

# Coversheet: Oranga Tamariki (National Care Standards) Regulations 2018

**This report contains legal advice and should not be disclosed on an information request without further legal advice**

Advising agency	Oranga Tamariki—Ministry for Children
Decision sought	Policy agreement to the proposals to be included in the Oranga Tamariki (National Care Standards) Regulations 2018
Proposing Ministers	Minister for Children

## Summary: Problem and Proposed Approach

### Problem Definition

**What problem or opportunity does this proposal seek to address? Why is Government intervention required?**

Arrangements for children and young people placed in the care or custody of the State are not always meeting their needs or supporting them to experience positive outcomes, and there is variability and inconsistency in practice. A significant contributor to these issues has been the lack of clear, comprehensive expectations and accountability mechanisms.

Recent amendments to the Oranga Tamariki Act 1989 require regulations to be recommended by 13 July 2018 that set out the actions or steps the chief executive of Oranga Tamariki—Ministry for Children (the Ministry), their delegates, and section 396 care providers must take to ensure an appropriate standard of care is provided. This presents an opportunity to introduce new mechanisms through regulation to support clear and transparent expectations and improved accountability for the quality of care.

### Proposed Approach

**How will Government intervention work to bring about the desired change? How is this the best option?**

Introducing regulations setting out key actions and steps that must be taken to help ensure that children and young people in care receive an appropriate standard of care will provide clarity for children and young people to understand what they can expect in care, and will help to create greater consistency in the quality of their care experiences.

Having a clear regulatory framework will provide a level of transparency and accountability for the care provided by the Ministry that has not previously existed within the New Zealand care system. It will provide clarity for the chief executive to enable compliance, while allowing best practice to develop over time.

## Section B: Summary Impacts: Benefits and costs

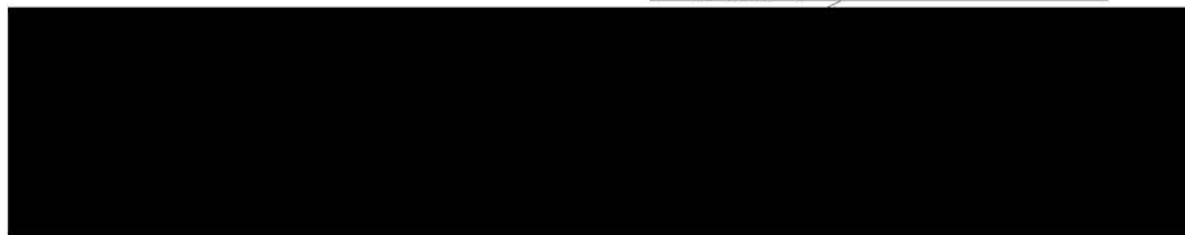
**Who are the main expected beneficiaries and what is the nature of the expected benefit?**

The main expected beneficiaries are children and young people in the care or custody of the chief executive or a body or organisation approved under section 396 of the Oranga Tamariki Act 1989, who will receive a more consistent care experience. If the regulations are consistently followed this may lead to improved long-term life outcomes for these children and young people, which would also have benefits for government in the form of reduced life course spending.

### Where do the costs fall?

The costs will largely fall on the Ministry, either directly through costs of administering the standards or through contract costs for the contracted section 396 care providers who may not be able to absorb the costs of compliance.

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Although the proposed regulations would not place obligations on caregivers or other agencies, it is likely that there will be some minor compliance costs for those parties.

### What are the likely risks and unintended impacts, how significant are they and how will they be minimised or mitigated?

The likely risks largely relate to the Ministry's ability to strengthen its workforce capacity and capability in order to ensure the requirements in the regulations are consistently met. This risk will be mitigated through the following:

- While the Oranga Tamariki Act 1989 requires the regulations to be recommended by 13 July 2018, it is proposed that the regulations will not come into force until 1 July 2019, to allow the Ministry and section 396 care providers time to review and update their processes and services, and build their capacity and capability to meet the requirements.
- The preferred option for the regulations will allow scope for operational decision-making as to how the Ministry determines it will meet the requirements.
- The Minister responsible for the administration of the Oranga Tamariki Act 1989 is required to regularly review the regulations, and monitoring and evaluations will highlight any regulatory provisions which have unintended impacts on the workforce.

### Identify any significant incompatibility with the Government's 'Expectations for the design of regulatory systems'.

No significant incompatibility has been identified.

## Section C: Evidence certainty and quality assurance

### Agency rating of evidence certainty?

- There is limited quantitative evidence on the effectiveness of international care standards regimes in improving outcomes.
- As the proposed regulatory framework is intended to be enabling, there is limited ability to precisely estimate costs.
- There was a clear response from consultation with stakeholders that care standards regulations, if properly implemented and resourced, would increase the quality of care provided.

*To be completed by quality assurers:*

<b>Quality Assurance Reviewing Agency:</b>
Oranga Tamariki—Ministry for Children and Ministry of Social Development
<b>Quality Assurance Assessment:</b>
The Regulatory Impact Assessment has been reviewed by a Principal Analyst from the Ministry of Social Development, and a Principal Analyst from the Oranga Tamariki—Ministry for Children, neither of whom was involved in the policy process, who have both independently concluded that the RIA meets the Quality Assurance criteria.
<b>Reviewer Comments and Recommendations:</b>

# Impact Statement: Oranga Tamariki (National Care Standards) Regulations 2018

## Section 1: General information

**Purpose**

Oranga Tamariki—Ministry for Children (the Ministry) is solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise explicitly indicated.

This analysis and advice has been produced for the purpose of informing final decisions to proceed with a policy change to be taken by or on behalf of Cabinet.

**Key Limitations or Constraints on Analysis**

There is limited international evidence and evaluations regarding the effectiveness of a comprehensive regulatory care standards regime, in particular that they directly correlate with improved outcomes for children. We have utilised the findings of the Modernising Child, Youth and Family Expert Panel (the Expert Panel), as well as qualitative research on international care standards regimes from other jurisdictions. We have largely been guided by the feedback from stakeholders during the consultation process (including children and young people) about what actions or steps would make a difference for children and young people in care.

There is also a lack of reliable evidence regarding the extent to which the Ministry is adhering to practice guidance, and the scale of inconsistent practice. This lack of evidence is one of the problems that the care standards regulations and monitoring regime is intended to address. The lack of evidence limits our ability to precisely estimate the overall cost for the Ministry to comply with regulations – in some areas the compliance costs will be low where best practice is already being consistently applied, and for other areas they may be significant.

The proposed care standards regulations have been drafted to set out what actions and steps the chief executive must take, but not how those must be done. This is intended to allow the chief executive and other section 396 care providers to determine the most effective way to meet their obligations, in line with best practice and Government priorities. However, this approach limits our ability to provide precise costings for the fiscal impact of the care standards regulations, as the future fiscal impact will be determined by the processes, services and supports which are reviewed, updated and created to give effect to the regulations.

[Redacted]

[Redacted] However, the future cost of meeting the care standards regulations could be significantly different, and will be dependent on what future processes and services the chief executive and providers design to meet their obligations.

The proposals set out below do not address the decision made by Cabinet on 7 September 2016 to revoke the Oranga Tamariki (Residential Care) Regulations 1996 once the care standards regulations are made [SOC-16-MIN-0114; CAB-16-MIN-0460 refer]. The proposed care standards regulations are intended to cover the spectrum of the care system, including residential care settings. However, the focus of the proposals is on the universal domains of care and therefore they do not provide the level of specificity or prescription that is required in more controlled residential care settings, for example, around search and seizure of unauthorised items, and limitations on powers of punishment and discipline.

The accompanying Cabinet paper seeks agreement to rescind the original Cabinet decision and instead retain the Oranga Tamariki (Residential Care) Regulations 1996 until further work is completed

[Redacted] with both sets of regulations applying concurrently in a

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residential environment to the extent that this is practicable in the circumstances. Authority is sought for the Minister to make any minor and consequential amendments to ensure both sets of regulations can be applied in a workable manner until the longer-term review is completed.

**Responsible Manager (signature and date):**

Trish Langridge

Deputy Chief Executive, Care Services

Oranga Tamariki—Ministry for Children

26 January 2018

## Section 2: Problem definition and objectives

### 2.1 What is the context within which action is proposed?

The Ministry provides care and protection to children and young people for whom it is not safe to continue to live at home and who are in need of a safe, stable and loving place to live, as well as for young people in the youth justice system who have been detained in custody or are subject to a court order requiring residential care. While the majority of these children and young people are directly in the care or custody of the chief executive, a small number are placed in custody of care providers approved under section 396.<sup>1</sup> The Ministry also contracts other non-governmental organisations to provide a variety of care and other services for children and young people in the care or custody of the chief executive.

Around 5,700 children and young people are currently in the care of the chief executive,<sup>2</sup> 69 percent of whom identify as Māori.<sup>3</sup> In the course of a year, approximately 550 young people are remanded to a youth justice residence and 300 sentenced to a Youth Justice Supervision Order.

#### **Children and young people in the current care system are significantly more likely to experience poor outcomes**

Those in care are highly likely to enter young adulthood with few qualifications, and go on to experience very high rates of benefit receipt and contact with the adult corrections system. Analysis of children born in 1990/91 shows that children who were placed in care were:

- twice as likely to have failed to gain NCEA Level Two by age 21 (77.7 percent compared to 36.3 percent of children overall)
- six times more likely to have been on benefit for more than two years before age 21 than other children (44.4 percent compared to 7.7 percent of all children)
- ten times more likely to have been in prison before age 21 (18.3 percent compared to 1.8 percent of all children)
- three times more likely to have been on benefit for more than 6 months when aged 35 (30.1 percent compared to 9.3 percent of all children)
- six times more likely to have been in prison before age 36 (26.0 percent compared to 4.6 percent of all children).

Recent research shows that children currently in care have higher rates of stand downs, suspensions, exclusions and expulsions from school, lower levels of NCEA achievement, lower levels of public health organisation (PHO) enrolment and high rates of use of mental health services.

Compared with children and young people who have had a Family Group Conference but were not placed in care, children and young people in care:

- spend an average of 20 percent more time receiving a benefit up to age 25
- are more likely to leave school with no NCEA qualifications
- have almost double the volume of offending.

There are large fiscal costs associated with people who have spent time in State care. For example,

<sup>1</sup> Section 396 covers iwi, social, cultural or child and family support services (for example Barnardos, Open Home Foundation, Youth Horizons, Key Assets). The children and young people placed in the legal custody of these providers make up around 10 percent of the total number of children and young people in care.

<sup>2</sup> This includes children and young people with whānau caregivers, non-kin caregivers, in other settings (like residences or group homes) and those supported to live at home or independently.

<sup>3</sup> This figure captures children and young people who listed Māori as one of multiple ethnicities, as well as those who identified Māori as their sole or primary ethnicity.

the average amount of Child, Youth and Family spending for the 1990/91 cohort was almost \$100,000 and the subsequent benefit and Corrections expenditure to age 35 years was just over \$200,000.

## 2.2 What regulatory system, or systems, are already in place?

Oranga Tamariki—Ministry for Children was established in 2017 and a new operating model is currently being developed.

The Oranga Tamariki Act 1989 provides the basis for the operation of the current system and underpins all aspects of practice. The Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017, which amended the Oranga Tamariki Act 1989, introduced a wide range of reforms to underpin and give effect to the new operating model, one of which was the requirement to make regulations setting out standards of care.

Prior to the legislative changes, the regulatory settings and standards for children and young people in care were limited and applied only to those in secure care settings. The Oranga Tamariki Act 1989 provides a regulation-making power for care in residences established by the chief executive and for the residential component of a programme or activity imposed as a condition of a supervision with activity order or supervision with residence order. There was no similar power enabling care standards for all children and young people in care to be made, or for determining the monitoring and enforcement mechanisms of those standards. [s 9\(2\)\(h\) OIA Legal professional privilege](#)

Existing monitoring and reporting mechanisms in relation to children and young people in care include:

- the Children's Commissioner has a general mandate under the Children's Commissioner Act 2003 to investigate, monitor and assess the practices and provision of services under the Oranga Tamariki Act 1989. In practice, while the Commissioner is able to provide a certain degree of oversight, the Commissioner does not routinely provide systematic monitoring of legislative compliance or of the quality of services, including in relation to children in care
- the Children's Commissioner also carries out a more systematic monitoring role in relation to secure residences, through its mandate under the United Nations Optional Protocol to the Convention Against Torture (OPCAT)
- the chief executive has a general duty under section 7 of the Oranga Tamariki Act 1989 to monitor and assess the services provided under the Act by the department and by other organisations, groups and individuals
- grievance panels in residences must provide quarterly reports on the reviews carried out by the panel and whether there has been compliance with the grievance procedure. The reports must be provided to the chief executive, Principal Youth Court and Family Court judges and the Children's Commissioner
- inspections of residence findings must be reported to the chief executive and copied to the Children's Commissioner
- for the last three years, the Office of the Children's Commissioner has provided an annual, publicly available report on the findings of its monitoring functions in relation to the Act. This is known as the State of Care report. The report, however, is not an express statutory requirement, and the frequency and focus of such reporting is at the discretion of the Children's Commissioner.

New reports required in the recent amendments to the Act provide further accountability mechanisms, but do not provide the systemic focus that is currently lacking and which the care standards regulations are intended to address. These are:

- a report by the chief executive to the public at least once a year on the duties in relation to improving outcomes for Māori children and young persons who come to the attention of the department
- a report by the Minister to Parliament beginning in 2022, and every 3 years thereafter, into the extent to which accountability arrangements are meeting the needs of children with whom the department is concerned.

Non-government organisations (NGOs) and other government agencies also play an important role in New Zealand's care, protection and youth justice systems. These include:

- organisations that are contracted by the chief executive to provide services to children and young people under section 396 of the Act. This includes services that provide care to children and young people for whom the care standard regulations will apply
- organisations either contracted directly by the chief executive or funded through other means that provide a range of services to children, young people and their families outside of the Act
- government agencies providing services to children, young people and their families as part of their core responsibilities. This includes the provision of health, education, justice services and social services to children and young people.

### 2.3 What is the policy problem or opportunity?

In its Final Report, the Modernising Child, Youth and Family Expert Panel (the Expert Panel) described the system as one in which children and young people experience repeat referrals, high levels of instability and, in some cases, further maltreatment and trauma. It highlighted that the way the current system responds to children and young people in need of care means that:

- care arrangements are not always suited to the needs of children and young people. Their needs are generally higher and more complex than those of children and young people in the wider population
- there is insufficient attention to identifying and addressing the full range of needs of children and young people in care, including their emotional needs. Caregivers may also lack the capability, training and support, including financial support, needed to help them address the often complex needs of the children and young people they care for.

Periodic reviews by the Office of the Children's Commissioner have also found significant variability and inconsistency in practice across sites. In particular, the 2015 State of Care report found that across most sites and residences, there was inconsistent vision and direction, variable social work and core practice, and insufficient priority given to cultural capability.<sup>4</sup>

As the Expert Panel noted, Child Youth and Family was reviewed almost continuously between 1988 and 2015. These reviews, and the ensuing reforms, failed to result in any significant positive changes in the quality of care provided overall. The lack of clarity in purpose, mandate and accountabilities was a consistent theme in these reviews.<sup>5</sup>

**A significant contributor to these issues in the current system is the lack of clear, comprehensive expectations and accountability mechanism**

New Zealand does not currently have a set of overarching standards for the quality of care, which limits the accountability on the system to meet certain standards, and limits the expectations of children and young people in care and the level of caregiver support. To date, New Zealand's

<sup>4</sup> Office of the Children's Commissioner (2015). *State of Care 2015: What We Learnt From Monitoring Child, Youth and Family*. Wellington, New Zealand: Office of the Children's Commissioner, page 5.

<sup>5</sup> Modernising Child, Youth and Family Expert Panel (2015). *Expert Panel Interim Report: Modernising Child, Youth and Family*. Wellington, New Zealand: Ministry of Social Development, page 6.



legislative regime applying to children and young people in care has been comparatively light, with few rights and guarantees outlined for children and young people in care.

If care standards regulations (and the accompanying accountability mechanisms to oversee their enforcement) are not created, the new operating model may develop without standards that hold the Ministry to account for its responsibilities to provide quality care. It would mean children and young people in care would continue to be reliant on the Ministry creating and monitoring its own standards, which has not been done to date. Existing non-legislative measures, such as the children's charter, have not provided sufficient levels of accountability on the care system to ensure quality care. There is currently no one document that sets out the rights and needs of children and young people in care, what standards of care they should expect, and what support for caregivers should be provided.

Most comparable jurisdictions (eg England, Scotland, New South Wales, Queensland and Canada) have care standards supported through legislation. Where care standards operate in other jurisdictions, there is more accountability on the system and greater public scrutiny. Interviews with practitioners and experts from other jurisdictions with care standards found that almost all interviewees stated that standards had increased consistency across the sector, and most also reported that foster care standards were contributing towards an improvement in the quality of foster care.<sup>6</sup>

It is likely that the transformation programme to develop the new operating model will lead to improvement in the quality of care provided by the Ministry. However, these reforms alone are unlikely to raise the quality of care to the level and consistency required to achieve the outcomes we are seeking for children and young people in care. While there would be improvement due to the other reforms already underway, there is a risk that without care standards regulations, this would not be to a level sufficient to address the deficiencies identified by the Expert Panel.

## 2.4 Are there any constraints on the scope for decision making?

### The empowering provision sets out the parameters on the scope of the regulations

The regulation-making power for the care standards regulations is set out in section 447(1)(fa) of the Oranga Tamariki Act 1989, and requires that regulations prescribe the actions or steps that must be taken by the chief executive or the chief executive's delegates, or bodies or organisations approved under section 396, to help ensure that children and young persons in care or custody under Part 2 or 4 of the Act receive an appropriate standard of care that is consistent with the application of the principles in sections 4A, 5, 13, and 208, including actions and steps relating to:<sup>7</sup>

- the provision of care, services, and support to address the rights and needs of children and young persons in care
- the assessment and monitoring of care arrangements and residences, including youth justice residences
- the assessment, training and support of caregivers and care providers
- the creation and maintenance of records for a child or young person recording important matters in their life (including significant life events and significant achievements) occurring while they are in care, and the provision of access to those records for the child or young person
- the manner in which standards are monitored or reported on, within the department, by section 396 care providers, and by the agency or body referred to in section 447A.

The Act introduces a duty on the chief executive to comply with the regulations.<sup>8</sup> The Act also requires the chief executive to publish publicly accessible information to children and young persons and their

<sup>6</sup> Matheson, Iain (2009). *Foster care standards: A four country study*. Lower Hutt, New Zealand: New Zealand Family and Foster Care Federation Inc, page 40.

<sup>7</sup> Section 447(1)(fa). This provision came into force on 14 July 2017.

<sup>8</sup> Section 7(2)(bac). This provision will come into force on 1 July 2019 or at an earlier date if by Order in Council.

parents, whānau, families and caregivers, summarising the rights of children and young persons in the care or custody of the chief executive, and the standard of care they should expect from the department under the Act or regulations made under the Act.<sup>9</sup>

Compliance with the care standards regulations will be the responsibility of the chief executive and their delegates and section 396 care providers with custody of children and young people under the Act. Under the regulation-making provisions, legal obligations cannot be placed on caregivers and children's workers who are not delegates of the chief executive.

The Act requires the Minister to recommend the making of these regulations within 12 months of the commencement of the empowering provision.<sup>10</sup> This means the Minister must recommend the making of the regulations by 13 July 2018. Therefore, having no regulations for care standards is not an option.

The options for proposed regulations have been developed with the recent amendments to the Oranga Tamariki Act 1989 in mind. These changes come into force on a date appointed by Order in Council or by 1 July 2019. There are a number of provisions that the care standards regulations depend on including:

- new and amended purposes (section 4) and principles (sections 5 and 13)
- strengthened provisions relating to participation of children and young people in decisions that affect them (sections 5(1)(a) and 11)
- a new duty on the chief executive to establish complaints mechanisms (section 7(2)(bad))
- new provisions to support young people to move to independence (sections 386AAA to 386C).

**The care standards regulations have interdependencies with a number of other projects underway to develop the new operating model and to review the wider accountabilities in the system**

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The Act requires the Minister to appoint an independent agency or body to monitor and report on compliance with the regulations creating care standards.<sup>11</sup>

The care standards regulations will form a key part of the new operating model for the Ministry. Other pieces of work will need to align with the care standards regulations, and in many cases, will provide the operational framework for the implementation of the care standards regulations in the respective areas. For example, there is work currently underway or planned relating to:

- income support for vulnerable children (including caregiver income support)
- transition support (to implement the moving to independence provisions in the Act)
- the Ministry's practice framework
- caregiver recruitment, retention and support
- social worker recruitment
- establishment of a feedback and complaints mechanism

<sup>9</sup> Section 7(2)(bag). This provision will come into force on 1 July 2019 or at an earlier date if by Order in Council.

<sup>10</sup> Section 447(2)(a). This provision came into force on 14 July 2017.

<sup>11</sup> Section 447A. This provision will come into force on 1 July 2019 or at an earlier date if by Order in Council.

- access to services – direct purchasing
- sports and cultural initiatives
- social worker registration
- the continuum of care.

## 2.5 What do stakeholders think?

The key stakeholders are:

- Children and young people who in the care or custody of the chief executive or a section 396 care provider. The care standards regulations will set the standard for the quality of care they can expect and will assist them to advocate for themselves/lay complaints when this standard is not being met. If the quality of care set in the care standards regulations is delivered, it may lead to an improved care experience and more positive outcomes for these children and young people.
- Families and whānau of children and young people who in the care or custody of the chief executive or a section 396 care provider. They will have an interest in the care standards regulations in terms of the quality of care being provided and their ability to advocate for their children and young people, as well as more positive outcomes for their children and young people.
- Caregivers for children and young people who are in the care or custody of the chief executive. They will be directly affected by the care standards regulations, which will provide clearer expectations of their role and the support they can expect to receive. They will also have an interest in the support being offered to the children and young people in their care and a greater ability to advocate for this when it is not being provided.
- Section 396 care providers who are contracted by the Ministry to provide care for children and young people or care providers who hold care or custody in their own right. They will be directly affected by the care standards regulations as they will be bound by the regulations and their compliance with them will be monitored.
- Agencies providing services or support to children and young people who are in the care or custody of the chief executive. While they will not have direct legal accountability for the care standards, they will have an interest in the implications the regulations will have on the Ministry's practice and how the Ministry intends to work with other agencies as part of providing services for children and young people.

Māori children and young people are over-represented in the care population; 69 percent of children in care identify as Māori. Given the disparity in representation, the addition of Māori concepts of mana tamaiti (tamariki), whakapapa and whanaungatanga to the Act,<sup>12</sup> and the feedback from Māori young people that the current system sometimes fails to respond adequately to the importance of culture, it is vital that the care standards regulations are responsive to the particular needs of Māori.

This is also important to ensure that the Crown meets its obligation to uphold the principles of the Treaty of Waitangi, notably the principles of partnership and active protection which are particularly relevant here.

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### Development of the proposals has been informed by stakeholder consultation

To date, three consultation phases have been conducted to assist in developing the care standards regulatory proposals. A summary of these consultation phases, including who was consulted, the key themes identified and how feedback was incorporated, is set out in Appendix One.

<sup>12</sup> These concepts are reflected in the purposes, general principles, further duties of the chief executive in relation to improvement of Māori outcomes and the care and protection principles of the Act.

The voices of children and young people have been central to identifying key actions that will influence positive outcomes for children and young people in care. Between October and November 2016 the following groups of children and young people were consulted regarding initial domains of care:

- 52 care experienced young people
- 12 young people who had not experienced care
- 11 young people considered to be vulnerable.

Within these groups of children and young people, approximately 68 percent identified as Māori and 20 percent identified as Pasifika.

Consultation occurred throughout each of the three phases with:

- caregivers, both whānau and non-kin, as well as Fostering Kids, the main caregiver advocacy agency in New Zealand
- all of the care providers approved under section 396, including Barnados, Open Home Foundation, Youth Horizons and Key Assets
- the Māori Design Group<sup>13</sup>
- iwi social services and iwi section 296 and 403 providers
- the Office of the Children's Commissioner
- government agencies including the Ministry of Health, the Ministry of Education, the Ministry of Justice, Te Puni Kōkiri and New Zealand Police.

**Stakeholders generally agreed that the proposed care standards regulations will achieve the objectives**

All stakeholders have been supportive of the introduction of care standards regulations as a mechanism to ensure transparent and clear expectations are set for the care system and introduce a measure of accountability.

At the conclusion of the third phase of consultation there was a general consensus that the proposals would deliver on the objectives, provided there was sufficient resourcing available to implement and meet the requirements. Some approved care providers expressed concern regarding the level of resourcing required to deliver the standards and the risk of multiple layers of accountability and monitoring requirements. This will be mitigated through detailed implementation planning and ensuring close alignment with the other reforms underway as part of the development of the new operating model.

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<sup>13</sup> The Māori Design Group was established by the Ministry in order to provide an external Māori perspective into the design and/or development of work led by the Ministry.

## Section 3: Options identification

### 3.1 What options are available to address the problem?

The Act requires the Minister to recommend the making of the care standards regulations by 13 July 2018. The Act sets out what the regulations should cover and requires the chief executive to comply with the regulations. The Minister is required to appoint an agency independent of the Ministry to monitor and report on compliance with the regulations.

Non-regulatory options were ruled out as the Act requires a regulatory approach to be taken in setting out standards of care. Given that there is a statutory requirement for regulations, the following has been considered:

- the desired objectives of the regulations
- the form that the regulations should take
- the content of the regulations.

#### The objectives

When considering what content should be included in care standards regulations and the appropriate level of detail required to achieve the standards, the options have been assessed against both the criteria set out in Section 3.2 and their ability to give effect to the desired objectives. The overarching objective is to create a child-centred regulatory framework that ensures children and young people in care are cared for in a way that improves their outcomes and meets their needs, expectations and fundamental rights. In particular, the desired objectives are:

- the delivery of high quality services to children and young people in care
- greater consistency of the care experience for children and young people in relation to what they can expect when they are in care
- that caregivers are supported to provide safe, stable and loving care
- that there is a shared framework for those working in the care sector and that it is clear what is expected of them
- that compliance is able to be monitored and reviewed.

#### The form

Three different regulatory approaches have been considered in determining options for the form of the regulations:

- **Low level of regulatory detail:** this approach would take a principles-based approach that would focus on qualitative objectives to be achieved for children and young people in care – this approach would be similar to the approach taken in Queensland, where principle-based statements are set in primary legislation under section 122 of the Child Protection Act 1999.
- **Medium level of regulatory detail:** this approach would be outcomes focused and would prescribe the key actions or steps required in order to ensure children and young people receive an appropriate standard of care and that they understand what to expect when they are in care – this approach would be similar to the approach taken in Scotland, under the Looked After Children (Scotland) Regulations 2009.
- **High level of regulatory detail:** this would take the same approach as above but would have further prescription as to how actions or steps are expected to be implemented – this approach would be similar to the current Oranga Tamariki (Residential Care) Regulations 1996.

The impact analysis set out at Section 4.1 examines the impacts of each regulatory approach in achieving the objectives outlined.

## The content

After determining the different options for the form the regulations should take, we considered the content areas that should be included within the care standards regulations.

These content areas have been reached following a survey of international care standards documents, which tend to group requirements based on similar needs-based themes, and feedback from consultation (including with children and young people). These were then further refined based on the required areas set out in the regulation-making provision for the care standards, the new principles of the Oranga Tamariki Act 1989 and the extent to which these content areas would achieve the objectives outlined above.

These standards are not mutually exclusive and are non-hierarchical. The contents of the proposed regulations are intended to cover the spectrum of the care experience. It is proposed that they cover actions or steps in the following areas:

- Assessment, planning and monitoring to support children and young people in care
  - Needs assessment and developing a plan for the child or young person
  - Visits to monitor the ongoing safety and well-being of the child or young person
  - Maintaining and reviewing the child’s or young person’s plan
- Support to address children’s and young people’s needs
  - Whānau connections
  - Culture, belonging and identity
  - Play, recreation and community
  - Health
  - Education and training
- Caregiver and care placement assessment and support
  - Caregiver approval
  - Caregiver support plan
  - Caregiver support and capability-building
- Supporting children and young people to have a greater voice in their care experience
  - Enabling children and young people to make informed decisions
  - Providing feedback and making complaints
  - Responding to concerns of abuse or neglect
  - Ensuring children and young people have their own belongings
  - Maintaining records of important life events for children and young people while they are in care
- Supporting children and young people during care transitions
  - Placement decisions
  - Assessment, planning and monitoring during transition phases
  - Support to prepare young people for moving to independence
- Monitoring and reporting on compliance with the regulations
  - Manner in which the regulations are monitored and reported on by the independent monitor
  - Internal monitoring and reporting requirements.

These content areas have not been included in the Impact Analysis in Section 4.1 as these stay the same across the different regulatory approaches – it is the level of regulatory detail that varies across the options.

## The analysis

We have considered, for each content area set out above, whether a low, medium, or high level of regulatory detail would be required to give effect to the desired outcome, as assessed against the criteria in Section 3.2. Appendix Two sets out in more detail the analysis for each area of care.

As the regulations will confer legal liability, we considered the level of prescription needed to ensure those accountable will understand what is required and to ensure that compliance can be measured. We considered both regulatory and non-regulatory options.

### 3.2 What criteria, in addition to monetary costs and benefits, have been used to assess the likely impacts of the options under consideration?

In order to determine the actions that are appropriate for inclusion in regulations, criteria were developed to identify regulatory and non-regulatory options, assessed against the extent to which they would achieve the objectives outlined in Section 3.1.

Criteria	How this was assessed
Likely effectiveness	<p>The extent to which the option:</p> <ul style="list-style-type: none"><li>• is likely to enable the chief executive to deliver the desired care outcome sought and are consistent with the principles of the Act</li><li>• supports an approach that is consistent with the policy intent</li><li>• impacts on the likelihood of actions not occurring, and the extent to which that will reduce the chance of achieving the desired care outcome.</li></ul>
Durability	<p>The extent to which the option is likely to enable sustained change in the direction sought and support the long-term transformation required to implement the new operating model for children and young people in care.</p>
Flexibility	<p>The extent to which the option:</p> <ul style="list-style-type: none"><li>• minimises undue prescriptiveness</li><li>• enables practice to adapt, allows for professional judgement and accommodates different fact situations.</li></ul> <p>With options that have a greater degree of flexibility, there may be a trade-off with clarity.</p>
Clarity	<p>The extent to which the option would support a level of detail that:</p> <ul style="list-style-type: none"><li>• is practical, clear, and easy to understand, and provides clarity for practitioners</li><li>• enables the chief executive to be sure what is required to satisfy the requirement.</li></ul> <p>With options that have a greater degree of clarity, there may be a trade-off with flexibility.</p>
Operational and Fiscal Impact	<p>The extent to which the option:</p> <ul style="list-style-type: none"><li>• enables an approach that is achievable in practice either immediately or in the future</li><li>• achieves the objectives, balanced against the costs.</li></ul>
Fairness and equity	<p>The extent to which the option promotes fairness and treats similar cohorts in a consistent way.</p> <p>With options that promote a greater degree of fairness and equity, there may be a trade-off with flexibility.</p>

Consistency with the Treaty of Waitangi, UNCROC and other relevant international obligations	The extent to which option supports New Zealand to meet its Treaty of Waitangi and international obligations.
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### 3.3 What other options have been ruled out of scope, or not considered, and why?

Non-regulatory options were considered to understand what would happen under the counterfactual (ie if no care standards regulations are made). This helped determine what regulatory options would represent the most significant improvement on the counterfactual. However, they were not considered as viable options in their own right, as the Act requires that care standards regulations are made.


Consultation generated a significant number of proposed actions or steps across all the content areas. We eliminated actions or steps that are already covered by an existing Act, and those which fall outside the scope of the regulation-making power.



## Section 4: Impact Analysis

Marginal impact: How does each of the options identified at Section 3.1 compare with the counterfactual, under each of the criteria set out in Section 3.2?

	No action	Option 1: Low level of regulatory detail	Option 2: Medium level of regulatory detail	Option 3: High level of regulatory detail
		This approach would take a principles-based approach that would focus on qualitative objectives to be achieved for children and young people in care.	This approach would be outcomes focused and would prescribe the key actions or steps required in order to ensure children and young people receive an appropriate standard of care.	This would take the same approach as above but would have further prescription as to how actions or steps are expected to be implemented.
<b>Likely effectiveness</b>	<p><b>0 Not effective</b></p> <p>This is not likely to be effective in achieving better outcomes for children and young people in the custody of the chief executive. There would likely be improvements based on the anticipated design of the new operating model, for example the practice framework, but this would continue to rely on the Ministry creating and monitoring its own operational standards, which has not occurred to date.</p> <p>This would not provide measurable regulatory requirements to enable independent monitoring of the quality of care the Ministry provides.</p>	<p><b>+ Somewhat effective</b></p> <p>Prescribing qualitative objectives would go some way to achieving greater consistency of practice compared to the status quo, but would not be consistent with the policy intent and the legislative requirement to prescribe actions or steps that the chief executive must take.</p> <p>Without prescribed actions and steps, improvements in consistency of care quality may not occur as practice guidance would be left to determine how the objectives will be met. It would also not achieve the objective of ensuring that children and young people have clarity about what they can expect when they are in care.</p>	<p><b>+ + Effective</b></p> <p>This option would be consistent with the policy intent in prescribing actions or steps that the chief executive must take.</p> <p>It would provide clarity about <i>what</i> actions or steps must occur, ensuring that those outcomes are met, while allowing an appropriate level of judgement and discretion as to <i>how</i> those actions and steps must occur.</p>	<p><b>+ Somewhat effective</b></p> <p>This option would be consistent with the policy intent in prescribing actions or steps that the chief executive must take.</p> <p>There is a risk that in prescribing how these actions or steps should be carried out, it would generate a compliance focus on meeting procedural requirements and promote a 'one size fits all' approach, rather than encouraging a quality best practice approach that allows space for professional judgement and is responsive to children's differing strengths and needs.</p>
<b>Durability</b>	<p><b>0 Not durable</b></p> <p>Other reforms underway as part of the development of the new operating model which address the same content areas it is proposed the care standards regulations will cover may support the long-term transformation project, but without regulatory guidelines there is limited accountability to ensure that these endure and embed sustained change.</p>	<p><b>+ Somewhat durable</b></p> <p>Setting qualitative objectives that align with the vision for the new operating model may go some way to ensuring that the expected standard of care is provided, but will not provide specific actions or steps and therefore leaves open significant scope for how the objectives should be met. It is likely that that the expected standard would not be reached, or would be approached in inconsistent ways across sites, and therefore sustained change would not be achieved over the long term.</p>	<p><b>+ + Durable</b></p> <p>Requiring specific actions and steps in regulations will promote consistent practice and will ensure that there are clear and measurable steps the chief executive can be monitored against to assess how they are meeting their obligations and delivering the standard of care expected under the new operating model. This is likely to ensure that actions are delivered consistently and contribute to sustained changes in the quality and consistency of care provided.</p>	<p><b>+ Somewhat durable</b></p> <p>Having detailed and prescriptive regulatory standards would set a high standard of accountability and may provide the basis for more thorough monitoring of how well the chief executive is meeting their obligations to provide the required standard of care. This is likely to ensure that actions are delivered consistently and contribute to sustained changes in the quality and consistency of care.</p> <p>However, there is a risk that introducing regulations that are highly detailed at a process level means that the regulations are more likely to need to be changed in the future in response to government priorities and best practice.</p>
<b>Flexibility</b>	<p><b>0 Flexible</b></p> <p>While other reforms are underway to improve the quality of care provided by the Ministry, these would largely continue to sit in practice guidance or operational policy, which would continue to allow significant flexibility.</p>	<p><b>0 Flexible</b></p> <p>Regulating for high-level objectives without prescribing specific actions or steps allows for a high level of professional judgement and flexibility through use of practice guidance.</p> <p>In practice, this option could result in an approach that does not differ much from the status quo.</p>	<p><b>- Somewhat flexible</b></p> <p>Prescribing <i>what</i> action or steps are required in regulations will reduce flexibility compared to the status quo.</p> <p>However, under this option the regulations will not specify <i>how</i> those actions or steps should be carried out, which will allow some flexibility around what information, support, guidance etc will be required to be provided. It will allow practice to be tested, developed and improved over time without needing to change the regulations to accommodate this.</p>	<p><b>-- Not flexible</b></p> <p>A high level of regulatory detail around process would provide limited ability for practice to evolve in response to development of other aspects of the new operating model, as well as in response to best practice and government priorities.</p> <p>It also does not allow for professional judgement and may impact on the ability for professionals to meet the unique needs of individual children and young people. An approach that is heavy on process detail is also likely to drive compliance-focused behaviour.</p>
<b>Clarity</b>	<p><b>0 Not clear</b></p> <p>While other reforms underway would contribute to an improvement in the quality of care, there would continue to be a lack of clarity and accountability for what the Ministry should be providing for every child and young person in care and what support caregivers should be provided with.</p>	<p><b>0 Not clear</b></p> <p>Having only high-level principle-based objectives would not provide clarity for the chief executive and practitioners around what they would need to do to meet the requirements, or how it would be known whether or not those objectives have been achieved.</p> <p>Practice guidance would be developed and updated to assist with this, but it would give the monitoring agency and the courts scope to provide their own interpretation of the steps or actions that should have been carried out. This means that this option has increased legal risk compared to the other options.</p>	<p><b>+ Somewhat clear</b></p> <p>This option goes further than option 1 as it will provide more clarity on the actions or steps that practitioners and the chief executive must take, but leaves room for interpretation as to the way in which those actions or steps must be carried out. Having the actions or steps set out in regulations would provide clear standards for the chief executive and monitoring agency to determine whether the requirements have been met or not.</p>	<p><b>+ + Clear</b></p> <p>A high level of regulatory detail which sets out not only what actions or steps must be carried out, but how they should be carried out, would give a high degree of certainty to frontline staff and the chief executive as to what their obligations are in comparison to options 1 and 2. Providing a high level of clarity about what is expected and how requirements should be met would minimise legal risk.</p> <p>This option would also provide clear and measurable requirements that could be monitored by the independent agency.</p>

	<b>No action</b>	<b>Option 1: Low level of regulatory detail</b>	<b>Option 2: Medium level of regulatory detail</b>	<b>Option 3: High level of regulatory detail</b>
		This approach would take a principles-based approach that would focus on qualitative objectives to be achieved for children and young people in care.	This approach would be outcomes focused and would prescribe the key actions or steps required in order to ensure children and young people receive an appropriate standard of care.	This would take the same approach as above but would have further prescription as to how actions or steps are expected to be implemented.
<b>Operational and Fiscal impact</b>	<b>0 Low impact</b> There are a number of budgeted initiatives underway and planned as part of the new operating model, including increasing frontline staff capacity and capability; without care standards regulations there would be no additional impacts on top of the already planned reforms.	<b>- Low/Medium impact</b> This option is likely to have a low/medium level of operational and fiscal impact. A combination of current practice and already anticipated changes through other reforms would likely be sufficient to meet high-level principle-based standards, although an increase in workforce resources, capacity and capability would still be needed as part of these reforms.  However, changes to practice and further budget initiatives may be required if the independent monitoring body identifies that these reforms have not been sufficient to raise the quality of care to meet the high-level requirements.	<b>-- High impact</b> Many of the proposed actions in the care standards regulations are either expected under current practice, or are covered by other initiatives underway or planned as part of the development of the new operating model.  However, significant fiscal and operational investment would be needed to ensure that the requirements are being met consistently across the country, and that the agency has sufficient resources, capacity and capability to meet the regulations.  With a medium level of detail that focuses on what must be done but not how it must be done, there is a degree of flexibility to allow the agency to update and improve its practice over time.	<b>--- Very high impact</b> Many of the proposed actions in the care standards regulations are either expected under current practice, or are covered by other initiatives underway or planned as part of the development of the new operating model.  However, significant fiscal and operational investment would be needed to ensure that the standards are able to be met consistently across the country, and that the agency has sufficient resources, capacity and capability to meet the regulations, over and above the current budgeted initiatives.  A high level of detail in the regulations would likely require significant changes to practice, which would require significant upfront investment and operational change to achieve in advance of the care standards regulations coming into force.
<b>Fairness and equity</b>	<b>0 Not fair and equitable</b> Other practice reforms underway as part of the new operating model may go some way to ensuring children and young people in the custody of the chief executive are treated fairly and consistently, but still risks replicating same inconsistencies in practice that were features of the previous system.	<b>+ Somewhat fair and equitable</b> This option is more likely to ensure that all children and young people are likely to be treated consistently and have the same standard of care than the status quo. However, with the action or steps taken to achieve the high level objectives left to practice guidance, it is likely that there would continue to be variation in the application of the regulations.	<b>++ Fair and equitable</b> This option is more likely than option 1 to ensure that all children and young people will be treated consistently and have the same standard of care. Practice guidance would still be relied on to set out how the requirements should be carried out, which may leave some scope for variation in how the care standards regulations are adhered to.	<b>++ Fair and equitable</b> This option is even more likely to ensure that all children and young people will be treated consistently and have the same standard of care.  However, a highly prescriptive regulatory framework is likely to promote a 'one size fits all' approach which is unable to adapt to the unique needs of individual children and young people.
<b>Consistency with the Treaty of Waitangi, UNCROC and other relevant international obligations</b>	<b>0 Limited consistency</b> Other reforms underway to develop the new operating model, particularly those relating to improving outcomes for Māori and supporting children's participation, will contribute to greater consistency with these obligations, but without regulation still risks inconsistency in application and that this may not be applied for every child.	<b>+ Somewhat greater consistency</b> High-level objectives could be drafted consistently with UNCROC and Treaty of Waitangi obligations and this would be a positive step in enshrining those in regulation. However, without clear actions or steps stating how to meet these objectives there is a risk that these principles and obligations are not translated meaningfully into practice and are not carried out as part of a consistent approach.	<b>++ Greater consistency</b> Clear actions or steps to achieve standards will support the Ministry to give effect to Treaty of Waitangi and international obligations, particularly Article 20 of UNCROC. <sup>14</sup>  	<b>++ Greater consistency</b> As for option 2, clear actions or steps to achieve standards will support the Ministry to give effect to Treaty of Waitangi and international obligations particularly Article 20 of UNCROC.  s 9(2)(h) OIA Legal professional privilege
<b>Overall assessment</b>	<b>0 Does not meet objectives</b> If no further action to develop care standards regulations is taken, other reforms to develop the new operating model for the care and protection system will continue to progress, but without explicit legislative directives or requirements to ensure that children and young people in the care and protection system are receiving the quality of care that the new operating model is intended to deliver.  It is possible that the Ministry could create and monitor its own standards as a matter of practice. However, without regulatory requirements there is no accountability for this to be done in a consistent and transparent manner.	<b>+ Partially meets objectives</b> Overall, this option would be a slight improvement on the status quo. It would introduce high-level principles and leave the actions or steps the chief executive must take to meet those objectives to practice guidance. Depending on how this is implemented as part of the new operating model, it could improve practice to some extent, but there is a risk that this would result in the same inconsistencies and deficiencies in practice that face the current system.	<b>++ Meets objectives</b> This option is an improvement on the status quo. It is the option that is most likely to meet the objectives outlined above in providing a clear expectation about what constitutes quality care and supports the delivery of high quality services, and provides a clear basis for monitoring compliance.  This option allows for best practice and emerging priorities to be considered and for practice to evolve over time, enabling a continuous quality improvement, rather than compliance-driven, approach.	<b>+ Partially meets objectives</b> This option is an improvement on the status quo. It is likely to meet the objectives outlined above in providing clear expectations about what constitutes quality care and supports the delivery of high quality services, and provides a clear basis for monitoring compliance.  However, this option is likely to be less flexible and therefore less durable than a medium level of regulatory detail under Option 2, as a process-driven regulatory framework will not allow for professional judgement and for best practice to develop.

**Key:**

- ++ much better than doing nothing/the status quo
- + better than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

<sup>14</sup> Article 20 of the United Nations Convention on the Rights of the Child states that a child temporarily or permanently deprived of their family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

## Section 5: Conclusions

### 5.1 What option, or combination of options, is likely best to address the problem, meet the policy objectives and deliver the highest net benefits?

The analysis shows that each of the three assessed would achieve the objectives to some extent. However, **overall a medium level of regulatory detail is considered most appropriate for the care standards regulations.** The regulations are designed to help achieve better long-term outcomes for children and young people. Taking an outcomes-focused approach with medium-level detail on proposed actions and steps will be sufficiently clear to limit potential legal risk and clearly articulate what is required of the chief executive to enable compliance, while also allowing best practice to develop over time. A medium level of detail will provide an enabling regulatory approach to the ongoing development of the new operating model for the Ministry.

For some specific actions or steps where safety or essential needs are in question, such as caregiver safety checking and assessing the needs of a child or young person, it is appropriate to adopt a slightly higher level of regulatory detail to reflect the need to ensure that specific steps are taken in a prescribed manner in every case, to ensure consistency and safety. There are also areas (for example the actions or steps that should be taken to ensure a child or young person's culture, identity or other needs are met), where a lower level of regulatory detail is appropriate to reflect the diversity of children and young people's needs and allow for flexibility in meeting those unique needs. However, in every case, the focus remains on what actions or steps need to be taken to ensure that a specific outcome is achieved. Appendix Two provides further detail on how this analysis was applied to each of the content areas identified in Section 3.1.

All of the regulatory approaches considered would have some degree of financial and operational impact, and would not be able to be delivered with current workforce capacity and capability. If a medium level of regulatory detail is adopted, the financial and operational impact and the improvements required to enable the workforce to be able to meet the care standards will be significant.

We consider that a medium level of detail is the most likely to be effective in changing practice and improving the level and consistency and care provided, while allowing flexibility for the organisation to design different approaches to meet the regulatory requirements. This flexibility will allow the Ministry and section 396 care providers to develop different options for meeting the regulatory requirements, and consider the financial and operational implications of those individual options. While a lower level of regulatory detail would likely have lower financial and operational impacts, we consider that this option would not deliver on the aspirational objectives of the care standards and would not be likely to result in a significant difference from the status quo.

While the Act requires the Minister to recommend regulations to be made by 13 July 2018, it is proposed that the actual commencement date for the regulations be on 1 July 2019. This is intended to allow the Ministry and section 396 care providers time to review and update their processes and services, and build their capacity and capability to meet the standards.

#### **Confidence in assumptions and evidence**

The care standards regimes of other jurisdictions are diverse in their focus, legislative standing and level of detail, with a wide range of different legislative and non-legislative approaches adopted based on the particular features of the care system of each jurisdiction. There is limited empirical evidence as to the effectiveness of any of these care standards regimes, which has hindered our ability to choose a regulatory approach based on evidence of improved outcomes. However, we have drawn upon the different approaches to develop a regulatory framework which complements New Zealand's primary care and protection legislation. This framework sets legal requirements while allowing best practice in meeting those obligations to develop and be informed by evidence and experience.

These evidential limitations will be addressed through the comprehensive monitoring regime established in the regulations. This regime will be focused not only on measuring compliance but in

supporting continuous service improvement. This, combined with the legislative requirement for the Minister to regularly review the regulations, will ensure that any areas of the regulations which are not delivering the benefits envisaged, or meeting the policy objectives, can be amended.

**Stakeholder views**

As outlined in Section 2.5, consultation feedback on the care standards was positive and conveyed a general consensus that the regulatory proposals would deliver the objectives. In phase three of consultation, summaries of the proposed regulatory content were presented to stakeholders. Of the survey respondents who participated in this stage of consultation, 83 percent indicated that the summarised content would be likely to meet the objectives identified (set out at Section 3.1) and the general response from the consultation participants was that the regulations, if fully implemented and met, would be likely to result in an improved level of care for children and young people. More detailed feedback was also used to refine the detail of the proposals.

Some consultation feedback could not be incorporated as it was outside the scope of the regulation-making power. For example, placing direct requirements on caregivers and on other agencies was a common theme. However, under the regulation-making power, the care standards regulations may only require actions or steps to be taken by the chief executive or their delegates or care providers approved under section 396 who have care or custody of a child or young person.

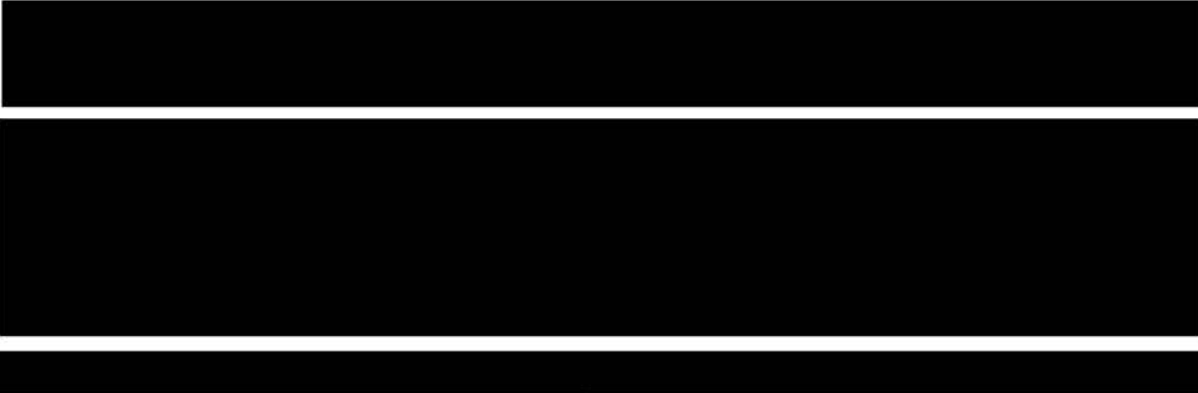
**5.2 Summary table of costs and benefits of the preferred approach**

The table below indicates some of the key costs and benefits associated with introducing the care standards regulations. Further context about the costs expected to fall on the Ministry is provided here. These cost estimates are indicative only, as the cost of implementing the care standards regulations is highly dependent on the design of future processes and services by the Ministry.

**The care standards regulations will form a key component of the Ministry’s core business and will require significant levels of resourcing to achieve**

The proposed care standards regulations are intended to set minimum standards to ensure children and young people in care receive an appropriate standard of care, and are therefore expected to become part of business as usual for the Ministry. The proposed regulations cut across the care system and will underpin the Ministry’s delivery of core services for children and young people in care.




While many of the actions in the proposed regulations are already required as part of current practice, ensuring these minimum standards are achieved consistently will require a significant level of resourcing.



s 9(2)(f)(iv) Active consideration

<sup>15</sup> In the 2017/18 financial year, the Ministry had a total spend of over \$860 million, of which \$503 million was on statutory intervention and transition.

REDACTED

Affected parties	Comment	Impact	Evidence certainty
<b>Additional costs of proposed approach, compared to taking no action</b>			
Chief executive and the chief executive's delegates / Oranga Tamariki—Ministry for Children  (Regulated party)	Ongoing funding to provide services and supports to children and young people and their caregivers required under the regulations: <ul style="list-style-type: none"> <li>to fund new initiatives that are not part of current practice</li> <li>to ensure that those already required under current practice are provided consistently nationwide</li> <li>to build and maintain a workforce with the capacity and capability to undertake the additional tasks and activities required in the regulations</li> </ul>	 s 9(2)(f)(iv) Active consideration	Medium
	One-off cost to design and update systems and processes for collecting information to meet monitoring and reporting obligations		Low
	Ongoing costs to carry out internal monitoring and reporting		Low
	One-off cost of reviewing and amending existing policies, practice guidance, professional development and induction activities, to ensure alignment with regulations	Medium	Low
	One-off cost to redesign contracts with section 396 care providers who hold custody	Low	Low
Section 396 care providers who hold custody  (Regulated party)	One-off costs to design new policies and practice guidance to ensure alignment with regulations	Low	Low
	One-off costs to renegotiate contracts to ensure alignment with regulations	Low	Low
	Ongoing funding to provide for services and supports to children and young people and their caregivers required under the regulations	Medium	Low
Wider government agencies	Ongoing compliance costs in the form of worker time to engage with the chief executive's delegates who are carrying out actions or steps under the care standards	Low	Low
	One-off costs of reviewing policies and practice guidance to reflect any impact the care standards regulations may have on how agencies engage with the chief executive's delegates	Low	Low
	Greater demand for services as a result of children and young people being referred	Medium	Low

			Low
			Low
	s 9(2)(f)(iv) Active consideration		
Caregivers	Increased compliance costs (primarily cost of individual's time)	Low	Low
Children and young people in care or custody under Part 2 or 4 of the Oranga Tamariki Act 1989	None	n/a	n/a
Families and whānau of children and young people	None	n/a	n/a
<b>Total monetised cost (Indicative estimate)</b>			Low
<b>Non-monetised costs</b>		Low/Medium	Low

Affected Parties	Comment	Impact	Evidence Certainty
<b>Expected benefits of proposed approach, compared to taking no action</b>			
Chief executive and the chief executive's delegates / Oranga Tamariki—Ministry for Children  (Regulated party)	Greater understanding of whether the Ministry is meeting the needs of children and young people in care will lead to more effective services and greater ability to discharge the Ministry's mandate	High	Low
	Greater ability for frontline workers to identify and request resources and support needed to meet the standards when these are not being provided	Medium	Low
	Monitoring of section 396 care providers will help the Ministry understand which are providing quality care and enable better contractual arrangements	Medium	Low
Section 396 care providers who hold custody  (Regulated party)	Greater clarity on what is expected for children and young people in care, leading to more effective contractual arrangements	Medium	Low
	Greater understanding of the needs of the children and young people in their care, leading to ability to design more effective and responsive services and greater ability to meet those needs	High	Low

	Learning opportunities that can support continuous service improvement will be identified through monitoring	Low	Low
Wider government agencies	Greater clarity about the chief executive's role and responsibilities for children in care, leading to more efficient and effective coordination with the chief executive's delegates	Medium	Low
	Improved information and communication from the Ministry about a child or young person's needs, which will improve agencies' ability to provide services and interventions that respond earlier and more effectively to those needs	Medium	Low
	Better long-term outcomes for children and young people in care will result in lower government spending over their lives	High	Low
Children and young people in care or custody under Part 2 or 4 of the Oranga Tamariki Act 1989	Less trauma and harm as a result of being taken into care	Medium	Low
	Reduced rate of placement change and greater stability of placements	Medium	Low
	Receiving higher quality care will result in better long term life outcomes, for example greater involvement in education, better health, lower rates of offending	High	Low
	Greater understanding about their entitlements and ability to hold the Ministry and section 396 care providers to account for their responsibilities to provide quality care	Medium	Low
Caregivers	Increased access to training and support for caregivers, leading to caregivers feeling more skilled and confident and providing higher quality care	Medium	Low
	Greater clarity on entitlements and ability to hold the Ministry and section 396 care providers to account for their responsibilities to provide support	Medium	Low
	Greater clarity about the quality of care the child or young person in their care should be receiving, leading to greater ability to participate in decision-making	Low	Low
Families and whānau of children and young people	Greater clarity about the quality of care the child or young person in their care should be receiving, leading to greater ability to participate in decision-making and hold the Ministry to account	Low	Low
<b>Total monetised benefit</b>	<i>No monetised benefits identified</i>	n/a	Low
<b>Non-monetised benefits</b>		Medium/High	Low



### 5.3 What other impacts is this approach likely to have?

#### **The cost of the care standards regulations is dependent on the design of future processes and services by the Ministry**

The regulations have been drafted in a manner that allows best practice and innovative approaches to develop over time, while ensuring children and young people in care have their needs met. This makes it difficult to assess the true extent of compliance costs, as we are not able to predict what services, processes and practices the Ministry and section 396 care providers will develop in the future to meet the requirements in the regulations.

Overall, it is likely that a potentially significantly increased level of resourcing would be needed for the development of tools and resources to enable the actions in the care standards regulations to be carried out consistently across sites. [REDACTED]

s 9(2)(f)(iv) Active consideration

#### **Achieving compliance with the care standards regulations is dependent on having sufficient social workers and care placements available**

The success of the care standards regulations is heavily dependent on social worker capacity and resourcing to adhere to these regulations. It is also dependent on having enough care placements available to provide the right environments for children and young people in care. Currently, neither social worker capacity nor placement availability is at sufficient levels for the Ministry to be able to meet the regulations.

Current social worker and caregiver recruitment and capability-building initiatives aim to address these resourcing shortfalls. However, this is not only a funding issue, as it also depends on there being sufficient numbers of quality social workers being trained and available to be recruited. It is likely that capacity building initiatives will take a number of years and be dependent on resourcing decisions. If the current funding and resourcing initiatives are unsuccessful or do not provide enough increase in capacity in the timeframe necessary to meet the demand that the care standards regulations will contribute to (in conjunction with the other demands of the new operating model), then the Ministry's ability to comply with the requirements of the care standards regulations will be limited.

### 5.4 Is the preferred option compatible with the Government's 'Expectations for the design of regulatory systems'?

The preferred option is compatible with the Government's "Expectations for the design of regulatory systems" and no issues have been identified.

## Section 6: Implementation and operation

### 6.1 How will the new arrangements work in practice?

The care standards regulations will be introduced by way of regulations as required under section 447(1)(fa) of the Act. The proposals have been developed with the new and amended purposes and principles of the Act in mind, as well as other changes to the Act such as new provisions to support young people to independence and strengthened obligations to support children's and young people's participation. These changes come into force on a date appointed by Order in Council or by 1 July 2019. It is therefore recommended that the care standards regulations also come into force on 1 July 2019.

This will allow time for detailed implementation planning, and will support the regulations to align with other non-legislative projects currently being designed to underpin the new operating model. It will allow time for services and processes to be updated to ensure consistency with the standards, and for any new Budget initiatives to support the agency to meet the standards to be developed. It will also allow time to work with section 396 care providers and other agencies to communicate the expectations set in the care standards regulations.

Detailed implementation planning will include:

- co-ordinating with all components of the service design of the Ministry's new operating model, and establishing new projects for areas where the regulations go beyond current practice
- reviewing the current approval process and contracting arrangements for providers contracted by the Ministry to provide care to children and young people or services to children and young people in care
- reviewing the Ministry's internal quality assurance and monitoring functions to ensure effective mechanisms are in place to support both internal monitoring of compliance with the care standards regulations, and external monitoring of the care standards by the independent agency
- reviewing the Ministry's policies, practice guidance and tools to ensure compliance with and support for the implementation of the care standards regulations
- identifying the internal staff training that is required to ensure existing staff are aware of the care standards regulations and any areas of capability can be addressed
- publishing a care standards document for families, whānau, caregivers, external stakeholders and the New Zealand public will also need to be done as part of the communication strategy.

Other agencies have been involved in the development of the proposals for the care standards regulations, both through the consultation process and through the Cabinet and legislative processes, and we will continue to engage with agencies as implementation planning progresses. This will include exploring mechanisms to ensure successful operation of the care standards where relationships with other agencies are key, for example, through establishing joint implementation plans.

Once the regulations are in force, the chief executive, their delegates and section 396 care providers that hold legal custody of children or young people will be responsible for the ongoing operation of the care standards regulations. Implementation of the regulations will also need to align with other reforms already underway, for example, the new initiatives for caregiver support and training.

The internal and independent monitoring and reporting requirements will be key mechanisms to support the enforcement of the new obligations. Another key compliance mechanism will be the Ministry's own internal complaints process, the establishment of which is underway and is supported by a new duty on the chief executive under recent amendments to the Oranga Tamariki Act 1989.

There is also a new power under the recent amendments to the Act to make regulations providing for the appointment of a person or body to provide an independent review of the chief executive's to complaints.

The recommended proposals for the care standards regulations will create legal obligations and could also be enforced through the courts. The recent amendments to Act support the use of the Ministry's own internal complaints process and any independent complaints review process in the first instance to resolve disputes. This is achieved through the provision of a limitation that will require a complainant to have exhausted internal complaints mechanisms and any independent complaints review process before court proceedings may be brought.

<b>6.2 What are the implementation risks?</b>		
<b>Implementation issues</b>	<b>Assumptions or uncertainties</b>	<b>Risk mitigation</b>
The implementation of care standards regulations will require an increase in current levels of frontline resourcing.	There is an assumption that the Ministry will be able to recruit more quality social worker staff.	The Ministry is actively working to recruit and retain quality social work staff as well as develop a longer-term recruitment strategy.
The implementation of care standards regulations will require a competent social work workforce.	There is an assumption that the Ministry will be able to ensure a competent social work workforce through training and development initiatives.	The Ministry is actively working to increase social work competency through a number of initiatives.
The implementation of care standards regulations will require an increase in current levels of caregivers and placements available to children and young people.	There is an assumption that the Ministry will be able to recruit more caregivers and make more placement options available for children and young people in care.	The Ministry is actively working to develop a strategy to recruit and retain quality caregivers as well as develop a continuum of care options for children and young people.
The care standards regulations may not be adhered to for children and young people in care for short duration, or where a child or young person who will be subject to the regulations will also be subject to another order requiring their detention in a facility run by another agency. <sup>17</sup>	It may not be practically possible for some of the regulations to be met for children and young people in care for only a short time or in the custody of another agency.	In these instances, the proposed regulations will apply to the extent that is reasonably practicable.  The exact detail will be worked through during drafting.

<sup>17</sup> For example, this would cover orders under the Mental Health (Compulsory Assessment and Treatment) Act 1992.

Implementation issues	Assumptions or uncertainties	Risk mitigation
<p>The care standards regulations will not cover the specific requirements for children and young people in residential care placements.</p>	<p>Some features of care are specific to children and young people in residential placements.</p>	<p>Consultation on the care standards regulations has included discussion to ensure that they will be able to apply in a residential context.</p> <p>The accompanying Cabinet paper seeks agreement to rescind the original Cabinet decision and instead retain the Oranga Tamariki (Residential Care) Regulations 1996 until further work is completed [REDACTED]</p> <p>[REDACTED]</p> <p>s 9(2)(f)(iv) Active consideration</p> <p>with both sets of regulations applying concurrently in a residential environment to the extent that this is practicable in the circumstances. Authority is sought for the Minister to make any minor and consequential amendments to ensure both sets of regulations can be applied in a workable manner until the longer-term assessment is completed.</p>
<p>If care standards regulations were to come into full legal effect and be enforceable before implementation could be achieved, the Ministry and section 396 care providers would be unable to demonstrate compliance with the care standards.</p>	<p>Previous reviews found that there is significant variation in the quality and consistency of care provided by the Ministry and non-government care providers. There is an assumption that the design of the Ministry's new operating model will be able to address these quality and consistency issues.</p>	<p>The proposed commencement date for the care standards regulations of 1 July 2019 is intended to allow for detailed implementation planning, ensuring that all aspects of the care standards regulations can be met by the Ministry and section 396 care providers. This will allow the Ministry and care providers to build provider and sector capability, develop and implement appropriate monitoring and surveillance initiatives, and prepare for the introduction of the new regulatory requirements.</p> <p>There will be a number of significant reform initiatives across the care system that will support care providers to comply with the care standards, for example around caregiver recruitment.</p> <p>The legislative requirement for the Minister to regularly review the care standards regulations will also be used to review how the care standards are working in practice and what changes may be needed.</p>

Implementation issues	Assumptions or uncertainties	Risk mitigation
<p>The introduction of care standards regulations will require the Ministry and an independent oversight body to design new monitoring, compliance and enforcement arrangements to support implementation.</p>	<p>There is sufficient time between the date the regulations are made and the enactment date to complete [redacted] monitoring arrangements, and test them prior to the care standards coming into full legal effect.</p>	<p>It is proposed that the independent monitor report every three years to the Minister for Children on compliance with the regulations. [redacted]</p> <p>s 9(2)(f)(iv) Active consideration</p> <p>We expect that the arrangements will be designed in consultation with section 396 care providers and focus on ensuring continuous quality improvement and building the capability of care providers. The effectiveness of these arrangements will require evaluation and improvement over the period of introduction of the care standards.</p>
<p>The introduction of care standards regulations and the design of monitoring arrangements, compliance promotion activities, and enforcement responses may result in unco-ordinated, overlapping, and possibly conflicting administrative requirements.</p>	<p>There are a number of monitoring and reporting requirements which already apply across different aspects of the care system, particularly for section 396 care providers. For example approvals, residential care compliance assurance carried out by the Office of the Chief Social Worker and the OCC, and contractual requirements and quality assurance administered by the Ministry.</p>	<p>The design of monitoring, compliance and enforcement arrangements will take into account existing and planned performance, regulatory, contractual and quality management activities; the broader legislative and regulatory reform context; [redacted]</p> <p>s 9(2)(f)(iv) Active consideration</p> <p>The design work will occur in consultation with those who will be involved in the implementation of the regulations and will aim to improve outcomes for children and young people, support continuous quality improvement of care services, ensure coherency with existing accountabilities, and seek to minimise administrative burden of demonstrating compliance.</p>
<p>Section 396 care providers have expressed concern that if the regulatory landscape and accountabilities become too complex and costly to manage, especially for smaller services, then some care providers will be driven to withdraw from the market.</p>	<p>Monitoring, compliance and enforcement arrangements for the care standards can be designed in a way that supports providers to develop capability without driving smaller, less providers to withdraw from service provision.</p>	<p>Section 396 care providers will be a key partner in designing monitoring, compliance and enforcement arrangements.</p> <p>Provider and sector capability supports will be put in place to support care providers, including smaller services, to improve the quality of care provided and demonstrate compliance with the care standards regulations.</p>

Implementation issues	Assumptions or uncertainties	Risk mitigation
<p>Other entities affected by the care standards also need to know what quality of care children and young people can expect and what to do if the standards are not met. Regulations will not, by themselves, be able to achieve these objectives.</p>	<p>Clear and accessible guidance about the standard of care can be developed and made known to children and young people, social workers, caregivers, whānau, care providers, those involved in monitoring compliance, and others involved in the care system.</p>	<p>The Ministry will develop clear and accessible information about the care standards regulations and what they require, including for children and young people.</p> <p>Information will be published in a variety of formats and distributed through a variety of channels.</p> <p>Guidance will be developed for children and young people and professional guidance will be developed for social workers and other professionals across the care system.</p> <p>Indicators will be developed for care providers to help them monitor compliance against the care standards regulations.</p>

# Section 7: Monitoring, evaluation and review

## 7.1 How will the impact of the new arrangements be monitored?

*[existing monitoring and oversight arrangements are set out at Section 2.2]*

**A comprehensive monitoring and reporting regime will track how well the regulations are achieving the objectives and provide evidence for any required amendments or resourcing decisions**

Section 447A of the Oranga Tamariki Act 1989 requires the Minister to appoint an independent agency to monitor and report on compliance with the care standards regulations.

The care standards regulations may include steps relating to “the manner in which care standards are monitored and reported on”, both internally and by the independent monitoring body.<sup>18</sup>

It is proposed that the care standards regulations allow a degree of flexibility to the independent monitor to develop an appropriate monitoring and reporting regime, but will prescribe some minimum requirements necessary to ensure an approach that is rigorous, transparent, efficient, useful for improving practice, supports improved outcomes for children and young people in care and is key to understanding how well the care system is functioning.

The proposed minimum requirements include:

- that the independent monitor must, in consultation with the chief executive and other affected organisations, establish a framework for monitoring and reporting that provides clarity on how compliance will be assessed and includes details of key sources of information and key indicators of performance
- that the independent monitor must use multiple sources of information to assess compliance, and that this must include information obtained directly from children and young people
- some key objectives that the monitoring and reporting framework must work to achieve
- the required reporting timeframe and minimum details which mandatory reports must include.

s 9(2)(f)(iv) Active consideration

**There will also be internal mechanisms for monitoring, reporting and continuous improvement**

Effective internal monitoring of compliance with the care standards regulations by the chief executive and other organisations with the custody of children and young people is also essential to the success of the regulations in improving the quality of care for children and young people.

The care standards regulations will therefore also set out requirements for self-monitoring, reporting

<sup>18</sup> Section 447(1)(fa)(v). This provision came into force on 14 July 2017.

and systems for continuous improvement, and will require that these are designed in a way to ensure the collection of information which will support the independent monitor to fulfil their monitoring role.

These requirements will also support the other reporting requirements on agency performance introduced as part of the changes to the Oranga Tamariki Act 1989 (set out at Section 2.2). These reporting requirements will contribute to keeping visibility on the care standards regulatory framework and will help in understanding whether the regulations are achieving their objectives in improving the quality and consistency of care provided to children and young people.

## **7.2 When and how will the new arrangements be reviewed?**

The independent monitoring agency or body is required to report to the Minister on compliance with the regulations.<sup>19</sup> The Oranga Tamariki Act 1989 also requires the care standards regulations to be “regularly reviewed”.<sup>20</sup>

The monitoring approach taken by both the independent monitoring body and internal mechanisms will support the requirement to ensure the regulations are regularly reviewed, by identifying areas where the regulations may not be working as intended.

Once a period of time has elapsed after the regulations are proposed to come into force on 1 July 2019, there is an opportunity to carry out an evaluation of the implementation process, to inform the ongoing enforcement of the regulations and provide a basis for reviewing them. Analysis of the monitoring data collected and interviews with key stakeholders who deliver or experience care under the new standards could be used to look at:

- the strengths and challenges of implementing and enforcing the care standards regulations, including monitoring arrangements
- what a review of the regulations could focus on.

Building in an evaluation would ensure learning throughout the implementation process, and would provide a clear basis for any changes to the regulations that the review may raise. This would support a focus on continuous quality improvement that future reviews of the regulations can build on.

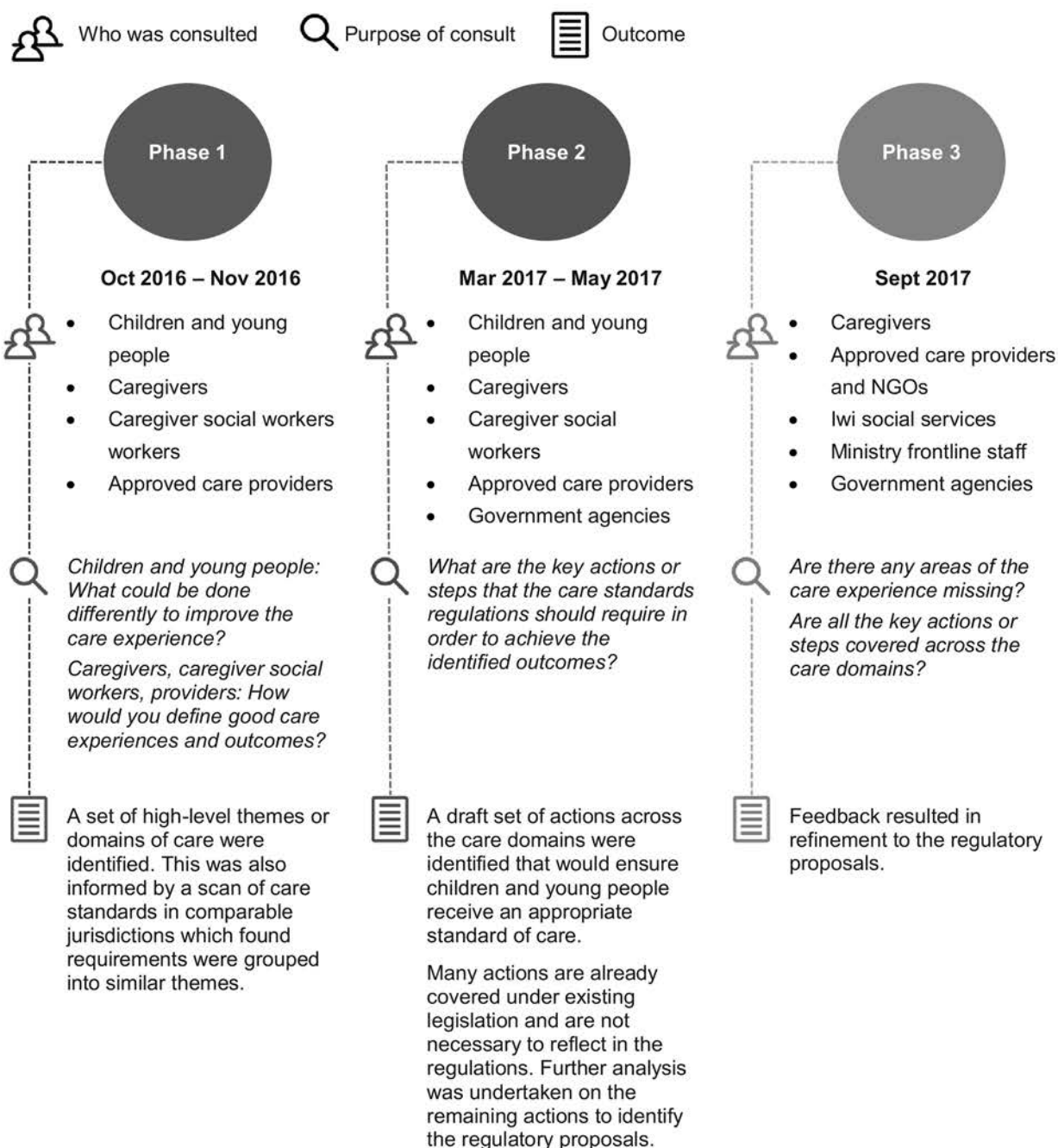
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<sup>19</sup> [Section 447A\(b\)](#). This provision came into force on 14 July 2017.

<sup>20</sup> [Section 447\(2\)\(c\)](#). This provision came into force on 14 July 2017.



# Appendix 1: Care standards consultation



## Summary of consultation

Three formal consultation phases have been conducted:

### Phase 1

Phase 1 consultation took place in October and November 2016.

#### Purpose of the consultation

- An initial set of 14 domains of care were drafted based on a review of international care standards, consideration of their applicability to the New Zealand care population, and their alignment to the

United Nations Convention on the Rights of the Child (UNCROC). These were then tested through Phase 1 of the design process.

- Feedback was sought from children and young people on what could be done differently to improve their care experience.
- Feedback was sought from caregivers, caregiver social workers and providers on how they would define good care experiences and outcomes.

#### **How the feedback was used**

- The feedback resulted in a set of high-level themes or care domains. This was also informed by a scan of care standards in comparable jurisdictions which found requirements were grouped into similar themes.

#### **Who was consulted**

- The following groups of children and young people were consulted regarding the initial 14 draft standards:
  - 52 care experienced young people
  - 12 young people who had not experienced care
  - 11 young people considered to be vulnerable.

Within this group of children and young people, approximately 68 percent identified as Māori and 20 percent identified as Pasifika.

- Others consulted included:
  - Ministry caregivers, social workers, residence managers and staff
  - NGO care providers
  - Office of the Children's Commissioner.

#### **Findings from the consultation**

- There were a number of significant themes raised by children and young people during the consultation process. These included:
  - the maintenance of connections with family (siblings in particular), whānau, hapū and iwi:  
*"Social workers should support our parents in every way, don't cut my family off, they are important to me...they are my blood, the people who will come and get me if I was to die, not CYF or my social worker."*
  - the need to feel supported rather than punished and to have people surrounding them who understood that their behaviours were a reflection of their experiences and who possessed the skills to manage these behaviours:  
*"To be able to go and get angry and let out my emotions, without always having to be put down and feel low about it."*
  - the importance of being placed with the right people with the right skills to help them make sense of their lives and to heal and recover from their past experiences:  
*"Treat me just like your own children. Don't stick me in a room with nothing but a bed and my bag full of clothes."*
  - to be an active participant in all decisions made about them, having their views listened to and acknowledged:  
*"I have the right to be included about any decisions involving me. I have the right to honest and complete information so I can make informed decisions."*

- the preservation of their culture and identity with opportunities to learn more about their culture if they wished to do so:

*“Let us speak our language, give us people who can keep it alive...I lose my language, I don’t want to lose it, because it’s the only thing I can hold onto.”*

## Phase 2

Phase 2 consultation took place from March to May 2017.

### **Purpose of the consultation**

- Feedback was sought to identify the actions or steps that would need to be taken by the Ministry and providers of care in order to achieve the identified outcomes.

### **How the feedback was used**

- A draft set of actions across the care domains that would ensure children and young people receive an appropriate standard of care.
- Many actions identified are already covered under existing Acts, primarily the Oranga Tamariki Act 1989, and it is therefore not necessary to reflect these requirements in the regulations. Further analysis was undertaken on those actions or steps that are not already covered in an existing Act to determine what would be appropriate for inclusion in the regulations.

### **Who was consulted**

- 10 care experienced young people
- Five NGO care providers
- Ministry caregivers
- Key foster care bodies
- Office of the Children’s Commissioner
- Internal Oranga Tamariki—Ministry for Children staff
- Government agencies (including Te Puni Kōkiri, Ministry of Health, Ministry of Education)
- Crown Law
- The Ethnic Forum
- Māori Design Group.

## Phase 3

Phase 3 consultation took place in September 2017.

### **Purpose of the consultation**

- Feedback was sought on the whether any areas of care were missing to ensure all the key actions or steps were covered across the domains.

### **How the feedback was used**

- Feedback received through consultation and the online survey was analysed and led to refinement of the regulatory proposals. Feedback not incorporated into the regulations themselves will be used to inform implementation planning.

### **Who was consulted**

- Thirty consultation sessions were held and 354 stakeholders attended
- The consultation sessions took place across 16 locations and were designed to cover all 11 Oranga Tamariki—Ministry for Children regions.

- For the external consultation sessions the following participants were invited:
  - section 396 approved care providers
  - caregivers (whānau and non-kin)
  - representatives of section 403 approved community services providers
  - iwi providers
  - Fostering Kids
  - Grandparents Raising Grandchildren
  - internal Oranga Tamariki—Ministry for Children staff
  - Government agencies (including Ministry of Education, Ministry of Health, Ministry of Justice, New Zealand Police, Te Puni Kōkiri)
  - Office of the Children’s Commissioner
  - lawyers for the child
  - Social Service Providers Aotearoa
  - New Zealand Council of Christian Social Services
  - VOYCE - Whakarongo Mai
  - community groups and NGOs
  - regional health practitioners.
- Attendees were also offered the opportunity to provide feedback through an online survey and over 110 people filled out the survey. The survey option was also presented to those who were not able to attend for various reasons.

### **Findings from the consultation**

Themes from the feedback are as follows:

- a general consensus that the care areas were accurate and covered all areas. Comments included “will provide a common framework for those in the care sector and help to ensure standards for children and young people are met” and “the domains cover the standards every child should expect while in care”
- a general consensus that the standards are child-centric
- a general consensus that the proposed care standards regulations would improve the quality of care should sufficient resources, both staff and funding, be provided
- strong support for the inclusion and encouragement of the embracing culture section (this was particularly strong with Māori providers and representatives)
- strong support for the inclusion of whānau connections and a desire was relayed to strengthen the proposals relating to whānau connections
- many requested that the caregiver voice be stronger throughout the care standards regulations
- strong desire to be able to hold other agencies accountable
- concerns voiced around language that was perceived to be open to interpretation such as ‘as soon as practicable’ ‘reasonable’ and ‘understand’
- some stakeholders expressed a desire for timelines to be prescribed in the regulations
- concerns voiced about how the regulations would apply to youth justice residences
- some stakeholders felt that proposals relating to safety should be placed in a separate domain
- some stakeholders raised concerns about disability and how the care standards would apply to children and young people with disabilities.

## Appendix 2: Summary of preferred options for care standards regulatory form and content

Set out below is a summary of the preferred approach for each of the content areas it is proposed the care standards regulations should cover. For each content area, a low, medium and high level of regulatory detail have been considered.

For each content area, a medium level of regulatory detail was considered the preferred option, for the reasons set out at Section 5.1. This section provides additional content-specific information about why that conclusion was reached for each area of the proposals.

### Assessment, planning and monitoring to support children and young people

<p><b>What does this area cover?</b></p>	<ul style="list-style-type: none"> <li>• Needs assessment and developing a plan for the child or young person</li> <li>• Visits to monitor the ongoing safety and well-being of the child or young person</li> <li>• Maintaining and reviewing the child's or young person's plan</li> </ul>
<p><b>Why is this needed? Was a non-regulatory option considered?</b></p>	<ul style="list-style-type: none"> <li>• Assessment and planning for children and young people is central to all social work activity. It informs decision making and planning for the child or young person, and provides the focus for interventions and supports. It also keeps those involved with the child's or young person's case on track.</li> <li>• Comparable jurisdictions include requirements around assessment, planning and review in regulations (such as England and Scotland).</li> <li>• The regulation-making power for care standards requires actions or steps related to the provision of care, services and support to address the rights and needs of children and young people in care, and actions or steps related to the assessment and monitoring of care arrangements and residences, including youth justice residences. Therefore while non-regulatory options were considered to understand the benefits gained in comparison to the status quo, this is an area where regulatory options were considered appropriate.</li> </ul>
<p><b>What is the status quo?</b></p>	<ul style="list-style-type: none"> <li>• All children and young people in care will have an assessment completed and plan developed. Aside from legal requirements for Family Group Conference (FGC) plans and Court plans, this is not currently reflected in the Oranga Tamariki Act 1989. The requirements around assessment, planning and visits to the child or young person are only contained in practice policy and guidance.</li> <li>• Although there is guidance provided through practice policy, this is not always carried out consistently across the country. There is significant variation in the quality of care provided by the Ministry and non-government care providers and it has been difficult to determine the extent to which current practice guidance is being consistently applied. This has particularly been the case for ongoing monitoring of children and young people's plans.</li> </ul>
<p><b>Level of detail in proposed regulation –</b></p>	<ul style="list-style-type: none"> <li>• <b>Low:</b> a principles-based approach would focus on achieving a qualitative objective. The chief executive would be required to take reasonable steps to ensure that a holistic approach is taken to a child's and young person's</li> </ul>

<p><b>options considered:</b></p>	<p>individual needs, interests and well-being that recognises mana tamaiti (tamariki), whakapapa, and whanaungatanga in assessment, planning and review processes.</p> <ul style="list-style-type: none"> <li>• <b>Medium:</b> an outcome-focused approach would prescribe key actions or steps required to achieve a holistic approach as part of a child’s or young person’s needs assessment and plan, and they would understand what to expect when they are in care. The chief executive would be required to make an assessment of the child’s or young person’s immediate and long-term needs (including what supports are available) and develop a plan that has explicit regard to each of the child’s or young person’s needs as identified through the assessment.</li> <li>• <b>High:</b> this would build on the “medium” level of regulatory specificity to include further prescription on how actions or steps are expected to be implemented.</li> </ul>
<p><b>Recommended option:</b></p>	<ul style="list-style-type: none"> <li>• <b>Medium</b> – as assessment and planning is a crucial part of social work practice, a reasonable level of prescription is appropriate to ensure that children and young people know what to expect when they are in care. This level of detail is consistent with comparable jurisdictions such as England and Scotland, which prescribe the assessment, planning and review of children’s plans. While this option is more detailed than some of the other content areas, the level of prescription is such that it still allows flexibility for how it is expected to be implemented.</li> </ul>

## Support to address children and young people’s needs

<p><b>What does this area cover?</b></p>	<ul style="list-style-type: none"> <li>• Whānau connections</li> <li>• Culture, belonging and identity</li> <li>• Play, recreation and community</li> <li>• Health</li> <li>• Education and training</li> </ul>
<p><b>Why is this needed? Was a non-regulatory option considered?</b></p>	<ul style="list-style-type: none"> <li>• The chief executive has a responsibility under the Oranga Tamariki Act 1989 to ensure that children and young people in their care receive special protection and assistance to address their particular needs, for example physical and health care, emotional care, identity needs, and material needs relating to education.</li> <li>• Children and young people in care identified that having their needs met was key, and that this is not currently done well consistently – particularly in the areas of maintaining whānau connections and cultural and identity needs.</li> <li>• Non-regulatory options were considered to understand what may happen under the new operating model. However, given that the regulation-making power in the Oranga Tamariki Act 1989 specifies that the regulations may prescribe the provision of care, services and support to address the rights and needs of children and young people in care, this was an area where regulatory options were considered appropriate.</li> </ul>
<p><b>What is the status quo?</b></p>	<ul style="list-style-type: none"> <li>• The provision of support to address the range of needs of children and young people is currently only contained in practice guidance and policy. The extent to which support is provided at consistent and equitable levels is unknown.</li> </ul>

	<ul style="list-style-type: none"> <li>The 2016 State of Care report by the Office of the Children’s Commissioner found that, while the Ministry does well at meeting children’s and young people’s immediate safety needs and ensuring physical needs are addressed, further improvements could be made to ensure their full range of social, emotional and psychological needs are also met.</li> </ul>
<b>Level of detail in proposed regulation – options considered:</b>	<ul style="list-style-type: none"> <li><b>Low</b> – principles-based approach that would focus on qualitative objectives to be achieved. The chief executive would be required to take reasonable steps to ensure the child or young person’s assessed needs in the specified areas are met.</li> <li><b>Medium</b> – outcome-focused approach that would set out the key actions or steps required to ensure that children’s and young people’s needs in certain areas are met. After assessing the needs of the child or young person, the chief executive would be required to provide reasonable support, including providing information and support to caregivers and undertaking specific actions such as engagement with education and health professionals, to meet specified needs.</li> <li><b>High</b> – this would build on the “medium level” of regulatory detail and would specify the manner in which those actions or steps must be carried out and the ways in which those needs must be met.</li> </ul>
<b>Recommended option:</b>	<ul style="list-style-type: none"> <li><b>Medium</b> – recommended to ensure that there are clear and measurable accountabilities with regards to meeting the needs of children and young people, and to ensure that children and young people with different needs still receive consistent levels of support tailored to their specific needs.</li> </ul>

## Caregiver and care placement assessment and support

<b>What does this area cover?</b>	<ul style="list-style-type: none"> <li>Caregiver approval</li> <li>Caregiver support plan</li> <li>Caregiver support and capability-building</li> </ul>
<b>Why is this needed? Was a non-regulatory option considered?</b>	<ul style="list-style-type: none"> <li>The right people with the right skills are needed to help children and young people recover from past trauma. The need for improved and widely available caregiver assessment, training and support was clearly expressed during consultation with stakeholders – including care-experienced children and young people, and caregivers themselves.</li> <li>A number of comparable jurisdictions specify the requirements that must be met in approving caregivers and ensuring adequate safety checking, training and support is provided.</li> <li>The regulation-making power for the regulations requires actions or steps related to the assessment, training and support of caregivers and care providers, therefore regulatory options for this content area were considered appropriate.</li> </ul>
<b>What is the status quo?</b>	<ul style="list-style-type: none"> <li>Caregiver assessment and some training and support are part of current operational practice but are not always provided to consistent levels. The Expert Panel’s Final Report found that currently caregivers may lack the capability, training and support – including financial support – that they need.</li> </ul>
<b>Level of detail in proposed</b>	<ul style="list-style-type: none"> <li><b>Low:</b> a principles-based approach would focus on qualitative objectives for caregiver assessment and support. Regulatory action would require the chief</li> </ul>

<p><b>regulation – options considered:</b></p>	<p>executive to take reasonable steps to ensure caregivers are adequately assessed, trained and supported on the job.</p> <ul style="list-style-type: none"> <li>• <b>Medium:</b> an outcome-focused approach would prescribe key actions or steps required to ensure that children and young people receive an appropriate standard of care, and understand what they can expect in care. For example, this would include an obligation to take specific steps to assess the suitability of the caregiver and caregiving household, rather than just a principle that the caregiver must be deemed suitable.</li> <li>• <b>High:</b> this would build on an outcomes-focused “medium” level of regulatory specificity to include further prescription on how actions or steps are expected to be implemented. This approach could inhibit practice development and flexibility.</li> </ul>
<p><b>Recommended option:</b></p>	<ul style="list-style-type: none"> <li>• <b>Medium</b> – recommended because this option is sufficiently clear to limit legal risk and make clear what the chief executive needs to do, while allowing best practice around implementation, particularly around the support and training provided to caregivers, to develop over time. A slightly higher level of detail is needed in areas such as the safety checks to be performed on caregivers, given the serious safety concerns involved.</li> </ul>

## Supporting children and young people to have a greater voice in their care experience

<p><b>What does this area cover?</b></p>	<ul style="list-style-type: none"> <li>• Enabling children and young people to make informed decisions</li> <li>• Providing feedback and making complaints</li> <li>• Responding to concerns of abuse and neglect</li> <li>• Ensuring children and young people have their own belongings</li> <li>• Maintaining records of important life events for children and young people while they are in care</li> </ul>
<p><b>Why is this needed? Was a non-regulatory option considered?</b></p>	<ul style="list-style-type: none"> <li>• Recent changes to the Oranga Tamariki Act 1989 have strengthened obligations on decision-makers to encourage and assist children and young people to participate in decisions being made about them. However, children and young people need a strong foundation of knowledge about what they can expect in care to enable them to make informed decisions, provide feedback and make complaints.</li> <li>• The regulation-making power specifically includes actions or steps relating to the creation and maintenance of records for a child or young person recording important matters in their life occurring while they are in care.</li> </ul>
<p><b>What is the status quo?</b></p>	<ul style="list-style-type: none"> <li>• Currently, many children and young people are not sufficiently informed about key matters such as why they are in care and what they can expect when they are in care. This impacts on their ability to make informed decisions about their care and to participate generally in their care experience.</li> <li>• Those working with children and young people reported that children and young people often do not understand how they can provide feedback or make complaints, and they are often dependent on social workers advocating for them if something is not right.</li> <li>• Responding to information that raises concerns about the safety of a child or</li> </ul>



	<p>young person in care has not always occurred consistently.</p> <ul style="list-style-type: none"> <li>• Feedback from stakeholders highlighted that children and young people often find their personal belongings are lost when they change placement or when they leave care, they also report that children and young people do not have basic belongings, such as a bag they can use to carry their belongings from place to place.</li> <li>• Stakeholders also reported that children and young people often find key information about important life events or achievements such as photos, school reports and artwork, are lost.</li> </ul>
<b>Level of detail in proposed regulation – options considered:</b>	<ul style="list-style-type: none"> <li>• <b>Low</b> – a principle-based approach would focus on qualitative objectives around children and young people being informed, understanding complaints and feedback mechanisms, and having important records and personal belongings kept.</li> <li>• <b>Medium</b> – an outcomes-focused approach would set out the key actions or steps the chief executive is required to take to meet objectives. This would include providing information on specific matters to the child, ensuring that children are supported to provide feedback and make complaints, setting out specific steps the chief executive must take when there is concern about a risk of harm or neglect, and what items and support the chief executive must provide to ensure that children and young people have personal belongings and important records are maintained.</li> <li>• <b>High</b> – this option would build on an outcomes-focused “medium” level of regulatory specificity to include further prescription on how actions or steps are expected to be implemented. This approach could inhibit practice development and flexibility to adapt to changing circumstances.</li> </ul>
<b>Recommended option:</b>	<ul style="list-style-type: none"> <li>• <b>Medium</b> – a low level of detail would not provide enough procedural certainty and would leave open a risk that children and young people would receive inconsistent responses. A high level of detail would be overly prescriptive and would inhibit flexibility and the ability of the organisation to develop best practice in these areas.</li> </ul>

## Supporting children and young people during care transitions

<b>What does this area cover?</b>	<ul style="list-style-type: none"> <li>• Placement decisions</li> <li>• Assessment, planning and monitoring during transition phases</li> <li>• Support to prepare young people for moving to independence</li> </ul>
<b>Why is this needed? Was a non-regulatory option considered?</b>	<ul style="list-style-type: none"> <li>• Care transitions can include when a child or young person comes into care, shifts placements or is returned home. Periods of transition can be an unsettling, stressful and confusing time for a child or young person. A child or young person in the custody of chief executive may have already experienced significant trauma and upheaval in their lives, and any change in placement needs to be carefully managed to minimise further disruption.</li> <li>• Young people need to be supported to be prepared to live more independently when they are transitioning from care to independence. Young people who engaged to the Expert Panel spoke of their pronounced vulnerability when they “aged” out of care.</li> </ul>

<p><b>What is the status quo?</b></p>	<ul style="list-style-type: none"> <li>• Consultation highlighted that changes in care placements are often occurring without sufficient planning or oversight to ensure there is as little stress, confusion and upheaval for the child or young person as possible.</li> <li>• Recent amendments to the Oranga Tamariki Act 1989 and its associated regulation-making powers largely cover the support to be provided to young people moving to independence, but there is a gap in the legislative framework around preparing young people for independence while they are still in the care or custody of the chief executive. It is appropriate for the care standards regulations to cover supporting young people to move to independence, as the regulation-making power for the care standards includes actions or steps relating to the provision of care, services and support to address the rights and needs of children and young persons while they are still in care.</li> </ul>
<p><b>Level of detail in proposed regulation – options considered:</b></p>	<ul style="list-style-type: none"> <li>• <b>Low</b> – a principle-based approach would focus on qualitative objectives for stable care transitions and supporting young people to prepare for independence that the chief executive and care providers must meet.</li> <li>• <b>Medium</b> – an outcomes-focused approach would set out the key actions or steps the chief executive is required to take. This would introduce obligations to take specific steps during care transitions such as developing a plan for the transition, providing information to the caregiver and child, visiting the placement in advance. For moving to independence, this would include identifying what life skills the young person has and what they may need to develop, and assistance with obtaining documentation and understanding how to access services once they have left care.</li> <li>• <b>High</b> – this would build on the “medium level” of detail and would take a more detailed approach to how those actions or steps must be carried out, for example, specifying what must be included in the transition plan, the frequency of monitoring during a transition period.</li> </ul>
<p><b>Recommended option:</b></p>	<ul style="list-style-type: none"> <li>• <b>Medium</b> – recommended because this option is sufficiently clear to limit legal risk and make clear what the chief executive is required to do, while allowing best practice to develop and for processes to be tailored to meet the child or young person’s individual needs. In contrast to taking a high level of detail, this option will ensure the requirements can be compatible with the future regulatory framework for services and supports post-moving to independence, which is still to be designed.</li> </ul>

## Monitoring and reporting on compliance with the regulations

<p><b>What does this area cover?</b></p>	<ul style="list-style-type: none"> <li>• The manner in which the regulations are monitored and reported on by the independent monitor</li> <li>• Internal monitoring and reporting requirements</li> </ul>
<p><b>Why is this needed? Was a non-regulatory option considered?</b></p>	<ul style="list-style-type: none"> <li>• This section of the proposed regulations differs from the areas discussed above, as it relates to the overall monitoring regime to ensure compliance with the regulations, rather than as an aspect of the care experience itself.</li> <li>• The regulation-making power sets out that the regulations may prescribe the actions or steps relating to the manner in which care standards are monitored or reported on, within the department, by section 396 care providers, and by the independent monitoring body.</li> <li>• Under the Oranga Tamariki Act 1989, the Minister is required to appoint an</li> </ul>

	<p>independent body or agency to report on compliance with the regulations. The Minister is also required to regularly review the regulations.</p>
<p><b>What is the status quo?</b></p>	<ul style="list-style-type: none"> <li>• As the care standards regulations will be a new regulatory framework, there are no existing monitoring and reporting requirements specifically for these regulations. There are however, existing monitoring and reporting mechanism in relation to children and young people in care. These are outlined below.</li> <li>• The Children's Commissioner has a general mandate under the Children's Commissioner Act 2003 to investigate and monitor and assess the practices and provision of services under the Act. In practice, while the Commissioner is able to provide a certain degree of oversight, the Commissioner has not provided systematic monitoring of legislative compliance or of the quality of services, including in relation to children in care.</li> <li>• The Children's Commissioner carries out a more systematic monitoring role in relation to secure residences. This derives from its mandate under the United Nations Optional Protocol to the Convention Against Torture (OPCAT), which New Zealand ratified in 2007.</li> <li>• The Chief Executive of the Ministry has a general duty under section 7 of the Act to monitor and assess the services provided under this Act by the department and by other organisations, groups and individuals. This has probably been done more comprehensively in relation to contracted providers than in relation to the department's own activities.</li> </ul>
<p><b>Level of detail in proposed regulation – options considered:</b></p>	<p>A similar approach to the level of regulatory detail has been taken:</p> <ul style="list-style-type: none"> <li>• <b>Low</b> – this approach would focus on setting high-level requirements that could require the independent body to assess simple levels of compliance. For example, to determine whether plans met the regulatory requirements, the independent monitor could be required to assess a random sample of plans across the country and identify what percentage of those met the legal requirements.</li> <li>• <b>Medium</b> – this approach would focus on setting the key actions or steps that would allow for more contextual information to be identified to promote service quality improvement rather than a simple focus on minimum standards. For example, this would introduce requirements around establishing frameworks and would allow the independent monitor to develop the assessment approach and methodology within certain parameters.</li> <li>• <b>High</b> – this would build on the “medium level” of detail, for example, it would prescribe the assessment approach and methodology specifically.</li> </ul>
<p><b>Recommended option:</b></p>	<ul style="list-style-type: none"> <li>• <b>Medium</b> – the regulations will set out some minimum actions or steps that the monitoring bodies (both independent and internal) must carry out. However, this option leaves it open to those bodies to determine the most appropriate manner that those requirements must be fulfilled. This will enable a focus on best practice and continuous improvement, and allow for monitoring practices to evolve to suit the needs of the system and to respond to emerging priorities and identified areas of interest.</li> </ul>