

# **Regulatory Impact Statement**

## **Investing in Children: Legislative support for improving outcomes for Māori children and young people**

**Ministry of Social Development**

**25 November 2016**

## Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Social Development (MSD). It provides an analysis of legislative options to support the operating model improve outcomes for Māori children, young people, their whānau, hapū and iwi.

The proposals here are intended to be included as part of a second Bill (Bill No 2) that will amend the Children, Young Persons, and Their Families Act 1989 (CYPF Act), and is expected to be introduced into the House in late 2016.

Legislative changes to support the new operating model are being progressed in two stages. Stage One is the Children, Young Persons, and Their Families (Advocacy, Workforce, and Age Settings) Amendment Bill (Bill No 1). Bill No 1 was introduced and referred to select committee on 15 June 2016. 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 amending the CYPF Act (Bill No 2).

This RIS covers proposals that:

- focus the system on achieving better outcomes for Māori young people
- provide a mandate for iwi and other Māori organisations' involvement in the new operating model
- signal the importance of the values, beliefs and culture of Māori in delivering interventions.

The key constraints around the analysis presented in this paper include that:

- the analysis has been undertaken within fairly tight timeframes alongside detailed design work on the system
- the recommendations 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. However, only targeted consultation on these specific proposals has been possible in the time available
- agency consultation has been undertaken on the impacts on agencies as part of the process of development of this RIS, but this has been done within limited timeframes
- the RIS provides only a general indication of the relative scope and magnitude of the options' operational implications, as detailed design work on the broader operating model is occurring in parallel.

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Date

## Executive summary

- 1 The proposals discussed in this RIS form part of the far reaching reform programme being undertaken by the Government to ensure that all children and young people are in loving families and communities where they can be safe, strong, connected and able to flourish [SOC-16-Min-0022 refers].
- 2 The Cabinet Social Policy Committee (SOC) agreed that major reform is required to the Children, Young Persons and Their Families Act 1989 (the CYPF Act) and related legislation to give effect to the proposed new operating model [SOC -16-Min-0024 refers].
- 3 SOC has agreed to a bold and urgent overhaul of the system and requested a report-back on possible areas of legislative reform, including:
  - new and amended provisions to further embed the voice of children at an individual and systemic level
  - updating current provisions to achieve a better focus on children’s rights
  - introducing new and amended provisions to support stable and loving care from the earliest opportunity [SOC-16-Min-0024 refers].
- 4 SOC agreed that the new operating model should, amongst other things, place a high degree of specific focus on improving outcomes for Māori children and young people [SOC-16-Min-0022 refers].
- 5 SOC agreed to specific measures intended to improve outcomes for Māori children and young people in the future system. These features are:
  - the design of a new operating model to have high and explicit expectations and targets to improve outcomes for vulnerable Māori children and young people, and their whānau
  - the new operating model should have a future target of improving outcomes for vulnerable Māori children and young people
  - strategic partnerships with iwi and Māori organisations, and Whānau Ora Commissioning Agencies to promote opportunity and innovation from organisations interested in improving outcomes for vulnerable Māori children, young people, and their whānau
  - the commencement of reporting progress towards improving outcomes for vulnerable Māori children and young people [SOC-16-MIN-0023 refers].
- 6 This RIS covers legislative amendments to Part 1 of the CYPF Act that:
  - update the purposes and general principles of the CYPF Act to support the new operating model to focus more strongly on achieving positive outcomes for Māori children and young people
  - strengthen existing duties of the chief executive (CE) to give greater recognition and respect to the principles of the Treaty of Waitangi.
- 7 Officials have worked closely with other agencies and stakeholders to develop the legislative proposals. The Youth Advisory Panel, Te Puni Kōkiri, and the Crown Law Office in particular were active in contributing to the proposals.

## Policy context

### Reducing the over-representation of Māori children and young people in the future system

- 8 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.
- 9 The changes proposed represent a fundamental shift, driving the most significant and comprehensive change since the CYPF Act was passed.
- 10 Almost 30 years ago, the CYPF Act sought to reset the model from the previous one of professional determination and judgements to one with much greater involvement of whānau, hapū and iwi in decision-making.
- 11 Results, however, have not been as expected. Young Māori are disproportionately represented in families with high levels of need and disadvantage and are nearly four times more likely to have a parent who was involved with Child, Youth and Family (CYF) as a child. There are compounding life course problems, and therefore lifetime costs. This is both a factor in and a result of the disparity between Māori and non-Māori generally<sup>1</sup> and unless addressed, the generational cycles are likely to continue.
- 12 Further, the Expert Panel anticipated an increased number of vulnerable Māori children engaged with the system due to an increasing Māori youth population and underlying social and economic factors.<sup>2</sup>
- 13 As with others involved with the CYF system, Māori children and young people who have required the intervention of the care, protection, and youth justice systems experience significantly worse outcomes as adults. This results in considerable government spend in lifetime costs – most of which relates to negative spending through the benefit receipt and involvement in the adult criminal justice system (where Māori are also over-represented).
- 14 Previous reviews of CYF have sought to address these issues and reduce the high number of Māori children and young people within the system. However, these reviews largely failed to achieve the results desired for Māori and non-Māori children. Notably such past reforms were not backed up by the level of legislative support proposed now.

### **Investing in New Zealand's Children and their Families: Policy and legislation**

- 15 The Expert Panel<sup>3</sup> considered that:

*A future where vulnerable Māori children and young people are able to live in stable, loving homes and whānau are enabled and supported to provide this environment is the aspiration. New Zealand can reach this endpoint through*

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<sup>1</sup> Out of 21 indicators over 57% (12 indicators) showed increasing gaps between Māori and non-Māori (Marriot & Sim 2014) pages 23 and 24.

<sup>2</sup>The Expert Panel (2015). *Final Report: Investing in New Zealand's Children and Their Families* (the Final Report), page 12. <https://www.msd.govt.nz/documents/about-msd-and-our-work/work-programmes/investing-in-children/investing-in-children-report.pdf>

<sup>3</sup> The Expert Panel Final Report, page 59.

*deliberate and careful navigation that encourages greater innovation and new approaches.*

- 16 On 30 March 2016, SOC agreed that major reform is required to the CYPF Act [SOC-16-MIN-0024 refers], and to give effect to the new operating model.
- 17 SOC also agreed to specific measures intended to reduce the over-representation of Māori children and young people in the future system. These features are:
  - the design of the new operating model to have high and explicit expectations and targets to improve outcomes for vulnerable Māori children, young people and their whānau
  - the new operating model should have a future target of improving outcomes for vulnerable Māori children and young people
  - strategic partnerships with iwi, Māori organisations, and Whānau Ora Commissioning Agencies to promote opportunity and innovation from organisations interested in improving outcomes for vulnerable Māori children, young people and their whānau
  - the immediate commencement of public reporting progress towards improving outcomes for vulnerable Māori children and young people [SOC-16-MIN-0023 refers].

### **Signalling and driving fundamental and wide-ranging reform**

- 18 The CYPF Act sought to establish a new model of social work, with a much stronger focus on family, whānau, hapū and iwi participation and decision-making than under the earlier Children and Young Persons Act 1974.
- 19 It signalled and set the direction of social work action, service delivery and performance monitoring, through legislated principles, objects, duties and powers.
- 20 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. This is comparable to the way the amended Social Security Act 1964 principles (section 1B) direct the “work focused” operating model for income support and employment services.
- 21 Alongside 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.
- 22 Significant reform of the CYPF Act offers an opportunity to signal support for a different and innovative approach to how we address and support the needs and aspirations of Māori children, young people and their families who come into contact with the care and protection, and youth justice systems. This includes looking at how the Ministry for Vulnerable Children, Oranga Tamariki (MVCOT) can work more effectively with iwi and Māori organisations.
- 23 Reforms propose MVCOT looks to how it can “better use the natural attributes of iwi and Māori organisations and communities to serve the needs of vulnerable Māori

children, young people and their whānau.”<sup>4</sup> Approaches to partnership with iwi and Māori organisations are already underway within the social sector, but further steps would assist to facilitate active participation and partnership.<sup>5</sup>

- 24 Targeted changes to the CYPF Act send a clear message about a desire to change the behaviour of actors within the care and protection, and youth justice systems. These legislative changes will reinforce and enhance major non-legislative initiatives that will deliver improved outcomes for Māori, such as the investment approach.
- 25 With this in mind legislative options seek to direct behavioural change and enable operational development, rather than tightly proscribe practice where this is not seen as necessary to achieve policy intent. A complementary and supportive range of non-legislative tools, such as practice guidelines, policies, performance measures and the investment approach will be used to further reinforce and achieve Government’s policy intent for system-wide reform.

## Status quo and problem definition

### **Māori children and young people experience worse outcomes and are over-represented in the system**

- 26 A separate RIS on the *Foundations for a Child-centred System* refers to the issues within the current system and its failure to be sufficiently child-centred. Many of the short comings identified in that RIS are equally applicable to the discussion about the experiences of Māori children and young people who have required the intervention of the care and protection, and youth justice systems. Māori children and young people are over-represented in both systems and experience particularly poor outcomes.
- 27 Young Māori are disproportionately represented in families with high levels of need and disadvantage and are nearly four times more likely to have a parent who was involved with CYF as a child. There are compounding life course problems, and therefore forward lifetime costs for Māori children and young people who come into contact with CYF. This is undoubtedly both a factor in and a result of the disparity between Māori and non-Māori generally<sup>6</sup> and unless addressed, the generational cycles are likely to continue.
- 28 Current preventative services are not effectively reaching these children and young people, and the system is failing to adequately respond to safeguard their safety and wellbeing. In 2014, eight out of every 10 Māori children and young people who were subject to a “Report of Concern” were already known to CYF, compared to five out of every 10 for non-Māori.
- 29 Young Māori also comprise 60% of young people in the youth justice system, even though they comprise 25% of children and young people aged between 10 and 16 years. The level of over-representation increases as the intensity of intervention increases. For example, while five out of every 10 young people cautioned by Police are Māori, seven out of 10 subject to a Court-imposed supervision order are Māori.

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<sup>4</sup> The Expert Panel Final Report, page 61.

<sup>5</sup> The Expert Panel Final Report, page 62.

<sup>6</sup> Out of 21 indicators, over 57% (12 indicators) showed increasing gaps between Māori and non-Māori (Marriot & Sim 2014) pages 23 and 24.

## **The system fails to connect Māori children and young people with their whānau, their culture and identity**

- 30 Children and young people who have been involved with the care and protection, and youth justice systems have spoken most strongly about an overwhelming desire to belong. Cultural identity, although not the sole determinant, can form a strong part of that belonging. When children and young people did not have their need for identity met they were vulnerable to seeking those connections from people or networks that could be harmful.
- 31 Māori young people within the system reported a lack of understanding they sometimes encountered from caregivers and social workers to the importance of culture. They felt they had to become strong self-advocates to ensure these needs were met. The ability to play this role is not one that many vulnerable children will have.
- 32 At the same time, caregivers and practitioners report a number of challenges in attempting to meet the identity and cultural needs of Māori children and young people. These included the absence of any clear legislative direction, and a lack of resourcing to support the cultural needs of Māori children and young people.
- 33 The principles in section 5 of the CYPF Act, which are central to decisions and actions that are taken under the Act by a range of professionals in relation to children and young people, refer to:
- the family, whānau, hapū, iwi and usual caregiver having a voice and a role in decisions made about the child or young person
  - wherever possible, the relationship between the child or young person and their family, whānau and usual caregiver is respected, supported and strengthened
  - consideration being given to the significance of the child or young person's wider whānau, hapū and iwi, and links to whakapapa or their equivalents in the culture of the child or young person
- 34 The CYPF Act does not set clear direction that practitioners will consider supporting the cultural needs of young Māori outside of generic references to whānau, hapū and iwi, and the importance of cultural connections.
- 35 Updating the CYPF Act to take into account modern perspectives about the importance of culture and a sense of identity to the well-being of Māori children and young people will address this gap.
- 36 A clearer focus on addressing the needs of Māori children and young people within Part 1 of the CYPF Act will set a clear intent and direction for the system, and combined with practice guidelines, policy settings and staff training, is an important part of delivering the changes needed. The *Foundations for a Child-centred System* RIS sets out the critical role that sections 4 and 5 of the CYPF Act play in everyday decision-making in more detail.

## **Prior reviews of CYF failed to empower substantive change**

- 37 Successive reviews of CYF have failed to empower or deliver change for Māori children or young people. Part of the explanation for this is that those reviews failed to provide the impetus required to support the transformational change required to deliver improved outcomes for Māori. This is despite section 7(2)(c)(ii) of the CYPF

Act that requires the CE to ensure policies and services pay “particular regard for the values, culture, and beliefs of the Māori people”.

- 38 The lack of meaningful change for Māori, in the face of clear evidence that the system has consistently failed to improve responsiveness to their needs, has been described as disempowering.<sup>7</sup> This in turn has resulted in increasing mistrust in a system that appears unwilling or unable to adapt to the circumstances surrounding Māori children and young people.
- 39 Of particular note is that successive reviews have failed to provide a mandate or opportunity for Māori leadership to participate in a meaningful way in decision-making at a level where they could direct or influence the system to deliver more effective support to Māori children and young people.
- 40 It is unlikely that any future department and wider system will achieve the change required without such participation. Iwi organisations and Māori organisations are better placed to work with MVCOT and support Māori children, young people and their whānau now than they were at the commencement of the CYPF Act.
- 41 The past absence of any legislative impetus or direction to develop strategic partnerships involving iwi and Māori leadership appears to be at odds with the over-representation of Māori within the care and protection, and youth justice systems, and the poor outcomes experienced by young people following their transition out of the system.

### **A lack of accountability to Māori children and their whānau**

- 42 Section 7(1) of the CYPF Act requires the CE to take proactive and prompt measures to ensure that the objects of the Act are reached, including that the well-being of children is advanced by the promotion of services that are appropriate *having regard to the needs, values, and beliefs of particular cultural and ethnic groups* (section 4(a)(i)). As part of this duty the CE is required to:
- monitor, and advise the Minister on, the effect of social policies and social issues on children, young persons, families, whānau, hapū, iwi and family groups (section 7(2)(a))
  - ensure policies and services have particular regard for the values, culture, and beliefs of the Māori people (section 7(2)(c)(ii)).
- 43 Despite these duties, there is no clear evidence that these duties have resulted in meaningful change for Māori.
- 44 Legislative changes will draw greater attention to the need to:
- ensure that performance targets directed at improving life outcomes for Māori are being reached and reported on in a visible or transparent way
  - provide a clear process for allowing Māori to provide feedback on the impact of social policies on Māori or to provide input into the development of policies and services that take into account their values, culture and beliefs.

### **Crisis-driven responses to working with Māori**

- 45 There are a number of initiatives underway which allow iwi, Māori and Māori organisations to engage with MSD and CYF over the design and delivery of services

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<sup>7</sup> The Expert Panel Final Report, page 61.

for young Māori. These initiatives are designed to respond to concerns raised by individual iwi about the numbers of children and young people in CYF care.

- 46 The initiatives are supported by memoranda of understanding between CYF and the six individual iwi, who also receive funding from MSD to run these programmes.
- 47 Although such initiatives are supported through Part 8 of the CYPF Act, the Act does not promote a coherent or cohesive approach to looking at how services can be designed and delivered to support improved outcomes for Māori on a proactive basis. They also appear to operate at arms-length from other social sector initiatives that have aspirations to improve outcomes for Māori.

## Objectives

- 48 The Expert Panel's final report sets out six high-level system objectives for a child-centred system:
  - Ensure that children have the earliest opportunity for a loving and stable family
  - Address the full range of needs for each child
  - Prevent harm and re-victimisation of children
  - Help children to heal and recover
  - Support children to become flourishing adults
  - Help children and young people to take responsibility for their actions and live crime-free lives.
- 49 The proposals included in this RIS focus on each of these objectives. The overall purpose of these proposals is to reduce the over-representation of Māori children and young people in the care and protection, and youth justice systems and to secure better life outcomes for young Māori who have been in the system.
- 50 The key objectives for the proposals are that they:
  - *address the cultural and identity needs* for Māori children, young people, their families and whānau to provide them with a sense of belonging and help them achieve better life outcomes
  - *identify opportunities to increase participation* of iwi and Māori organisations in the design, development and delivery of policies and services to Māori children, young people and their families and whānau
  - *provide greater clarity and transparency* about the accountability of the CE to ensure policies and services deliver better life outcomes for Māori children and young people who come to the attention of MVCOT.
- 51 These objectives will be included as criteria against which the options will be assessed, along with further criteria:
  - **Likely effectiveness** - the extent to which the proposals meet the objectives stated above
  - **Durability** - the extent to which proposals are likely to achieve sustained change in the direction sought and support the long-term transformation required to implement the new operating model for vulnerable children and young people

- **Practicality** - the extent to which proposals are practical, clear, and easy to understand including clarity for practitioners
- **Fiscal and operational impact** - the extent to which proposals achieve the objectives above while minimising the compliance costs and the operational implications of the proposal
- **Fairness and equity** - the extent to which proposals promote fairness and treat similar cohorts in a consistent way
- **Interaction with other legislation provisions and planned reforms** - the extent to which proposals align with, and do not hinder, relevant legislation or planned reforms
- **Consistency with the principles of Treaty of Waitangi, United Nations Convention on the Rights of the Child and other relevant international obligations** - the extent to which proposals meet New Zealand's international obligations
- **Compatibility with other Government objectives (including social investment)** - the extent to which the proposals align with the investment approach.

52 We have used a child impact assessment tool to assess whether the proposals are consistent with UNCROC.

53 Detailed option analysis is set out in the table on the following pages.

## Options and impact analysis

54 Each of the options for reforms in the following section has been considered across the eight objectives listed above. The results are summarised on page 13 below.

## Option and impact analysis

Option	Features	Implications and impacts	Benefits	Issues/Risks
<p><b>Option 1 (status quo)</b></p> <p>No additional measures in the legislation relating to Māori children and young people</p> <p><b>Non-regulatory option</b></p> <p>Not preferred</p>	<p>No specific purpose or principles relating to Māori children or young people are added to improve the legislation.</p> <p>Policies and practice guidelines are used to introduce the changes sought. An investment approach is used to support interventions aimed at improving outcomes for Māori.</p> <p>The CYPF Act currently sets out the general duties of the MSD CE such, as the duty to monitor and advise on the effect of social policies and issues on children and families, the duty to promote child abuse awareness and prevention, and the duty to promote policies to assist children and families.</p> <p>The CE would be required to report against new performance targets designed to address over-representation of Māori and lack of participation.</p> <p>The application of an investment approach will help determine investment priorities.</p>	<ul style="list-style-type: none"> <li>Practitioners and caregivers have no consistent, clear direction about the importance of addressing cultural needs of children and young people.</li> <li>Māori children and young people are unlikely to experience a sense of belonging and identity on a consistent basis.</li> </ul>	<ul style="list-style-type: none"> <li><b>Fiscal and operational impact</b> – Changes to policies and operational guidance are likely to cause least disruption to existing services and incur least additional cost.</li> <li><b>Fairness and equity</b> – Operational guidance may lead to some low level improvements (with incremental benefits) but are unlikely to result in transformational changes that result in equitable outcomes for Māori.</li> <li><b>Durability</b> – Operational guidance and policies provide flexibility to allow the operating model to evolve and adapt to changing priorities.</li> <li><b>Likely effectiveness</b> – Non-legislative arrangements, such as performance targets addressing over-representation of Māori will go some way towards prioritising commitments of MVCOT in key areas (but not to same extent as legislation).</li> </ul>	<ul style="list-style-type: none"> <li><b>Likely effectiveness</b> – Policy practice guidelines to date have not achieved a greater focus on the needs of Māori children and young people, or delivered a more child-centred approach. Non-legislative directions are unlikely to provide for desired levels of transparency or provide opportunities for Māori, iwi and others to participate in decision-making on a proactive basis.</li> <li><b>Compatibility with other government objectives including the investment approach</b> – Without clearer legislative direction, this approach will not deliver a focus on culture and identity of Māori.</li> <li><b>Durability</b> – This option is unlikely to achieve confidence amongst Māori that any change will be sustained. Unlikely to provide confidence that long-standing issues will be resolved.</li> <li><b>Consistency with the Treaty of Waitangi, UNCROC and other international obligations</b> – Although this approach is not inconsistent with these obligations, it does not advance them within the system; NZ will be out of step with other comparable jurisdictions that include specific measures to address over-representation of indigenous children and youth in statutory care.</li> <li><b>Interaction with other legislative proposals and planned reforms</b> - Approach may impact on effectiveness of other system-wide changes.</li> </ul>
<p><b>Option 2</b></p> <p>Include new purpose statements in the CYPF Act to be considered and applied when working with Māori children and young people</p> <p><b>Regulatory option</b></p> <p><b>PREFERRED</b></p>	<p>The CYPF Act would include two new purpose statements directly relevant to Māori children and young people:</p> <ul style="list-style-type: none"> <li>to recognise mana tamaiti, whakapapa and the whanaungatanga of every Māori child and young person</li> <li>to promote an approach that supports capability building at a whānau level</li> </ul> <p>These purposes statements will signal the importance of identity and sense of belonging for Māori.</p>	<ul style="list-style-type: none"> <li>Inclusion of the concepts of mana tamaiti, whakapapa and whanaungatanga assist with a clearer articulation of how to give effect to a child-centred approach, particularly in relation to Māori children and young people.</li> <li>Having a high level of participation from, and responsibility within, family and whānau in relation to children and young people is consistent with a child-centred approach.</li> <li>Māori children and young people are likely to have better connections to their culture, and consequently a better sense of self and identity.</li> <li>Identity, connection and belonging are central to a child's wellbeing.</li> </ul>	<ul style="list-style-type: none"> <li><b>Likely effectiveness</b> - Specific purpose statements will help set expectations and prioritise the professional resources required to achieve a more culturally inclusive and responsive practice. This will signal the importance placed by the Government on achieving positive change for Māori.</li> <li><b>Compatibility with other government objectives including the investment approach</b> - Increasing the focus on Māori is likely to result in better outcomes, and therefore reduce future liability.</li> <li><b>Durability</b> – Promotes system change and at practice level (including operational changes), and promotes durable long-term solutions.</li> <li><b>Consistency with the Treaty of Waitangi, UNCROC and other international obligations</b> – This approach is consistent with the Treaty of Waitangi and international obligations such as UNCROC.</li> <li><b>Interaction with other legislation and planned reforms</b> – Is likely to complement other proposed reforms and make other changes more effective for Māori.</li> <li><b>Fairness and equity</b> – will contribute to improvements in outcomes for Māori and, over time, address over-representation in the system.</li> </ul>	<ul style="list-style-type: none"> <li><b>Fiscal and operational impact and practicality</b> – Will require additional resources, training and guidance for practitioners to understand what these purpose statements mean for everyday practice and how they can be applied.</li> </ul>

Option	Features	Implications and impacts	Benefits	Issues/Risks
<p><b>Option 3</b></p> <p>Include new general principles into the CYPF Act to be considered and applied when working with Māori children and young people</p> <p><b>Regulatory option</b></p> <p><b>PREFERRED</b></p>	<p>The CYPF Act would include two new general principles directly relevant to Māori children and young people:</p> <ul style="list-style-type: none"> <li>to protect the wellbeing and mana of Māori children and young people by recognising the whakapapa and whanaungatanga responsibilities and obligations of whānau, hapū and iwi</li> <li>recognising the importance of whakapapa and whanaungatanga; wherever possible, whānau, hapū and iwi can participate in decisions made about Māori children and young people.</li> </ul>	<ul style="list-style-type: none"> <li>Māori children and young people are likely to have better connections to their culture, and consequently a better sense of self and identity.</li> <li>Practitioners and caregivers will have greater clarity about how Māori children and young people should be treated by the system. This is likely to result in an increased focus on meeting their needs.</li> </ul>	<ul style="list-style-type: none"> <li><i>Likely effectiveness</i> - Specific principles will help reset expectations and prioritise the professional resources required to achieve a more culturally inclusive and responsive practice. This will signal the importance placed by the Government on achieving positive change for Māori.</li> <li><i>Compatibility with other government objectives including the investment approach</i> - Increasing the focus on Māori is likely to result in better outcomes, and therefore reduce future liability.</li> <li><i>Durability</i> – promotes system change and at practice level (including operational changes) and promotes culturally responsive decision making on a consistent basis.</li> <li><i>Consistency with the Treaty of Waitangi, UNCROC and other international obligations</i> – This approach is consistent with the Treaty of Waitangi and international obligations such as UNCROC.</li> <li><i>Interaction with other legislation and planned reforms</i> – Is likely to complement other proposed reforms and make other changes more effective for Māori.</li> <li><i>Fairness and equity</i> – Is likely to lead to improvements in outcomes for Māori and, over time, address over-representation in the system.</li> </ul>	<p><i>Fiscal and operational impact and practicality</i> – Will require additional resources, training and guidance for caregivers and practitioners to support them to understand what these principles mean and how to apply them in everyday practice. This will require practitioners to develop networks with local Māori, iwi and hapū to build cultural awareness and understanding.</p> <ul style="list-style-type: none"> <li><i>Interaction with other legislation and planned reforms</i> – the principles need to align with the other principles in the Act. Alignment will be achieved through training, resources and the new practice framework.</li> </ul>
<p><b>Option 4</b></p> <p>Amend care and protection principles in the CYPF Act to reflect the views, mana tamaiti, whakapapa and whanaungatanga of Māori children and young people</p> <p><b>Regulatory option</b></p> <p><b>PREFERRED</b></p>	<p>The CYPF Act would be amended to include that:</p> <ul style="list-style-type: none"> <li>any intervention with whānau should recognise and respect the views, mana tamaiti and whakapapa of Māori children and young people, and whanaungatanga responsibilities and obligations</li> <li>where a child or young person is at risk of being removed from their family, whenever practicable, whānau, hapū and iwi should be assisted to enable them to provide a safe, stable and loving home in accordance with whakapapa and whanaungatanga</li> <li>when determining placement where a child or young person is removed from his or her immediate family, whānau, or caregivers, the following principles will apply: <ul style="list-style-type: none"> <li>(i) decisions in relation to Māori children and young people should take into account the importance of their views, mana tamaiti, whakapapa and whanaungatanga</li> <li>(ii) honouring whanaungatanga and the whakapapa of child or young person is important and should continue to occur wherever the child or young person shall live.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>These changes will be read alongside those proposed above (amending section 5 general principles) and other general principles in section 5.</li> <li>Practitioners, caregivers and those exercising functions under the Act are guided in the steps that need to be taken to involve whānau, hapū and iwi in critical decision making eg placements.</li> </ul>	<ul style="list-style-type: none"> <li><i>Likely effectiveness</i> - Specific purpose statements will set expectations and prioritise the professional resources required to achieve a more culturally inclusive and responsive practice. This will signal the importance placed by the Government on achieving positive change for Māori.</li> <li><i>Compatibility with other government objectives including the investment approach</i> - Increasing the focus on Māori is likely to result in better outcomes, and therefore reduce future liability.</li> <li><i>Durability</i> – promotes system change and at practice level (including operational changes) and durable long-term solutions.</li> <li><i>Consistency with the Treaty of Waitangi, UNCROC and other international obligations</i> – This approach is consistent with the Treaty of Waitangi and international obligations such as UNCROC.</li> <li><i>Interaction with other legislation and planned reforms</i> – Is likely to complement other proposed reforms and make other changes more effective for Māori.</li> <li><i>Fairness and equity</i> – Is likely to lead to improvements in outcomes for Māori and, over time, address over-representation in the system.</li> </ul>	<ul style="list-style-type: none"> <li><i>Fiscal and operational impact and practicality</i> – Will require additional resources, training and guidance for caregivers and practitioners to support them to understand what these principles mean for everyday practice. This will require practitioners to develop networks with local Māori, iwi and hapū to build cultural awareness and understanding.</li> </ul>
<p><b>Option 5</b></p> <p>Broaden and clarify the scope of CE's duties in order to recognise and respect the Treaty of Waitangi</p>	<p>Duties in the CYPF Act will be broadened and will clarify the CE's duty to recognise and respect the treaty of Waitangi. In doing so:</p> <ul style="list-style-type: none"> <li>the policies and practices adopted by MVCOT that impact the wellbeing of children and young people have the objective of reducing disparities by setting measurable outcomes for Māori children and young people who come to the attention of MVCOT</li> <li>the policies, practices and services of MVCOT will have regard to the mana and whakapapa of</li> </ul>	<ul style="list-style-type: none"> <li>Māori children, young people and families across the service continuum would be more likely to receive a responsive service.</li> <li>Iwi and Māori organisations will have a clearer mandate and role in providing support, advice and guidance on achieving better outcomes for Māori children, young people and their families.</li> <li>Stakeholders have greater awareness about MVCOT's commitment to achieving</li> </ul>	<ul style="list-style-type: none"> <li><i>Likely effectiveness</i> – Goes significantly further than Option 1 in addressing objectives relating to achieving better outcomes for Māori. Supports MVCOT to deliver systemic change that will have a wider influence.</li> <li><i>Durability</i> – Provides transparency and accountability and embeds the importance of a consistent focus on achieving better outcomes for Māori; will provide greater confidence in the appropriateness of services delivered for Māori and drive greater community support and collaboration.</li> <li><i>Consistency with the Treaty of Waitangi and international obligations</i> – There is a significantly increased likelihood of reforms achieving key objectives such as reducing over-representation of Māori children in populations of concern.</li> </ul>	<ul style="list-style-type: none"> <li><i>Fiscal and operational impact</i> – Places significant commitment on MVCOT to improve how it works with Māori and communities across New Zealand. Commitment could be time and resource intensive in initial stages until relationships become established, and new approaches to practice and the delivery of services are embedded.</li> </ul>

Option	Features	Implications and impacts	Benefits	Issues/Risks
<p><b>Regulatory option</b></p> <p><b>PREFERRED</b></p>	<p>children and young people, and whanaungatanga responsibilities of the whānau, hapū and iwi</p> <ul style="list-style-type: none"> <li>• MVCOT will seek to develop strategic partnerships with iwi and Māori organisations</li> <li>• the CE will report annually and publicly on the measures taken in relation to these stated duties, including the impact of these measures in improving outcomes for Māori who come to the attention of MVCOT and the steps to be taken in the immediate future.</li> </ul> <p>Changes to legislative duties will be accompanied by changes to performance measures and operational policies.</p>	<p>transformational change for Māori.</p> <ul style="list-style-type: none"> <li>• There is an increased level of transparency and accountability for how effective changes will be in driving better outcomes and in relation to the CE's responsibilities for delivering improved outcomes.</li> <li>• The CE will need to establish appropriate processes, networks and support structures to give effect to duties.</li> </ul>	<p>This is likely to result in development of strategic partnerships at local and national level as innovative approaches to delivering services evolve.</p> <ul style="list-style-type: none"> <li>• <i>Alignment with investment approach</i> – Clear alignment with an investment approach. Retains flexibility to target prevention activities to where they are needed based on available evidence.</li> <li>• <i>Fairness and equity</i> – Provides greater confidence that improvements in outcomes will be addressed and over time address over-representation in the system.</li> </ul>	

# Options and impact analysis

55 Each of the options for reforms to the foundations of the system within the CYPF Act was considered across the eight themes/issues being addressed in this RIS. Impact analysis ratings listed below:

[--] = Much worse	[-] = Worse	[0] = Neutral	[+] = Better	[++] = Much Better
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Options	Likely effectiveness	Durability	Practicality	Fiscal and operational impact	Fairness and equity	Interaction with other legislation provisions	Consistency with the Treaty of Waitangi, UNCROC	Compatibility with other Government objectives
Option 1	0	0	0	0	0	0	0	0
Option 2	+	+	+	0	+	+	+	+
Option 3	+	+	+	0	+	+	+	+
Option 4	+	+	+	0	+	+	+	+
Option 5	++	++	+	-	+	+	++	+

## Discussion of preferred options

56 Options 2 to 5 are preferred because these will best orient the organisation to achieve positive outcomes for Māori children and young people. As a combined legislative package, these options clearly signal the importance of key Māori values to decision-making under the Act and that working in partnership with Iwi, Māori is integral to the organisation’s cultural responsiveness.

### Option 2 – new purposes

57 Previous proposals for amendments to the CYPF Act outlined the case for updating the object/purpose statements and the general principles in section 5 to create a foundation for a more child-centred system. This approach, which was previously considered and agreed to by the Cabinet Social Policy Committee, equally applies here.

58 Expressed as a Māori proposition, this would be a requirement to recognise and respect the mana of the child (‘mana tamaiti’). Whakapapa and whanaungatanga are both complementary to, and a fundamental part of, that approach. Mana tamaiti is a multi-dimensional concept; it speaks both to the child as an individual and as a part of a wider whanaungatanga based whole.

### Options 3 and 4 – new principles

59 The proposed new general principles are aligned with the purposes and principles for a child-centred system outlined in the Foundations for a Child-centred system RIS and ensure that the approach is consistent with what a child-centred system may look like for Māori.

60 These proposals ensure that the child-centred approach is fit for purpose and durable. This cannot be achieved through operational guidance or performance measures alone. As previously noted, prior reviews were unsatisfactory as they resulted in incoherent changes that did not lead to any major change in outcomes. Māori are seeking transformational change that provides appropriate recognition to

the long-standing concerns about the failure of the current system to address the needs of Māori.

- 61 The new principles, when combined with other changes proposed as part of this legislative reform, provide specific and explicit recognition to the needs of Māori. Legislation sends a strong and deliberate message to stakeholders about the Government's commitment to address these needs. Legislative change also reflects the Government's desire to effect transformational change that is enduring.
- 62 A number of other jurisdictions have included legislative provisions aimed at reducing the over-representation of indigenous populations in the statutory care and justice system. These jurisdictions include states in Australia, Canada and the United States.
- 63 Legislation rather than policy sends a signal in the most enduring way about the importance placed by government on achieving positive change for Māori. It will provide the basis for a Māori-focused framework to guide practitioners and provide direction for the system as a whole.
- 64 There is a risk that practitioners may give too much emphasis to the new principle at the expense of other considerations when working with Māori children and young people. A focus on culture and identity, whilst important, will not get better results for Māori children and young people by itself. This focus needs to be part of wider effective practice and appropriate services.
- 65 This risk can be mitigated by clearly signposting in the legislation that the purpose and principles are additional to and do not replace any other principles in Part 1 of the CYPF Act. Practitioners must also be cognisant of the paramountcy of the wellbeing and interests of the child or young person. Training will be provided for practitioners on how to use these principles.

### **Option 5 – broadened and clarified duties**

- 66 Option 5 entails broadening and clarifying the statutory duties the CE already has under the CYPF Act by recognising and respecting the Treaty of Waitangi. These duties include that:
  - the policies and practices adopted by MVCOT that impact on the wellbeing of children have the objective of reducing disparities by setting measurable outcomes for Māori children and young people who come to the attention of MVCOT
  - the policies, practices and services of MVCOT will have regard to the mana and whakapapa of the child, and whanaungatanga responsibilities of the whānau, hapū and iwi
  - MVCOT will seek to develop strategic partnerships with iwi and Māori organisations
  - the CE shall report annually on the measures taken in relation to these stated duties, including the impact of these measures in improving outcomes for Māori who come to the attention of MVCOT and the steps to be taken in the immediate future.
- 67 The duty to seek to develop strategic partnerships will allow MVCOT to:
  - provide opportunity and invite innovation from organisations interested in improving outcomes for Māori children, young people and their whānau who come to the attention of MVCOT

- contribute to setting expectations and targets to improve outcomes for Māori children and young people who come to the attention of MVCOT
- enable robust, regular and genuine exchange of information
- consider opportunities for the CE to delegate functions to appropriately qualified people within iwi and other Māori organisations
- provide, and regularly review, guidance to persons discharging functions under the CYPF Act to support cultural competency as a best practice feature of the Oranga Tamariki workforce.

68 The suite of proposals in Option 5, which are complementary and mutually supportive, are intended to bring about greater clarity about the direction of MVCOT and its commitment to achieving better life outcomes for Māori children and young people.

*Strategic partnerships are a key mechanism for meeting the needs of vulnerable children and their families*

69 Strategic partnerships will enable iwi to have a greater role in decision-making and in performing statutory functions. Many iwi and Māori organisations are well placed to work with MVCOT and support Māori children, young people and their whānau. Strategic partnerships will involve joint planning and mutual trust, clear governance processes, transparent performance metrics and reporting, collaborative risk management and issues resolutions, and multi-tiered relationships and information exchanges.

*New legislation to recognise and respect Treaty of Waitangi is preferred*

70 Legislating to recognise the Treaty of Waitangi and importance of cultural identity to the wellbeing of children and young people has a number of advantages over different administrative devices. The main advantage is that legislation sends a clear, unambiguous message about MVCOT's commitment to the principles of the Treaty of Waitangi and how this should be given effect.

71 References to the Treaty can be found in other legislation where the Government is seeking to achieve better population-based outcomes, for example the *New Zealand Public Health and Disability Act 2000* and the proposed *Education (Update) Amendment Bill*. Such references recognise that Māori are likely to have a strong interest in the outcomes.

72 Creating legislative provisions that specifically relate to the interests and culture of Māori may be seen by some as creating risks that the interests of Māori children and young people may be prioritised over other populations. The risk is balanced by the existing countervailing duty in section 7(2)(c)(i), which requires the CE to have regard to the cultural values of all cultural and ethnic groups.

73 Reliance on generic legislation also overlooks the reality that the majority children in care and youth justice are Māori. Comparable overseas legislation contains provisions that relate specifically to indigenous populations. This reflects a widespread will to learn from the past and to have more culturally responsive child welfare systems.

74 We consider that non-legislative options such as performance measures and practice guidelines will deliver some beneficial changes. However, these benefits are unlikely to have a transformative effect or drive culture changes on a consistent, sustainable basis without a clear mandate and stronger imperatives. Non-legislative options carry the risk that they will be seen as a continuation of the status quo and a sign of a lack of commitment to achieve change on a consistent basis.

- 75 The changes to the duties will also have the benefit of giving greater impetus and traction to a number of organisational and operational initiatives currently underway, such as the investment approach and Māori bicultural practice framework. Legislation is likely to increase the prospect of these initiatives meeting their objectives, as the legislation has the effect of providing that work with the required level of authority.

### *Greater transparency*

- 76 Including new duties within the legislation that reference concepts reflected in the purposes and principles of the legislation will provide more clarity to those exercising functions under the Act and transparency about what needs to be done to give effect to the Treaty. Without these duties, the effect of the Treaty on practice and service provision is non-specific.
- 77 Improved accountability mechanisms in legislation, including enhanced reporting requirements, will provide external stakeholders, including agencies inside and outside the Public Sector with greater understanding of the intended scope of change.

### **Financial and operational implications of preferred options**

- 78 Changes to the purposes, principles and duties will enhance our current efforts to respond to Māori. It will require training and resource provision to staff about how to give effect to these principles and obligations and once implemented, will support a transformation in practice.
- 79 Significant costs are involved in establishing the new operating model and implementing legislative provisions relating to purposes, principles, duties and powers. The implementation of these proposals and associated costs will be integral to all aspects and costs of the new operating model. Ongoing training, resource development and the practice framework will be especially important mechanisms for implementing these proposals.
- 80 The carrying out of some duties is likely to be influenced in the short to medium term by the availability and capacity of Māori, iwi and other Māori organisations in different locations to provide the level of support and technical assistance envisaged.
- 81 Such matters will be addressed through consultation with iwi and Māori organisations.

### **Consultation**

- 82 The Expert Panel completed the high-level proposals for a new operating model, informed by a collaborative process with children, young people, families, caregivers, victims, experts from across the system, and an extensive review of local and international research.
- 83 As part of this process, interviews and workshops were held with a range of young people who had personal experience with CYF, including a number who had spent time in care.

### **These proposals**

- 84 A range of internal and external stakeholders have been involved in the development of the proposals at their early stage. Proposals have been further developed and changed since consultation.

- 85 At an early stage, officials sought feedback and input throughout the process from the Investing in Children's Programme, CYF, the Office of the Chief Social Worker, the Youth Advisory Panel, members of the Expert Panel Māori Reference Group, Te Puni Kōkiri, and the Crown Law Office.
- 86 Officials also received feedback on initial proposals from the Ministries of Health, Education, Justice, and the Treasury.
- 87 The members of the Expert Panel Māori Reference Group broadly supported the intent and stressed the importance of ensuring that services are able to meet the needs of Māori children and young people and are compatible with the Māori world view.

## Conclusions and recommendations

- 88 Following consideration of the options analysis, we recommend the following:
- introduce new purposes and principles into the CYPF Act that will support the new operating model to focus more strongly on the values, culture and beliefs of Māori when supporting Māori children and young people, in particular mana tamaiti, whakapapa and whanaungatanga
  - amend the CYPF Act to strengthen existing duties of the CE to give greater recognition and respect to the Treaty of Waitangi and to facilitate and support the above principles and purposes.
- 89 In conjunction with proposals detailed in other RIS, these proposals form part of broader reform to the way we respond to vulnerable Māori children, young people and whānau. These proposals will combine to provide a clear and strong foundation in the legislation as detailed in the Foundations of a Child-centred System RIS.
- 90 We have assessed that legislation is a necessary mechanism for progressing these proposals because it will be most effective at advancing the government's objective to achieve improved outcomes for Māori, will provide strong guidance about what is expected of those operating under the Act and will help achieve consistency of practice. Importantly, legislation sends a strong signal about the need for culture change and that priority should be given to cultural responsiveness within the organisation.

## Implementation plan

- 91 The new operating model is being developed by the Investing in Children Programme and will be further developed and implemented by MVCOT from 1 April 2017. The process to develop the future operating model is using a robust programme management system that includes reporting and monitoring, decision-making protocols, change control, change management, stakeholder management, risk and issues management and benefits realisation.
- 92 Funding to meet the costs associated with the implementation of the future operating model will be sought from the contingency fund, and where necessary in future budgets via the normal budget process.

## Monitoring, evaluation and review

- 93 These proposals form part of a larger 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 and by central agencies. There will also be a requirement for the Chief Executive to report publicly on an annual basis on the impact of measures on improving outcomes for Māori children and young people.

94 Further work will be undertaken with 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 those 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.

95 Work is also being progressed to gather data on the voices and experiences of those the system is designed to serve, starting with children and young people.

96 The adoption of an investment approach also means that the overall impact can be measured through assessing improvements in outcomes and the reduction in the overall future cost (forward liability) for this group of vulnerable children and young people. The precise measure and associated targets can be determined once the actuarial model is in place.