers]:

- improved long-term outcomes for vulnerable children and young people
- reduced liability for future social, economic and fiscal costs
- reduction of churn in the number of care placements and stability of care through long-term relationships in safe and loving homes
- reduction in the rate of statutory response due to increased prevention and intensive support for children and families and whānau
- reduction of re-abuse and re-victimisation (including in care)
- reduction of re-offending rates for youth offenders
- reduction in the over-representation of Māori children and young people in care and the youth justice system
- improved outcomes for Pacific children and young people.

- 230 A strategic evaluation plan is currently being developed. This plan will include an outcomes framework and intervention logic, as well as setting out a schedule of evaluations that will take place over the next five years. The schedule will include a range of evaluations, including process and effectiveness evaluations (under an investment approach).
- 231 The first evaluation is intended to take place in mid-2019.
- 232 The Parliamentary reporting option considered in Table Eight would provide an additional means of monitoring existing policy and legislative settings for the new operating model and assessing whether further changes are needed, including legislative change.