

In Confidence

Office of the Minister for Children

Chair, Cabinet Social Wellbeing Committee

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ORANGA TAMARIKI (NATIONAL CARE STANDARDS) REGULATIONS 2018

Proposal

- 1 The Oranga Tamariki Act 1989 requires me to recommend the making of regulations relating to national care standards. This paper seeks agreement to the policy proposals to be included in these regulations and authority to instruct Parliamentary Counsel Office to commence drafting. The proposals are intended to address the variability and inconsistency in the quality of care provided to children and young people in the care or custody of the State, and set clear and transparent expectations and accountability mechanisms to support the provision of quality care.

Executive Summary

- 2 Evidence shows that those who experience abuse, neglect and other adverse childhood events and enter the care system have a significantly higher likelihood of experiencing poor life outcomes, such as low educational achievement, unemployment and/or involvement in the adult corrections system. This Government is committed to reducing inequality and poverty and improving the well-being of New Zealand's children and young people, and their families and whānau.
- 3 The current care, protection and youth justice systems have not been operating in a way that ensures children and young people are able to achieve their developmental potential and experience positive outcomes. Recent reviews of these systems have found that children and young people placed in State care often experience repeat referrals, high levels of instability and in some cases, further maltreatment and trauma.¹ It has also been identified that caregivers are not sufficiently supported to provide safe, secure environments for children and young people.² A significant contributor to these issues has been the lack of clear, comprehensive expectations and accountability mechanisms.
- 4 Care standards, often with legislative underpinning, are a key feature of care systems in most comparable jurisdictions (for example, England, Scotland, New South Wales, Queensland and Canada). Where care standards operate in other jurisdictions, there is more accountability on the system and greater public scrutiny.
- 5 New Zealand does not currently have a set of national care standards that apply to all children and young people in care. To date, New Zealand's legislative regime applying to

¹ Modernising Child, Youth and Family Expert Panel (2015). *Expert Panel Final Report: Investing in New Zealand's Children and their Families*. Wellington, New Zealand, Ministry of Social Development.

² Office of the Children's Commissioner (2016). *State of care 2016: What we learnt from monitoring Child, Youth and Family*. Wellington, New Zealand, Children's Commissioner.

children and young people in care has been comparatively light, with few rights and guarantees outlined for children and young people in care other than those in secure residences.³ Without legislative directives or requirements, children and young people in care have been reliant on the Ministry creating and monitoring its own standards, which has not been done to date.

- 6 Oranga Tamariki—Ministry for Children (the Ministry) was established in 2017 and a new operating model is currently being implemented. Under recent changes to the Oranga Tamariki Act 1989 (new section 447(2)(a)), I am required to recommend the making of regulations relating to care standards by 13 July 2018.
- 7 These regulations are to prescribe the actions or steps that must be taken to help ensure children and young people in care or custody under Part 2 (care and protection of children and young people) or Part 4 (youth justice) of the Act receive an appropriate standard of care that is consistent with the principles of the Act.⁴ These regulations are an opportunity to introduce a regulatory framework that will provide a level of transparency and accountability that has not previously existed within the New Zealand care system.
- 8 As the first step in this process I seek agreement to the policy proposals for these regulations.
- 9 The proposals in this paper outline the actions and steps that the chief executive (and delegates) and bodies or organisations approved under section 396 of the Act will take in order to ensure children and young people receive safe, stable and loving care, have their needs met and are supported to achieve their aspirations and developmental potential. I expect these proposals to provide greater clarity for children and young people to understand what they can expect in care, and will assist in creating greater consistency in their care experiences.
- 10 I propose the regulations cover the spectrum of the care experience. The direction and shape of the proposals have been guided by consultation with stakeholders, including with children and young people, caregivers and care providers. The proposals cover areas that these key stakeholders identified as critical components for improving the quality of children's and young people's care experience.
- 11 This includes the following six areas:
 - 11.1 Assessment, planning and monitoring to support children and young people in care
 - 11.2 Support to address children's and young people's needs
 - 11.3 Caregiver and care placement assessment and support
 - 11.4 Supporting children and young people to have a greater voice in their care experience
 - 11.5 Supporting children and young people during care transitions
 - 11.6 Monitoring and reporting on compliance with the regulations.

³ 'Residences' in this context refers to the nine secure care and protection and youth justice residences operated or funded by the Ministry. Care and protection residences are used as a 'last resort' to enable interventions in a secure setting. Youth justice residences are used to place young people detained in the custody of the chief executive pending a court decision, or under a Supervision with Residence Order as a response to proven offending.

⁴ This includes children and young people in secure care and protection and youth justice residences.

- 12 While the proposals presented in this paper are intended to cover the spectrum of the care experience, I note that existing Acts, primarily the Oranga Tamariki Act 1989, already impose a number of duties on the chief executive and decision-makers, and protect the rights of children and young people in care. The focus on the regulatory proposals is on the key actions or steps that are essential for achieving good outcomes and are not already covered by an existing Act.⁵
- 13 In some areas the proposals reflect best practice, and in some instances current practice, rather than a major change of approach. However, ensuring they are achieved consistently for all children and young people in care will require a significant effort and focus from the Ministry over several years. This change to the care experience is something the Ministry is committed to and I acknowledge that the care standards regulations alone will not achieve the outcomes we are seeking for this group of children and young people. They will operate alongside the wider programme of change which includes significant changes that have already been made to the Oranga Tamariki Act 1989.

The care, protection and youth justice systems do not adequately respond to the needs of children and young people

- 14 As at 30 June 2017, there were around 5,700 children and young people in care.⁶ Sixty-nine percent of children in care at the end of 30 June 2017 identified as Māori.⁷ Children and young people who have contact with the care and protection and youth justice systems have a higher likelihood of experiencing certain poor long-term 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.⁸
- 15 The 2016 State of Care report by the Office of the Children's Commissioner found that the Ministry's case management is not sufficiently child-centred and is of variable quality.⁹ It also found that it does not listen to, or sufficiently take into account the views of children and young people. It identified that the Ministry needs to improve support for psychological needs and cultural connections and to provide more training and support for caregivers to enable them to provide safe, secure environments for children and young people.
- 16 In its Final Report the Modernising Child, Youth and Family Expert Panel (the Expert Panel) recommended that, to bring New Zealand in line with comparable jurisdictions, the future system should have a set of national care standards.¹⁰ It described the current system as one in which children and young people experience repeat referrals, high levels of instability and, in some cases, further maltreatment and trauma.¹¹ It further highlighted that:

16.1 the way the current care support system responds to children and young people in need of care means that care arrangements are not always suited to the needs of

⁵ For example, there are relevant requirements in other Acts such as the Vulnerable Children Act 2014, Education Act 1989 and the Privacy Act 1993.

⁶ This includes children and young people placed with whānau caregivers, non-kin caregivers, in other settings (like residences or group homes) and those supported to live at home or independently.

⁷ This figure captures children and young people who may have listed Māori as one of multiple ethnicities, as well as those who identified Māori as their sole or primary ethnicity.

⁸ Analysis of children born in 1990/1991 shows that children who were placed in care were twice as likely to have failed to gain NCEA level two by age 21, six times more likely to have been on benefit for more than two years before age 21 than other children, ten times more likely to have been in prison before age 21, estimated to be three times more likely to have been on benefit for more than six months when aged 35, and estimated to be six times more likely to have been in prison before age 36.

⁹ Office of the Children's Commissioner (2016). *State of care 2016: What we learnt from monitoring Child, Youth and Family*. Wellington, New Zealand: Children's Commissioner, pages 19-24.

¹⁰ 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 91.

¹¹ Modernising Child, Youth and Family Expert Panel (2015). *Expert Panel Final Report: Investing in New Zealand's Children and their Families*. Wellington, New Zealand: Ministry of Social Development, pages 41-55.

children and young people. Their needs are generally higher and more complex than those of children and young people in the wider population

- 16.2 there is insufficient attention on identifying and addressing the full range of needs of children and young people in care, including their emotional needs
- 16.3 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.

Introducing care standards forms one part of the wider system changes to better support children and young people in care at a national level

- 17 New requirements in the Oranga Tamariki Act 1989 to introduce care standards regulations were part of a suite of legislative reforms to respond to the findings of the Expert Panel and to underpin and give effect to the new operating model for the Ministry. This included amended purposes and principles of the Act, including principles specifically relating to children in care and acknowledging their need for special assistance and protection.¹²
- 18 The care standards regulations are one part of the wider system changes to support children and young people in care. The regulations alone will not achieve the enduring changes we are seeking for these children and young people, and will sit alongside primary legislation and other changes underway to underpin the system transformation, including caregiver recruitment.
- 19 Under the Act, the regulations cannot place obligations on the chief executives of other agencies. However, I recognise that one government agency alone will not be able to achieve the outcomes we are seeking for children and young people in care. Critical to the success of the regulations will be the co-operation of other agencies and the willingness of other State sector chief executives to meet the needs of these children and young people. This will be advanced through the Child Wellbeing Strategy and the Oranga Tamariki Action Plan.

The care standards regulations are intended to ensure greater accountability and improved quality care

- 20 Currently, New Zealand does not have a national set of care standards. This limits the accountability on the system to meet certain standards. It also limits the expectations of children and young people in care and the level of caregiver support that should be provided.
- 21 Care standards, often with legislative underpinning, are a feature of care systems in most comparable jurisdictions (for example England, Scotland, New South Wales, Queensland, Canada). Where care standards operate in other jurisdictions, there is more accountability on the system and greater public scrutiny.
- 22 To date, New Zealand's legislative regime applying to children in care has been comparatively light, with very few rights and guarantees outlined for children in care. The rationale behind regulations as the mechanism to introduce national care standards was that, without legislative directives or requirements, children and young people in care have

¹² Other changes included new duties on the chief executive (including to provide a practical commitment to the Treaty of Waitangi, report annually on specific outcomes for Māori children and young persons, and establish complaints mechanisms), provisions allowing young people in care to remain or return to living with a caregiver until the age of 21, with transition support and advice available up to age 25, and amended information sharing provisions.

been reliant on the Ministry creating and monitoring its own standards. This has not been done to date.

- 23 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. Currently, there is no ability for children and young people to find a clear statement of the standard of care they can expect, what entitlements they have when they are in care, and how their rights will be protected when they are living in out-of-home placements.
- 24 Therefore, the purpose of care standards is to create transparent accountability mechanisms to ensure quality care and to deliver a set of expectations, rights, and entitlements that clearly articulate what a child or young person can expect when they are in care of the State.

The Oranga Tamariki Act 1989 requires regulations relating to care standards to be recommended by 13 July 2018

- 25 The Oranga Tamariki Act 1989, as amended by the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017, requires the Minister to recommend the making of regulations setting out standards of care within 12 months of the commencement of the provision, and to regularly review the regulations.¹³ This means I am required to recommend the making of these regulations by 13 July 2018.
- 26 To provide transparency and clarity about accountability, the Act places an explicit duty on the chief executive to comply with the care standards regulations.¹⁴
- 27 The regulations are to 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 396,¹⁵ to help ensure an appropriate standard of care that is consistent with the application of the principles of the Act. This includes actions and steps relating to:
- 27.1 the provision of care, services, and support to address the rights and needs of children and young persons in care
 - 27.2 the assessment and monitoring of care arrangements and residences, including youth justice residences
 - 27.3 the assessment, training and support of caregivers and care providers
 - 27.4 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
 - 27.5 the manner in which care standards are monitored or reported on, within the department, by the organisations approved under section 396, and by the agency or body appointed to monitor compliance with the regulations.¹⁶

¹³ [Section 447\(2\)](#). This provision came into force on 14 July 2017.

¹⁴ [Section 7\(2\)\(bac\)](#). This provision will come into force on 1 July 2019 or at an earlier date appointed by Order in Council.

¹⁵ [Section 396](#) covers iwi, social, cultural or child and family support services (for example Barnardos, Open Home Foundation, Youth Horizons, Key Assets). While the majority of the care population are in the legal custody of the Ministry, there are also a small number of providers approved under section 396 who hold legal custody of children and young people (currently only 1 percent of children and young people in care are in the custody of section 396 providers). These organisations will be bound by the care standard regulations.

¹⁶ [Section 447\(1\)\(fa\)](#). This provision came into force on 14 July 2017.

- 28 The Act specifies that the regulations will apply to children and young people in care or custody under Part 2 or 4 of the Act, which deal with care and protection and youth justice respectively.¹⁷
- 29 The Act requires the Minister to appoint an agency or body independent of the department to monitor compliance with the regulations and to report on compliance to the Minister. The Minister must also regularly review the regulations.¹⁸
- 30 The regulations will be designed to help achieve particular outcomes and, as they confer legal accountability, they will need to have clear requirements to facilitate compliance. However, this means that the regulations alone will not achieve one of the policy objectives underlying the care standards, which is to ensure that children and young people, and their families, whānau and caregivers, have clear and accessible information about what they can expect from the care experience.
- 31 To address this, the Act requires the chief executive to publish information that is publicly accessible to children and young persons and their 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 Oranga Tamariki Act 1989 or regulations made under the Act.¹⁹
- 32 As a way to meet the above requirement, it is intended that, in addition to the care standards regulations, separate information will be published, which will contain relevant requirements in existing legislation as well as requirements in the care standards regulations.

The proposals I am recommending will cover the spectrum of the care experience

- 33 I am seeking to introduce a regulatory framework that will provide a level of transparency and accountability that has not previously existed within the New Zealand care, protection and youth justice systems. The focus is on the quality of the child's or young person's care experience and supporting them to achieve positive life outcomes.
- 34 The content of the proposals has been shaped by feedback from consultation, including with children and young people in care, caregivers, caregiver social workers, approved care providers, iwi providers, non-government organisations and government agencies. Consideration has also been given to overseas care standards regimes and the new principles of the Oranga Tamariki Act 1989. The new principles will guide decision-makers and will promote taking a holistic approach that sees the child or young person as a whole person; this includes considering their developmental potential, educational and health needs, whakapapa, and disability needs.
- 35 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, and that will provide them with a clear understanding of the level of care they can expect.
- 36 Stakeholders consulted on the draft regulatory proposals provided largely positive feedback. There was a general consensus that the proposals would deliver on the objectives and would lead to consistent high-quality care for children and young people, as long as they were fully and consistently implemented. Concerns were raised about the level of resourcing required to support these changes.

¹⁷ [Section 447\(1\)\(fa\)](#). This provision came into force on 14 July 2017. This also means that children and young people who are in the care of state-approved providers by way of agreement with their parent or guardian or as a consequence of a Family Court or Youth Court order will be within scope of the regulations.

¹⁸ [Section 447A](#). This provision will come into force on 1 July 2019 at an earlier date appointed by Order in Council.

¹⁹ [Section 7\(2\)\(bag\)](#). This provision will come into force on 1 July 2019 or at an earlier date if by Order in Council.

37 The proposals are intended to provide a level of detail that will enable the chief executive (and delegates) or organisations approved under section 396 to have clarity on what steps they are required to take. This has been balanced against the need to respond flexibly to the unique needs of children and young people, while ensuring the new operating model is able to develop and mature in line with future best practice and future Government priorities.

38 I am required to regularly review the regulations. I expect these regular reviews, as well as monitoring and evaluation of the regulations, will provide insight into how well they are operating over time and whether any changes are required to ensure they are supporting the outcomes we are seeking for children and young people in care.

39 For ease of reference, when the proposals refer to an obligation being placed on the chief executive, this should be taken to mean the chief executive, the chief executive's delegates and bodies or organisations approved under section 396 that have custody of children or young people under the Act, unless otherwise specified.

40 I am proposing that the regulations cover the following six areas:

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|---|--|
| 1. Assessment, planning and monitoring to support children and young people in care | <ul style="list-style-type: none">• 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 |
| 2. Support to address children's and young people's needs | <ul style="list-style-type: none">• Whānau connections• Culture, belonging and identity• Play, recreation and community• Health• Education and training |
| 3. Caregiver and care placement assessment and support | <ul style="list-style-type: none">• Caregiver approval• Caregiver support plan• Caregiver support and capability-building |
| 4. Supporting children and young people to have a greater voice in their care experience | <ul style="list-style-type: none">• 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 |
| 5. Supporting children and young people during care transitions | <ul style="list-style-type: none">• Placement decisions• Assessment, planning and monitoring during transition phases• Support to prepare young people for moving to independence |
| 6. Monitoring and reporting on compliance with the regulations | <ul style="list-style-type: none">• Manner in which the regulations are monitored and reported on by the independent monitor• Internal monitoring and reporting requirements |

41 Details of the regulatory proposals across the six areas are set out below.

Area 1: Assessment, planning and monitoring to support children and young people in care

42 Assessment and planning for children and young people informs decision-making and provides the focus for interventions and supports for the child or young person; it also keeps those involved on track.

43 Aside from requirements in the Oranga Tamariki Act 1989 for family group conference (FGC) plans and Court plans,²⁰ the requirements for assessment, planning and visits to monitor the child's or young person's well-being are only contained in practice policy and guidance. This is not always followed 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's and young people's plans.

44 I recommend the regulations cover the following:

44.1 *Needs assessment and developing a plan for the child or young person.* Those working with children and young people in care need to take a holistic approach to understanding children's and young people's full range of needs to ensure their wellbeing. They also need to have clarity about what will be expected of them to help achieve improved outcomes for children and young people. The chief executive must undertake an assessment and develop a plan for the child or young person to ensure their needs are met. In practice I expect the assessment to be informed by a model of best practice which takes into account a number of considerations, including needs arising from domestic violence and trauma.

44.2 *Visits to monitor the ongoing safety and well-being of the child or young person.* To achieve a system that is able to meet the need of children and young people in care, the chief executive must ensure those working with a child or young person actively engage with them.

44.3 *Maintaining and reviewing the child's or young person's plan.* Assessment and planning is an ongoing process for children and young people, it is not a one-off event when they enter care. In line with this, the chief executive must keep a child's or young person's plan up-to-date, in line with their needs, and reflect any changes in their circumstances.

45 Details of what I am recommending be required in undertaking the above, are set out in Appendix 1.

Area 2: Support to address children's and young people's needs

46 The 2016 State of Care report 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 the full range of social, emotional and psychological needs are also met.²¹ In addition, young people reported that they did not

²⁰ Sections 29(3) and 128 of the Oranga Tamariki Act 1989 respectively.

²¹ Office of the Children's Commissioner (2016). *State of care 2016: What we learnt from monitoring Child, Youth and Family*, page 21.

receive the support they needed while in care to address the impact of earlier traumatic experiences.²²

- 47 As previously outlined, I have proposed that a child or young person will have a plan to ensure their needs are met. I further recommend that the chief executive ensures that support is available for children and young people to address their assessed needs. Support based on the needs of the child or young person would ensure, for example, that support is provided to address the assessed needs of children and young people with disabilities to enable them to have the same opportunities as other children and young people in care, and it also recognises that they may require additional support. Further, caregivers must be provided with information to understand their role in helping to meet the needs of the child or young person in their care.
- 48 There are also a number of needs where it is important to clarify what is expected of the chief executive, therefore, I recommend the regulations cover the following:
- 48.1 *Connections with whānau.* Recent changes to the Oranga Tamariki Act 1989 introduced Māori concepts of mana tamaiti (tamariki), whakapapa and whanaungatanga.²³ The Act recognises that a child's mana exists in the context of their whakapapa and the whanaungatanga responsibilities of their whānau, hapū and iwi. During stakeholder consultation, young people emphasised the need to ensure they are able to maintain connections with family (siblings in particular), whānau, hapū and iwi. Consistent with this, the chief executive must support children and young people to establish, maintain or strengthen connections with their family, whānau, hapū and iwi.
- 48.2 *Culture, belonging and identity.* Children and young people who have been involved with the care and protection and youth justice systems have spoken strongly about an overwhelming desire for belonging. In particular, Māori young people within the system reported a lack of understanding they sometimes encountered. Caregivers and those working with children and young people reported challenges in attempting to meet the identity and cultural needs of Māori children and young people. The chief executive must support children and young people to meet their needs in relation to their culture and identity.
- 48.3 *Play, recreation and community.* The chief executive must support children and young people to address their play, recreation and community needs. Recognising children's and young people's place within their community will help foster a greater sense of identity and belonging. Play and recreational activity is also important for a child's or young person's healthy development.
- 48.4 *Health.* Good child and youth health is important not only for the child or young person and their families now, but also for their good health and well-being later in adulthood. The chief executive must ensure children and young people are provided with services and supports necessary to promote good health and address their individual health needs. Health needs should be considered holistically to include physical, mental, psychological and disability needs.
- 48.5 *Supporting children and young people in education and training.* Education is an important determinant of future life choices; success at school is linked to cognitive development, self-esteem and future employment possibilities. The chief executive

²² Modernising Child, Youth and Family Expert Panel (2015). *Expert Panel Final Report: Investing in New Zealand's Children and their Families*, page 52.

²³ 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 Oranga Tamariki Act 1989.

must support children and young people to be engaged in education and ensure they are supported through their educational journey.

- 49 Further details of what I am recommending be required in undertaking the above, are set out in Appendix 2.

Area 3: Caregiver and care placement assessment and support

- 50 The right people with the right skills are needed to help children and young people to achieve their potential and to heal and recover from past trauma. Caregiver approval, assessment and some training and support form part of current operational practice. However, this is not always provided at consistent levels. The need for improved and widely available caregiver assessment, training and support was emphasised during stakeholder consultation, by care-experienced children and young people as well as caregivers.

- 51 Section 362 enables the chief executive to place a child or young person in the care of any person whom the chief executive considers suitable to provide for that child's or young person's care, control and upbringing. The regulations cannot limit the chief executive's discretion under section 362. Further, decisions to place a child or young person, who has been removed from the care of members of their family, whānau, hapū, iwi, family group or their usual caregiver, are guided by the principles in the Oranga Tamariki Act 1989. However, the regulations can set processes that must be followed by the chief executive, including what they must take into account, when assessing the suitability of any person.

- 52 Under the empowering provision to make the care standards regulations, the regulations cannot impose obligations on caregivers. The focus of these proposals is, therefore, on the actions and steps that the chief executive will be required to take to ensure caregivers are enabled and supported to provide safe, stable and loving care.

- 53 I recommend the regulations cover the following:

53.1 *Caregiver approval.* The chief executive must assess prospective caregivers and the caregiving household to ensure they have the ability to meet the needs of a child or young person who comes into their care and to provide a safe, stable and loving home. Caregivers must also have a clear understanding of what they can expect and what will be expected of them, prior to becoming a caregiver.

53.2 *Caregiver support plan.* Caregivers play a key role in ensuring children and young people are well cared for and safe. To recognise this, the chief executive must ensure caregivers have a plan to support and assist them to provide the best possible care for children and young people in their care.

53.3 *Caregiver support and capability-building.* The chief executive must ensure support and training is provided to caregivers to support them to meet the needs of the child or young person. This will enable caregivers to provide ongoing safe and stable care.

- 54 Further details of what I am recommending be required in undertaking the above, are set out in Appendix 3.

Area 4: Supporting children and young people to have a greater voice in their care experience

- 55 When children and young people are in care they should know why important things are happening to them and have a say in what happens next. They should also expect to feel

welcome, to be well cared for, and to be enabled to speak out if they think something is not right.

56 To support children and young people to have a greater voice in their care experience, I recommend the regulations cover the following:

56.1 *Enabling children and young people to make informed decisions.* 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. To underpin these changes, the chief executive must ensure children and young people have a strong foundation of knowledge about what they can expect in care to enable them to make informed decisions. At the most basic level, children and young people need to know why they are in care – this was a consistent message that came through consultation with stakeholders.

56.2 *Providing feedback and making complaints.* The chief executive must ensure children and young people are supported and enabled to raise concerns and provide feedback, whether positive or negative, about their care. Many children and young people do not understand how to raise issues or make a complaint about their care and are often dependent on social workers advocating for them if something is not right at home.²⁴

56.3 *Responding to concerns of abuse or neglect.* Responding to information that raises concerns about the safety of a child or young person in care has not always occurred consistently. To help address this, the chief executive must respond to any information that raises concerns in relation to a risk of harm in a timely manner.

56.4 *Ensuring children and young people have their own belongings.* The chief executive must ensure children and young people in care have belongings they can call their own. Many children and young people do not have basic belongings when they enter care such as adequate clothing and a bag to carry their belongings from place to place.

56.5 *Maintaining records of important life events for children and young people while they are in care.* Children and young people often find key information about their achievements or photos of significance are lost when they change placement or when they leave care. The chief executive must collect and maintain records relating to important matters in a child's or young person's life, such as significant life events and achievements that have occurred while they are in care.²⁵

57 Further details of what I am recommending be required in undertaking the above, are set out in Appendix 4.

Area 5: Supporting children and young people during care transitions

58 Care transitions can include when a child or young person comes into care, shifts placements or returns home. To support children and young people during these phases, I recommend the regulations cover the following:

²⁴ Office of the Children's Commissioner (2016). *State of care 2016: What we learnt from monitoring Child, Youth and Family*, page 20.

²⁵ Ensuring children and young people have access to important information about their life was raised through public submissions to the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017, and the care standards regulation-making power was subsequently amended to explicitly reflect this.

58.1 *Placement decisions.* The chief executive must ensure decisions to place a child or young person in a particular care placement are guided by the care placement's ability to meet the needs of the child or young person.

58.2 *Assessment, planning and monitoring during transition phases.* To recognise that care transitions can be an unsettling, stressful and confusing time for a child or young person, the chief executive must take the steps required for the child or young person to experience a positive care transition. A child or young person in the custody of the chief executive may have already experienced significant trauma and upheaval in their lives, and any change in placement needs to be carefully managed to reduce further disruption.

59 While supporting young people to move to independence is largely covered by recent amendments to the Oranga Tamariki Act 1989,²⁶ I recommend that these regulations include actions that need to take place before a young person leaves care in order to prepare them to move toward independence. This is appropriate given these regulations are designed to set out the standards applicable while a young person is in care. I recommend the regulations cover the following:

59.1 *Support to prepare young people for moving to independence.* Young people who engaged with the Expert Panel spoke of their pronounced vulnerability when they "aged" out of care. Young people leaving care need to be supported to achieve the same positive outcomes as other young adults. The chief executive must ensure that, before they leave care, young people are supported so that they are prepared to live more independently when they transition from care to independence.

60 Further details of what I am recommending be required in undertaking the above, are set out in Appendix 5.

Area 6: Monitoring and reporting on compliance with the regulations

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

61 I am required to appoint an independent agency or body to monitor and report on compliance with the regulations. [REDACTED]

62 [REDACTED]

63 The Oranga Tamariki Act 1989 outlines that the care standards regulations may include the manner in which care standards are monitored and reported on within the Ministry, by section 396 providers, and by the independent body or organisation appointed by the

²⁶ This includes new and amended purposes and principles, an entitlement for a young person to live with a caregiver up to age 21, a requirement on the chief executive to maintain contact with a young person up to age 21, and the provision of advice and assistance for young people up to age 25.

Minister to monitor compliance with the regulations. I recommend the regulations cover the following:

63.1 *Manner in which regulations are monitored and reported on by the independent monitor.* I am proposing to allow a degree of flexibility to the independent monitor to develop an appropriate monitoring and reporting regime, but consider that some minimum requirements are 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 will provide insight into how well the care system is functioning.

63.2 *Internal monitoring and reporting requirements.* 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 outcomes.

64 Further details of what I am recommending be required in undertaking the above, are set out in Appendix 6.

65 I expect that the monitoring approach will support the requirement to ensure the regulations are regularly reviewed, through identifying areas where the regulations may not be working as intended. This includes any implementation risks for the Ministry of the wider social sector; for example, compliance will be dependent on the design of future processes and services by the Ministry and section 396 providers as well as having sufficient social workers, caregivers and care placements available.

66 I intend for this approach to reinforce the move away from a culture focused on complying with a narrow set of process measures toward an improvement culture where people are supported and motivated to make a difference for children and young people. Performance information needs to avoid creating incentives for people to meet arbitrary, partial or even misleading measures of work. Instead, it needs to be designed and used in a way that supports an open and reflective approach that helps to identify the challenges and possible solutions. I recognise that it will take time and investment for the Ministry to address current gaps in performance information to enable this.

67 The internal and independent monitoring and reporting requirements I have proposed will be key mechanisms to support the enforcement of the new obligations.

68 Another key compliance mechanism is the Ministry's own internal complaints process which is currently being established, which is underpinned by a new duty on the chief executive under recent amendments to the Oranga Tamariki Act 1989 to have complaint mechanisms in place.

[REDACTED]

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

69 The proposals I am recommending for the care standards regulations will create legal obligations and could also be enforced through the courts. The recent amendments to the 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.

Other matters related to the regulations

Application of the regulations to children and young people in short-term placements or under orders under a different Act

- 70 The proposals outlined above are intended to cover the range of actions and steps children and young people can expect across the care experience; however, for children and young people in care for a limited time,²⁷ it will not be possible or desirable for all the requirements in the care standards regulations to apply in all situations. For example, for a child in a short-term placement, it may not be practical for the full needs assessment to be completed as the time required to complete the assessment and plan may be longer than the placement itself.
- 71 There are also a limited number of cases where a child or young person who will be subject to the care standards regulations may also be subject to another order requiring their detention in a facility run by another agency, for example, under the Mental Health (Compulsory Assessment and Treatment) Act 1992.²⁸
- 72 In order for these children and young people to achieve the best possible outcomes while ensuring that compliance is feasible, in these instances, I recommend the regulations should apply to the extent that is reasonably practicable. The exact detail will be worked through during drafting.

Interaction with the Oranga Tamariki (Residential Care) Regulations 1996

- 73 On 7 September 2016, Cabinet agreed 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].
- 74 The care standards regulations are intended to cover the spectrum of the care system, including residential care settings. However, the focus of these 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.
- 75 I am therefore recommending that the previous Cabinet decision of 7 September 2016 be rescinded [SOC-16-MIN-0114; CAB-16-MIN-0460 refer] and instead recommending that the Oranga Tamariki (Residential Care) Regulations 1996 be retained, at least at this stage as an interim measure, until further work is completed [REDACTED] s 9(2)(f)(iv) Active consideration [REDACTED] I propose both sets of regulations will apply to children and young people in residences to the extent practicable in the circumstances. I note that minor and consequential amendments to the Oranga Tamariki (Residential Care) Regulations 1996 may be needed to ensure both sets of regulations can be applied in a workable manner until the longer-term assessment is completed, and I seek Cabinet's authorisation to make changes to this effect. Any amendments will be worked through in consultation with relevant agencies.
- 76 I have asked officials to assess the Oranga Tamariki (Residential Care) Regulations 1996 [REDACTED]

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

²⁷ This would include children and young people in placements under sections 39, 42, 48, 78, 139, 235 and 238(1)(d) of the Oranga Tamariki Act 1989.

²⁸ Other examples include orders under the Criminal Procedure (Mentally Impaired Persons) Act 2003 and the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003. Also note that a young person who is not in the care or custody of the chief executive under Part 2 or 4 of the Act will not be subject to the care standards regulations, this includes for example, young people who are in Police custody and are not in the care or custody of the chief executive under Part 2 or 4 of the Act.

Commencement of the regulations

77 The proposals have been developed with the new and amended purposes and principles of the Oranga Tamariki Act 1989 in mind, as well as other changes to the Act such as new provisions to support young people to move 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.

78 To align with this, I recommend that the regulations 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 also allow time to work with section 396 care providers and other agencies to communicate the expectations set in the care standards regulations.

Consultation

79 This paper was prepared by Oranga Tamariki—Ministry for Children. The following agencies were consulted in the development of the proposals: Ministry of Education, Ministry of Health, Ministry of Justice, Ministry for Pacific Peoples, Ministry of Social Development, ACC, Department of Corrections, New Zealand Police, Te Puni Kōkiri, Treasury and Department of the Prime Minister and Cabinet (Policy Advisory Group).

80 The Office of the Children's Commissioner was also consulted.

81 Detailed information outlining the people and organisations consulted during the development of the proposals is included in the attached Regulatory Impact Statement.

Further proposed consultation

82 I recommend that consultation outside the Crown be undertaken during the drafting of the regulations, including on possible exposure drafts of the regulations. While a large group of stakeholders was consulted during the development of the proposals, I propose that a smaller group of people and organisations be consulted at this stage of the process. The focus of the consultation will be on how the regulations have been drafted and will be confined to those who will be directly impacted by the regulations and those who have expertise and knowledge in applying regulations. This includes those who will be involved in implementation.

83 The details of any consultation will be worked through with the Chief Legal Adviser of the Ministry in accordance with the Attorney-General's protocol for release of draft Government legislation outside the Crown (CO (14) 4).

Financial Implications

The financial implications will be dependent on how the proposals are implemented and need to be situated within the context of the new operating model

84 The regulations are intended to have a medium level of prescription. This means they will not be overly prescriptive and there will be significant scope for operational decision-making as to how the Ministry can best meet the proposed requirements in each area.

- 85 Taking this approach to the form of the regulations ensures that they will be durable and flexible, enabling fiscal costs to be phased over time to allow the new operating model to mature in line with emerging practice and to respond to changes in government priorities.
- 86 This also means that there is not one fixed cost associated with the regulations as the final costs associated with the regulations will be dependent on the choices Ministers make as to how the proposals should be implemented.
- 87 The new Ministry was launched on 1 April 2017 and the new operating model is currently being developed. Fully achieving the intent of the new operating model will take time and effort from the Ministry and the care standards regulations is one of the early reforms that will take effect. These regulations will underpin the care system by setting minimum standards and will be critical to achieving the outcomes we are seeking for all children and young people in care. I expect the requirements to become part of business as usual for the Ministry.
- 88 I note that some activities are already underway to support the new operating model which will have interdependencies with the care standards regulations. For example, the new Oranga Tamariki Practice Framework provides the overarching practice guidance and is one way the Ministry is preparing to give operational effect to the requirements in the Oranga Tamariki Act 1989, including the proposed care standards regulations.
- 89 The costs of the care standards regulations are inextricably linked to the costs associated with developing the Ministry's new operating model. This means that the associated costs are likely to fall across the core business areas of the Ministry, and some existing baseline activities are likely to support compliance with aspects of the regulatory proposals.
- 90 I note that it is intended that the regulations come into force on 1 July 2019; this will allow time for the Ministry and section 396 providers to review and update their processes and services, and build their capacity and capability to meet the new requirements.

[REDACTED]

91 [REDACTED]

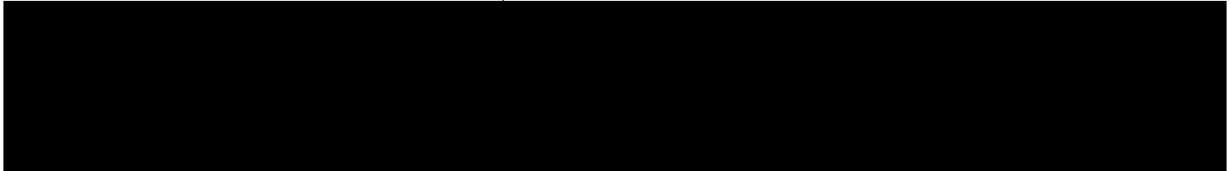
91.1 [REDACTED]

91.2 [REDACTED]

92 [REDACTED]

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

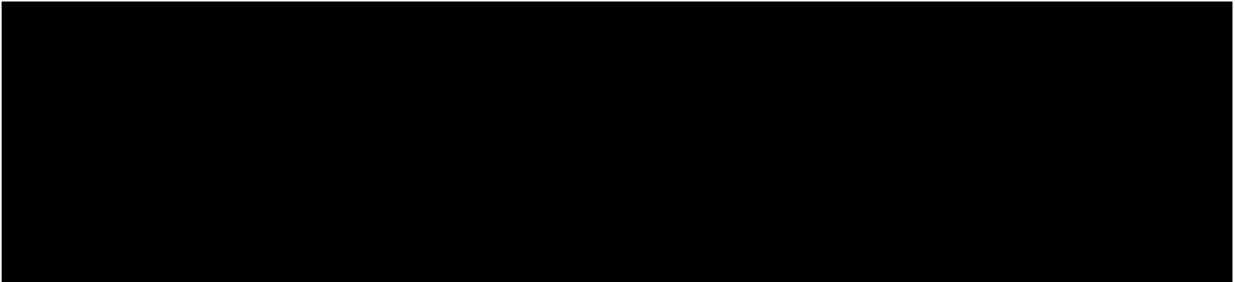
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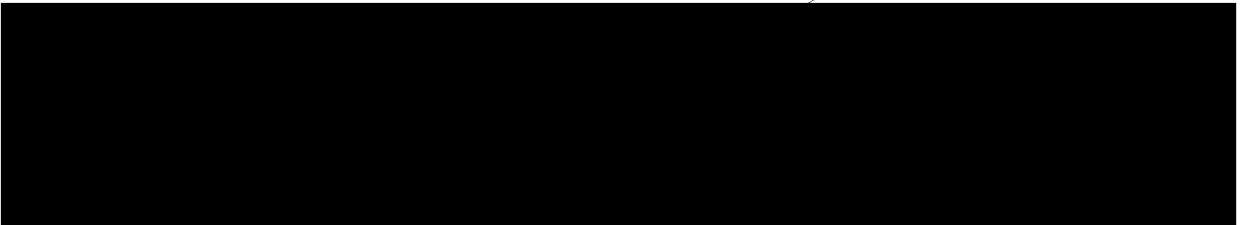
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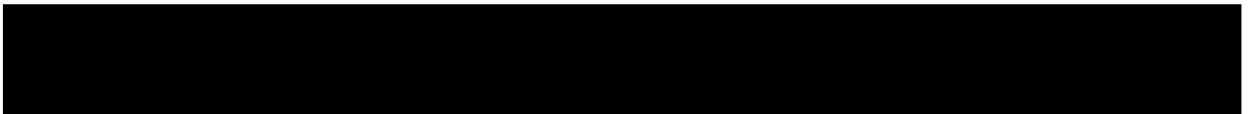
Work is underway to develop refined costings and to provide options for how the proposals can be implemented

96 The definitive costs associated with the regulatory proposals will not be known until more implementation planning is completed in the context of the new operating model. Work is underway to progress this, including identifying the gaps between current practice and the proposed regulatory requirements.

97



98



99



100 Officials have consulted with Treasury throughout the development of costings and assessment of the financial implications.

Human Rights

101 The proposals in this paper are not inconsistent with the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993. The proposals will increase New Zealand's alignment with the United Nations Convention on the Rights of the Child (UNCROC), particularly Article 20

which provides that children should be entitled to special protection and assistance by the State where they are temporarily or permanently deprived of their family environment.³⁰

102 The proposals may potentially result in the Ministry providing a higher standard of care than other children and young people in New Zealand who are not in the care of the Ministry may receive. This is particularly relevant in cases where a child or young person returns home or transitions to permanence and is no longer in the care or custody of the chief executive. However, these proposals need to be considered in light of the circumstances for which these children and young people are placed in the care or custody of the chief executive:

102.1 This group of children and young people have a significantly higher likelihood of experiencing poor long-term outcomes compared to other children and young people, including compared to children and young people who have had significant levels of contact with the care and protection system but have not been placed formally in care.

s 9(2)(h) OIA Legal professional privilege

102.2

102.3 The chief executive also has a duty under section 363(2) of the Oranga Tamariki Act 1989 to ensure payments are made to meet the reasonable needs of the child or young person.

102.4 A decision has been made to remove the child or young person from their home because it has been determined that they will be better off in the care of the chief executive than in their own home.

102.5 The chief executive in these situations is acting in the place of a parent and it is reasonable to expect that the chief executive would do what is possible, within available resources, to provide children and young people with an appropriate upbringing.

Legislative Implications

103 Regulations are required to implement the proposals in this paper. Drafting instructions will be issued to the Parliamentary Counsel Office based on Cabinet decisions. I also seek authorisation to make decisions on minor or technical policy changes that are not inconsistent with the policies agreed in this paper, in order to finalise the drafting of the regulations.

Regulatory Impact Analysis

104 The regulatory impact analysis requirements apply to the proposals in this paper and a regulatory impact statement has been prepared and is attached.

105 The Regulatory Impact Assessment (RIA) 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.

³⁰ Other Articles the proposals will increase alignment with include Articles, 3.3, 8, 12, 13, 19.2, 23, 24, 25, 28, 39 and 31.

Gender Implications

- 106 The proposals in this paper are intended to lead to higher quality care and contribute to improved outcomes for children and young people that are in the care or custody of the chief executive.
- 107 Boys and young men are expected to benefit from the proposals as they are disproportionately represented in the youth justice system and slightly over represented in care. Women are more likely than men to be the primary caregivers for children and young people. Therefore, the proposals which aim to provide caregivers with greater support and assistance will benefit women and their whānau.

Disability Perspective

- 108 The proposals are intended to apply across the population of children and young people in the care or custody of the chief executive. There are a number of aspects that will ensure the visibility of children and young people with disabilities across the regulations. For example, disability will be considered as part of assessing a child's or young person's health needs as well as their identity and cultural needs. Support must be provided to address any identified needs; this could include support to address any communication needs. Under the proposals that relate to participation, information must be explained in a manner that is appropriate to the child or young person, including where they may have barriers to understanding the issues because of age, language or disability. Regard must be given to the needs of children and young people with disabilities when creating and maintaining records of important life events.
- 109 The regulations will apply in addition to the legislative requirements in the Oranga Tamariki Act 1989. For example section 11 requires that, when decisions are made that significantly affect a child or young person, they must be provided with support where they have difficulties expressing views or being understood. Recent changes to section 11 will require that children and young people be provided with reasonable assistance to understand the proceeding or process. Section 9 requires that, in relation to proceedings under the Act, interpreters are provided to a child or young person and/or their parent or guardian if they are unable, by reason of a physical disability, to understand English.

Publicity

- 110 Any specific public announcements relating to care standards regulations will be co-ordinated by the Office of the Minister for Children.

Recommendations

- 111 The Minister for Children recommends that the Committee:
- 1 **note** that the Oranga Tamariki Act 1989 (the Act), as amended by the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017, requires the responsible Minister to recommend the making of care standards regulations within 12 months of the commencement of the legislative amendment (this means they will need to be recommended by 13 July 2018)
 - 2 **note** that the Act requires the regulations to prescribe the actions or steps that must be taken by the chief executive (and delegates) or organisations approved under section 396 of the Act to help ensure children and young people in care or custody under Part 2 or 4 of the Act, which deal with care and protection and youth justice respectively, receive an appropriate standard of care that is consistent with the principles of the Act

- 3 **note** that the regulations will confirm a set of expectations, rights and entitlements that set out what children and young people can expect when they are in the care or custody of the chief executive (“chief executive” also refers to the chief executive’s delegates and organisations approved under section 396 that have custody of children or young people under the Act, unless otherwise specified)
- 4 **note** that the development of the proposals for inclusion in the regulations has been guided by consultation with key stakeholders, including children and young people, caregivers, care providers, iwi providers, and government agencies

Assessment, planning and monitoring to support children and young people in care

Needs assessment and developing a plan for the child or young person

- 5 **note** that aside from legal requirements for family group conference (FGC) plans and Court plans, assessment, planning and visits to monitor the child’s or young person’s well-being are not required by the Act
- 6 **agree** that, when a child or young person enters the care or custody of the chief executive, the chief executive must undertake an assessment to identify the child’s or young person’s immediate and long-term needs and what is required to meet those needs, and the assessment must be recorded
- 7 **agree** that the chief executive must develop a plan for the child or young person to ensure their needs identified through the assessment are met, the plan must:
 - 7.1 set out how the assessed needs of the child or young person will be addressed and what support is required
 - 7.2 record the actions other parties, such as the child’s or young person’s caregiver and professionals involved with the child or young person, have agreed to undertake
 - 7.3 be informed by the findings of the assessment of the child’s or young person’s needs
- 8 **note** that the plan cannot be inconsistent with any FGC or Court plan the child or young person may have under Part 2 or 4 of the Act, any protection orders made under the Domestic Violence Act 1995 or orders under the Care of Children Act 2004
- 9 **agree** that the assessment must be undertaken and plan prepared as soon as reasonably practicable after the child or young person enters the care or custody of the chief executive
- 10 **agree** that the child or young person must be kept informed of the progress and timeframes for undertaking the assessment and preparing their plan
- 11 **agree** that the following must be identified as part of the assessment and inform the development of the child’s or young person’s plan:
 - 11.1 the child’s or young person’s wishes or aspirations
 - 11.2 the child’s or young person’s strengths and how those strengths can be fostered

- 12 **agree** that the assessment must include identification of, in no particular order, the following needs:
- 12.1 emotional care
 - 12.2 behavioural needs
 - 12.3 whānau connections
 - 12.4 culture, belonging and identity
 - 12.5 play, recreation and community
 - 12.6 safety
 - 12.7 health (this will include mental health, psychological health and any disability needs)
 - 12.8 education and training

Visits to monitor the ongoing safety and well-being of the child or young person

- 13 **agree** that the chief executive must monitor the ongoing safety and well-being of the child or young person, including:
- 13.1 regular visits to the child or young person, including face-to-face contact, to understand any concerns they may have, to understand matters that are important to them, and to identify if their needs have changed
 - 13.2 engaging with the child's or young person's caregiver, and other professionals who are party to the plan and people of significance to the child or young person
- 14 **agree** that the frequency of visits to the child or young person must be determined as part of the assessment of the child's or young person's needs and set out in their plan, including reasons for the frequency of visits, and that consideration must be given to a range of matters such as significant events or changes in the child's or young person's circumstances
- 15 **agree** that determining the frequency of visits to the child or young person must be done in consultation with the child or young person and their caregiver, and the child or young person and their caregiver must also be informed of the frequency of visits
- 16 **agree** that if, as a result of a visit, it is identified that the safety or well-being of the child or young person is not adequately being protected and supported, the chief executive must review the child's or young person's plan in accordance with the review requirements

Maintaining and reviewing the child's or young person's plan

- 17 **agree** that the chief executive must keep the child's or young person's plan up-to-date and under review to ensure the plan is meeting the needs of the child or young person and reflects any changes in their circumstances
- 18 **agree** that the review of the child's or young person's plan should be informed by a number of different information sources, including the findings of any reassessment of

the child's or young person's needs, and information obtained from the child or young person, their caregiver and other professionals involved with the child or young person as identified in recommendation 13

- 19 **agree** that the results of the review of the child's or young person's plan, including decisions or arrangements to implement those, must be recorded and the plan updated
- 20 **agree** that the child's or young person's plan must be reviewed no less than 6 weeks after they have entered the care or custody of the chief executive, and reviewed no less than once every 6 months thereafter

Support to address children's and young people's needs

- 21 **agree** that the chief executive must ensure that appropriate support (including financial support or specialist services) is available to children and young people to address their assessed needs and must provide support or assistance to access this support
- 22 **agree** that the chief executive must ensure that caregivers are provided with information to help them understand their role in helping to meet the needs of the child or young person in their care

Whānau connections

- 23 **agree** that the chief executive must provide support to enable children and young people to maintain connections with their family, whānau, hapū and iwi, this includes:
 - 23.1 providing the child or young person with support (including financial) necessary to ensure they are able to establish, maintain and strengthen relationships with their family, whānau, hapū and iwi where it is in the best interests of the child or young person
 - 23.2 providing caregivers with support to understand the importance for the child or young person to establish, maintain and strengthen connections with family, whānau, hapū and iwi, and to manage any contact arrangements
 - 23.3 identifying members of the child's or young person's family, whānau, hapū, or iwi that should be kept informed of their progress and development, and requiring those identified people be kept informed where it is in the best interests of the child or young person

Culture, belonging and identity

- 24 **agree** that to support children and young people's culture and identity needs, the chief executive must:
 - 24.1 provide support (including financial) to meet the culture and identity needs of the child or young person and to enable them to maintain meaningful connections with, and participate in, their culture, language, religion or spirituality and develop a sense of identity and culture
 - 24.2 provide caregivers with support necessary to enable them to promote the identity and culture of the child or young person in their care and understand and respect their personal choices with respect to the child's or young person's identity and culture

Play, recreation and community

- 25 **agree** that to support children and young people's play, recreation and community needs, the chief executive must:
 - 25.1 provide the child or young person with support (including financial) to enable them to participate in appropriate play, recreation and community activities
 - 25.2 provide caregivers with information on the steps they could take to facilitate meeting the play, recreation and community needs of the child or young person

Health

- 26 **agree** that the chief executive must ensure children and young people are provided with services and supports necessary to promote good health and address their individual health needs, this includes:
 - 26.1 maintaining a record of the child's or young person's health history
 - 26.2 ensuring the child or young person is enrolled with a Primary Health Organisation
 - 26.3 ensuring the child or young person has an annual general health check
 - 26.4 for children aged 2 and over, ensuring they have an annual dental check
 - 26.5 providing health information to the child or young person and their caregiver on a range of health matters, for example, physical development and growth, sexual matters, and relevant health services that can be accessed
 - 26.6 supporting and assisting the child or young person to access publicly-funded health services to address their health needs, including seeking parent or guardian consent where required and advocating for the child's or young person's best interests
 - 26.7 providing access to any other services to address their health needs if existing publicly-funded services to address their health needs are not available in a timely manner
 - 26.8 taking a coordinated approach to the child's or young person's health care with other agencies

Education and training

- 27 **agree** that, to ensure children and young people are enrolled in an appropriate licenced or certificated early learning service or other service, school or training or education programme or institution, the chief executive must:
 - 27.1 ensure that children aged 1 to 4 inclusive are enrolled by their parent or guardian in a licensed or certificated early learning service unless it is not in their best interests, for a time that is based on the needs of the child; this decision must be regularly reviewed
 - 27.2 consider, if a child aged 5 is not enrolled in a school, whether the child should be enrolled by their parent or guardian at school; if not, they must be enrolled in

- a licensed or certificated early learning service as for children aged 1 to 4; if the child is not enrolled at school, this decision must be reviewed regularly
- 27.3 for children aged 6 to 15 years inclusive, take all reasonable steps with the child or young person's parent or guardian to enrol that child or young person in an appropriate educational institution; this includes consideration of court action to resolve a dispute with a guardian as to enrolment, if considered appropriate
- 27.4 for young people aged 16 or over, who are not enrolled in an educational or training institution or programme, they must be provided with assistance to do so or to obtain employment
- 28 **agree** that the chief executive must take steps to facilitate attendance of a child or young person at their licenced or certificated early learning service or other service, school or training or education programme or institution, this includes, for example:
- 28.1 providing caregivers with information to understand the importance of attendance by the child or young person
- 28.2 obtaining updates, at least once a term, on the child's or young person's attendance
- 28.3 having in place alternative educational arrangements where a child or young person has been excluded from school
- 29 **agree** that the chief executive must provide services and supports necessary to support the child's or young person's assessed educational development and goals, this includes, for example:
- 29.1 the provision of equipment and items not funded by the school, including stationery, paying school-related costs such as donations or fees for early learning services
- 29.2 promoting a coordinated approach to the child's or young person's educational needs with other agencies
- 30 **agree** that the chief executive must ensure caregivers are provided with assistance necessary to enable them to support the child or young person to succeed in education
- 31 **agree** that the chief executive must monitor the child's or young person's educational progress and ensure regular contact is maintained with the child's or young person's school or education provider

Caregiver and care placement assessment and support

Caregiver approval

- 32 **note** that, under the empowering provisions in the Act, the regulations cannot impose obligations on caregivers
- 33 **agree** that the chief executive must provide information covering a range of matters to prospective caregivers, including, for example, information covering the assessment and approval process, the impact caregiving may have on their family life, the support and training available, and managing day to day care

- 34 **agree** that caregivers and the caregiving household are assessed to ensure they are suitable to provide the standards of care expected under the Act, including their ability to provide a safe, stable and loving home and meet the needs of the child or young person, this would include:
- 34.1 safety checks of prospective caregivers and consent sought to undertake safety checks of other adult members of the caregiving household, consistent where appropriate with those applied to the core children's workforce under the Vulnerable Children Act 2014 and the Vulnerable Children (Requirements for Safety Checks of Children's Workers) Regulations 2015
 - 34.2 assessment of a range of matters for example, prospective caregivers' experience, skills and abilities in providing care, and the safety and appropriateness of the physical caregiving environment
- 35 **agree** that caregivers' approval be reviewed periodically
- 36 **agree** that a review of a caregiver's approval would also be required in cases where a critical incident has taken place, such as an allegation of abuse or neglect against a caregiver, or where there is a significant change in the circumstances of the caregiving household
- 37 **agree** that there may be situations where a child or young person needs to be urgently placed and provisional approval of a caregiver may be necessary
- 38 **agree** that in the case of an urgent placement and where a caregiver has not completed the full approval process, some minimum requirements will apply, including:
- 38.1 Police and record checks of prospective caregivers, and for other adult members of the caregiving household, the chief executive must seek consent to undertake these checks
 - 38.2 interview with the prospective caregivers
 - 38.3 visit to the prospective caregivers' home
 - 38.4 any other actions necessary to be satisfied the prospective caregivers could provide the required level of safety
- 39 **agree** that the full assessment of the caregiver must be completed as soon as possible and the caregiver's provisional approval must be regularly reviewed until full approval is granted, if there are concerns that full approval would not be granted, the placement decision must be immediately reviewed

Caregiver support plan

- 40 **agree** that the chief executive must ensure caregivers have a support plan, based on their assessment, that sets out a range of matters including:
- 40.1 the support that will be provided to assist the caregiver and caregiving household to meet the needs of the child or young person
 - 40.2 the training that will be provided to the caregiver to help build their capability to meet the needs of the child or young person

- 40.3 how regularly the caregiver's approval status, their ability to meet the needs of the child or young person who is in their care, and their support and capability-building needs will be reviewed
- 41 **agree** that the caregiver support plan must be reviewed at a frequency based on the assessed needs of the caregiving household and the frequency, and reasons for it, must be set out in the plan

Caregiver support and capability-building

- 42 **agree** that, to support caregivers to meet the needs of a child or young person, including to provide a safe, stable and loving home, the chief executive must:
- 42.1 provide caregivers with support or assistance to access support, including where a caregiver requests this
- 42.2 ensure training is available to caregivers that helps to build their capability as a caregiver, this includes support and assistance to access training and any training attended must be recorded in the plan
- 43 **agree** that support may include financial assistance
- 44 **agree** that caregivers must have access to a support person who can help them understand their role as a caregiver and what will be expected of them

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

Enabling children and young people to make informed decisions

- 45 **note** that recent changes to the Act have significantly strengthened obligations on decision-makers to encourage and assist children and young people to participate in decisions that affect them
- 46 **note** that these proposals are focused on providing children and young people with a strong foundation of knowledge to enable them to participate meaningfully in decisions being made about them
- 47 **agree** that, when a child or young person enters care and whenever their plan is reviewed, the chief executive must explain a range of matters to the child or young person, including by providing information, that will help them to understand what they can expect in care; these matters would include for example why they are in care, their right to privacy and confidentiality, and how they can provide feedback and make complaints
- 48 **agree** that these matters must be explained in a manner and language that can be understood by the child or young person

Providing feedback and making complaints

- 49 **agree** children and young people must be supported to raise issues and make a complaint; this includes assisting them with understanding the process, making a complaint and addressing the impacts of a complaint

Responding to concerns of abuse or neglect

- 50 **agree** that the chief executive must respond to any information disclosed that raises concerns in relation to a risk of harm caused by abuse or neglect of a child or young person in care
- 51 **agree** that the chief executive must:
- 51.1 respond in a timely manner
 - 51.2 record and report this information in a consistent manner
 - 51.3 inform the child or young person of the outcome
 - 51.4 take appropriate steps with parties to the allegation, for example, having regard to the impact on the ongoing relationship between the child or young person and their caregiver
- 52 **agree** that the chief executive must provide information to the independent monitor on reports of abuse or neglect it has received under recommendation 50 and how those cases were handled

Ensuring children and young people have their own belongings

- 53 **agree** that the chief executive must ensure that children and young people are able to have their own personal belongings, this includes clothing, a bag and bedding and somewhere to store their belongings

Maintaining records of important life events for children and young people while they are in care

- 54 **agree** the chief executive must, in consultation with the child or young person, collect and maintain records relating to important events and achievements in the child's or young person's life, for example, photos, art work and school reports
- 55 **agree** that care leavers must be provided with a copy of the records relating to important events and achievements in their life when they leave care, and know where they can access these records in the future

Supporting children and young people during care transitions

- 56 **agree** that a care transition can include when a child or young person comes into care, shifts placements or is able to return home

Placement decisions

- 57 **agree** that, when the chief executive is making a decision to place a child or young person in a care placement, the chief executive must consider the ability of the care placement to meet the assessed needs of that child or young person and have a plan for providing the support required if the care placement is not able to fully meet the needs of the child or young person without support
- 58 **agree** that the chief executive must ensure the caregiver or care placement is provided with information about the child or young person being placed there, in order to ensure they understand that child's or young person's needs

Assessment, planning and monitoring during transition phases

- 59 **agree** that as soon as the chief executive knows that a child or young person is to have a care transition, the chief executive must undertake an assessment of the necessary steps required for the child or young person to experience a positive care transition and this must be reflected in a plan
- 60 **agree** that the plan must be developed in consultation with the current and intended caregiver and record the steps they have agreed to take
- 61 **agree** that the chief executive must ensure there is sufficient monitoring and support during phases of care transition based on the needs of the child or young person
- 62 **agree** that, to support a care transition, the chief executive must ensure the child or young person is provided with services and supports necessary to assist them to experience a positive care transition, for example by explaining to the child or young person why a care transition is happening, providing them with information in advance about the intended placement, providing them with the opportunity to visit the new care environment, ensuring they are able to take their belongings with them, and assisting with the maintenance or re-establishment of an ongoing relationship with their current caregiver if it is in the best interests of the child or young person

Support to prepare young people for moving to independence

- 63 **note** that recent amendments to the Act cover supporting young people to move to independence, and these regulatory proposals focus on the actions that need to take place before a young person leaves care in order to prepare them to move toward independence
- 64 **agree** that the chief executive must undertake an assessment and develop a plan to identify what life skills a young person already has and those they may need to help them to move toward independence, for example, personal care and health, managing money and maintaining safe and positive relationships
- 65 **agree** that, in accordance with section 386A, this proposal would apply to young people who, after the age of 14 years and 9 months, are or have been, at any time for a continuous period of at least 3 months, in the care or custody of the chief executive and are still in the care or custody of the chief executive
- 66 **agree** that, before a young person reaches the age of 18, the chief executive must assist them to obtain official documentation, for example photo identification, a certified copy of their birth certificate, an IRD number, a bank account, verifying their identity online to enable them to access key government services, and make them aware of their legal requirement to enrol on the electoral roll
- 67 **agree** that young people moving to independence be provided with support before they reach 18 to enable them to understand how to access key services and assistance after they leave care, for example relating to education and housing, and are supported to access these

Monitoring and reporting on compliance with the regulations

- 68 **note** that the Act requires the Minister to appoint an independent agency or body to monitor and report on compliance with the regulations

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72 **note** that the Act sets out that the regulations may include the manner in which the care standards are monitored and reported on, both internally and by the independent body or organisation appointed by the Minister to monitor compliance with the regulations

73 **note** that it is desirable for the independent monitor to have a degree of flexibility to develop an appropriate monitoring and reporting regime to ensure it is rigorous and fit for purpose

Manner in which the regulations are monitored and reported on by the independent monitor

74 **agree** that the regulations are to contain some minimum requirements with respect to the manner in which the regulations are monitored and reported on by the independent monitor, including that:

74.1 the independent monitoring body must establish an assessment framework for monitoring and reporting on compliance with the regulations

74.2 the framework must provide clarity as to how compliance will be assessed and include details of the sources of information and key indicators of performance that will be used to assess compliance, and consideration must be given to how the framework aligns with the systems in place for internal self-review and continuous improvement as set out in recommendation 82 below

74.3 the framework must be developed in consultation with the chief executive and any approved organisation under section 396 of the Act having the custody of children and young people under the Act

75 **agree** that the assessment framework may identify particular priorities based on areas of focus for performance improvement, such as by regulation subject, locality or by reference to particular groups of children and young people

76 **agree** that the independent monitor must use multiple information sources to assess compliance; this must include information obtained directly from children and young people to whom the regulations will apply about their experience of care in the areas covered by the regulations and must also include other information sources such as:

76.1 reviews of providers' policies, documents, reports and service feedback

- 76.2 site assessments
- 76.3 feedback, interviews and participation from children, young people, their families and whānau, staff and caregivers
- 76.4 stakeholder feedback, including from advocacy services
- 76.5 the providers' self-assessment
- 76.6 data collected by providers or through other mechanisms
- 76.7 information from complaints and reviews
- 77 **agree** that the manner of assessment and reporting must:
 - 77.1 support the achievement of the purposes of the Oranga Tamariki Act 1989 with particular regard to sections 4(1)(a)(ii) and (e), and must include analysis of the nature and degree of compliance found and its associated impacts on the fulfilment of those purposes
 - 77.2 contribute to the overall knowledge base with respect to the performance of the care system and have regard to the measures and indicators of performance developed by the Ministry or other children's agencies to assess the performance of the care system
 - 77.3 support the Ministry and other approved organisations under section 396 having custody of children and young people under the Act to work towards continuous service improvement, both through identification and follow up in areas where there are compliance concerns but also where there are opportunities for further improvement beyond minimum compliance
- 78 **agree** that the chief executive and approved organisations under section 396 the Act having custody of children or young people under the Act must provide any information requested by the monitoring agency that is reasonably required for the purposes of assessing compliance
- 79 **agree** that the independent monitor must report every three years to the Minister on compliance with the regulations in order to provide an overall assessment of the state of the care system, this report must also include:
 - 79.1 numbers of children and young people in care and the length of time spent in care
 - 79.2 a profile of the characteristics of children and young people in care, including ethnicity, age, disability and health needs
 - 79.3 information on the number of placement changes experienced by children and young people in care
 - 79.4 complaints and incidents of abuse and neglect in care and procedures followed in resolving these matters, including information provided by the chief executive on reports of abuse or neglect as set out in recommendation 50 and how those cases were handled, and those escalated to any independent review mechanism

- 79.5 identification of areas of good practice as well as areas recommended as a focus for improvement
 - 79.6 the particular situation for Māori children and young people in terms of the levels of compliance with the regulations
 - 79.7 an assessment of the state of the systems in place for self-monitoring and continuous improvement operated by chief executive and other organisations with the custody of children and young people
- 80 **agree** that the independent monitor may provide the Minister with supplementary reports at its own initiative or at the Minister's request and, unlike the three yearly report in recommendation 79 which must contain a comprehensive assessment of the state of care, these reports may focus on specific areas of interest
- 81 **agree** that the independent monitor be required to report any issue of non-compliance that places a child or young person at immediate risk as a matter of urgency to the organisation having care, and that organisation would then be required to report to the Minister on the outcome as soon as practicable thereafter

Internal monitoring and reporting requirements

- 82 **agree** that the chief executive and other approved organisations under section 396 of the Act with the custody of children and young people be required to:
- 82.1 self-monitor compliance using a system for self-monitoring designed to ensure the collection of information which will support the independent monitor to fulfil its monitoring role
 - 82.2 have systems in place for continuous improvement that must identify and address of areas of practice requiring improvement
- 83 **agree** that the chief executive and other approved organisations under section 396 of the Act with the custody of children and young people be required to report:
- 83.1 to the Minister and the independent monitor every three years, following the independent monitor's report to the Minister set out in recommendation 79 above, on the findings of their self-monitoring, including response to findings of areas of non-compliance and on the identification of and progress in advancing areas for service improvement and a plan setting out the actions to be taken
 - 83.2 from time to time as requested by the Minister

Application of the regulations to children and young people in short-term placements or under orders under a different Act

- 84 **note** that the regulations will cover children and young people who are in the care or custody of the chief executive for a limited time, however, it will not always be practicable or desirable for the full care standards regulations to apply to these children or young people
- 85 **note** that there are some cases where a child or young person, who is subject to the care standards regulations, will also be subject to another order requiring their detention in a facility run by another agency, for example, under the Mental Health (Compulsory Assessment and Treatment) Act 1992

- 86 **agree** that the regulations should only apply to the extent reasonable for the situations set out in recommendations 84 and 85
- 87 **authorise** the Minister for Children to finalise policy decisions relating to the applicability of the care standards regulations to children or young people who are in care for a limited time or are subject to other Acts

Interaction of the care standards regulations with the Oranga Tamariki (Residential Care) Regulations 1996

- 88 **note** that on 7 September 2016, Cabinet agreed 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]
- 89 **note** that while the care standards regulations are intended to cover the spectrum of care, including residential care, they will not provide the level of specificity or prescription required in more controlled residential care settings

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

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- 92 **rescind** the decision referred to in recommendation 88; and instead

- 93 **agree** that the Oranga Tamariki (Residential Care) Regulations 1996 be retained in the short-term until further work is completed and will apply concurrently with care standards regulations in a residential environment to the extent this is practicable in the circumstances

- 94 **authorise** the Minister for Children to make decisions on any minor and consequential amendments to the Oranga Tamariki (Residential Care) Regulations 1996 to ensure both sets of regulations can be applied in a workable manner until the longer-term assessment is completed

Commencement of the care standards regulations

- 95 **note** that the proposals have been developed with recent changes and amendments to the Oranga Tamariki Act 1989 in mind, including the new and amended purposes and principles and new provisions to support young people to move to independence, which will come into force on a date appointed by Order in Council or by 1 July 2019
- 96 **agree** that to align with the recent changes to the Oranga Tamariki Act 1989 and to allow time for detailed implementation planning, the regulations will also come into force on 1 July 2019

Financial implications

- 97 **note** that the regulations are intended to have a medium level of prescription which enables fiscal costs to be scaled and to be phased over time, to allow the new operating model to mature in line with emerging practice and to respond to changes in government priorities

98 **note** the costs of the care standards regulations are inextricably linked to the costs associated with the development of the Ministry's new operating model which is currently underway; this means that associated costs are likely to fall across core business areas of the Ministry and some existing baseline activities are likely to support compliance with aspects of the regulatory proposals

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

99 [Redacted]

100 [Redacted]

101 [Redacted]

102 [Redacted]

103 [Redacted]

104 [Redacted]

105 [Redacted]

Consultation on draft regulations

106 **agree** that consultation outside of the Crown may be undertaken during the drafting of the regulations, including on possible exposure drafts

107 **agree** that consultation be confined to those who will be involved in implementing the regulations and those who have expertise and knowledge in applying regulations

108 **note** that any consultation on the draft regulations with persons and organisations outside of the Crown will be worked through with the Chief Legal Adviser of the Ministry in accordance with the Attorney-General's protocol for release of draft Government legislation outside the Crown (CO (14) 4)

Next steps

- 109 **invite** the Minister for Children to issue drafting instructions to the Parliamentary Counsel Office to draft regulations, to give effect to Cabinet decisions on the recommendations in this paper
- 110 **authorise** the Minister for Children to make any minor or technical policy changes that are not inconsistent with the policies agreed in this paper, in order to finalise the drafting of the regulations.

Authorised for lodgement

Hon Tracey Martin

Minister for Children

____ / ____ / ____

Appendix 1: Details of recommendations for assessment, planning and monitoring to support children and young people in care

Needs assessment and developing a plan for the child or young person

Component	The action or step I recommend the chief executive must take
Needs assessment	<p>When a child or young person enters the care or custody of the chief executive, the chief executive must undertake an assessment to identify the child's or young person's immediate and long-term needs and what is required to meet those needs (including what support is required).</p> <hr/> <p>The chief executive must record the assessment.</p>
Taking a holistic approach to understand the child's or young person's needs and wellbeing	<p>When undertaking the assessment, the chief executive must identify the child's or young person's wishes or aspirations as well as their strengths and how those strengths can be fostered. These aspects must inform the development of their plan.</p> <hr/> <p>The assessment must include, in no particular order, the following needs:</p> <ul style="list-style-type: none"> • emotional care • behavioural needs • whānau connections • culture, belonging and identity • play, recreation and community • safety • health (this will include mental health, psychological health and any disability needs) • education and training.³¹
Preparing a plan	<p>The chief executive must develop a plan to ensure the child's or young person's needs are met.</p> <hr/> <p>The plan must set out how the assessed needs of the child or young person will be addressed, including the actions other parties, such as their caregiver and professionals involved with the child or young person, have agreed they will undertake.</p> <hr/> <p>The plan must be informed by the findings of the assessment.</p> <hr/> <p>This plan cannot be inconsistent with any FGC plan or Court plan the child or young person may have under Part 2 or 4 of the Oranga Tamariki Act 1989, any protection orders made under the Domestic Violence Act 1995 or orders under the Care of Children Act 2004.</p>
Timeframe for the assessment and plan	<p>The chief executive must undertake the assessment and prepare the plan as soon as reasonably practicable after the child or young person enters the care or custody of the chief executive.</p> <hr/> <p>The chief executive must keep the child or young person informed of the progress and timeframes for undertaking the assessment and preparing the plan.</p>

³¹ In practice, a Gateway assessment would be one of the tools used for assessing the child's or young person's health and education needs.

Visits to monitor the ongoing safety and well-being of the child or young person

Component	The action or step I recommend the chief executive must take
Purpose of visits	<p>The chief executive must monitor the ongoing safety and well-being of the child or young person. This will involve regular visits to the child or young person, including face-to-face contact, to understand any concerns they may have, to understand matters that are important to them, and to identify if their needs have changed.</p> <p>If, as a result of a visit, it is identified that the safety or well-being of the child or young person is not adequately being protected and supported, this would trigger a review of the child's or young person's plan.</p>
Other information sources	<p>Understanding the ongoing safety and well-being of the child or young person will also include engaging with their caregiver, other professionals who are party to the plan and people of significance to that child or young person (for example, a member of that child's or young person's family, whānau, hapū or iwi).</p>
Timeframe for visits	<p>To ensure the frequency of visits aligns with the individual needs of children and young people, the frequency must be determined as part of the assessment of the child's or young person's needs and regard must be had to a range of matters, such as significant events or changes in circumstances.</p> <p>Determining the appropriate frequency should be done in consultation with the child or young person and their caregiver.</p> <p>The frequency for visits, including reasons for it, must be set out in the plan.</p> <p>To provide clarity, the child or young person and their caregiver must be informed of the frequency for visits.</p>

Maintaining and reviewing the child's or young person's plan

Component	The action or step I recommend the chief executive must take
Purpose of review	<p>The chief executive must keep the child's or young person's plan up-to-date and under review to ensure the plan is meeting the needs of the child or young person and reflects any changes in their circumstances.</p>
Information sources	<p>The review should be informed by different information sources, including for example the findings of any reassessment of the child's or young person's needs, and information obtained from the child or young person, their caregiver and other professionals involved with the child or young person.</p>
Updating the plan	<p>The results of a review of the plan, including decisions or arrangements to implement those, must be recorded and the plan must be updated.</p>
Timeframe for review of the plan	<p>The child's or young person's plan must be reviewed no less than 6 weeks after the child or young person enters the care or custody of the chief executive, with subsequent reviews taking place no less than once every 6 months.</p>

Appendix 2: Details of recommendations for support to address children’s and young people’s needs

Component	The action or step I recommend the chief executive must take
General provision of support to address children’s and young people’s assessed needs	<p>The chief executive must ensure that appropriate support (including financial support or specialist services) is available for children and young people to address their assessed needs, and the chief executive must provide support or assistance to access this support.</p> <p>The chief executive must provide caregivers with information to understand their role in helping to meet the needs of the child or young person in their care.</p>
Whānau connections	<p>The chief executive must provide children and young people with support (including financial) necessary to ensure they are able to establish, maintain and strengthen relationships with their family, whānau, hapū and iwi, where it is in the best interests of the child or young person.</p> <p>The chief executive must provide caregivers with support to understand the importance for the child to establish, maintain and strengthen connections with family, whānau, hapū and iwi, and to manage any contact arrangements.</p> <p>The chief executive must identify members of the child’s or young person’s family, whānau, hapū, or iwi that should be kept informed of their progress and development and be required to keep those identified people informed where it is in the best interests of the child or young person.</p>
Culture, belonging and identity	<p>The chief executive must provide support (including financial) to meet the culture and identity needs of children and young people and to enable them to maintain meaningful connections with, and participate in, their culture, language, religion or spirituality and develop a sense of identity and culture.</p> <p>The chief executive must provide caregivers with support necessary to enable them to promote the identity and culture of the child or young person in their care and to understand and respect the personal choices of the child or young person with respect to their identity and culture.</p>
Play, recreation and community	<p>The chief executive must provide children and young people with support (including financial) to enable them to participate in appropriate play, recreation and community activities.</p> <p>The chief executive must provide caregivers with information about their role to facilitate meeting the child’s or young person’s play, recreation and community needs.</p>
Health	<p>The chief executive must ensure children and young people are provided with services and supports necessary to promote good health and address their individual health needs. This includes:</p> <ul style="list-style-type: none"> • maintaining a record of the child’s or young person’s health history • ensuring the child or young person is enrolled with a Primary Health Organisation • ensuring a child or young person has an annual health check • for children aged 2 and over, ensuring they have an annual dental check • providing health information to the child or young person, and their caregivers, on a range of matters, for example, physical development and growth, sexual

Component	The action or step I recommend the chief executive must take
	<p>matters, and relevant health services that can be accessed</p> <ul style="list-style-type: none"> • supporting and assisting the child or young person to access publicly-funded health services to address their health needs (for example, immunisation or specialist health services). This should include seeking parent or guardian consent where required and advocating for the child's or young person's interests • providing access to any other services to address their health needs if existing publicly-funded services to address their health needs are not available in a timely manner • taking a coordinated approach to the child's or young person's health care with other agencies.
<p>Education and training</p>	<p>To ensure children and young people are enrolled in an appropriate licenced or certificated early learning service or other service, school or training or education programme or institution, the chief executive must take the following actions:</p> <ul style="list-style-type: none"> • Ensure children aged 1 to 4 inclusive are enrolled by their parent or guardian in a licensed or certificated early learning service, unless it is not in their best interests.³² Enrolment must be for a time that is based on the needs of the child. This decision must be regularly reviewed. • If a child aged 5 is not enrolled in a school, consideration should be given to whether the child should be enrolled by their parent or guardian at school.³³ If not, they must be enrolled in a licensed or certificated early learning service as for children aged 1-4. If the child is not enrolled at school, this decision must be reviewed regularly. • For children aged 6 to 15 years inclusive, the chief executive must take all reasonable steps with the child's or young person's parent or guardian to enrol that child or young person in an appropriate educational institution.³⁴ This includes consideration of court action to resolve a dispute with a guardian as to enrolment, if considered necessary. • For young people aged 16 or over who are not enrolled in an educational or training institution or programme, they must be provided with assistance to do so or to obtain employment. <p>The chief executive must take steps to facilitate attendance of a child or young person at their licenced or certificated early learning service or other service, school or training or education programme or institution, this includes:</p> <ul style="list-style-type: none"> • providing caregivers with information to understand the importance of attendance by the child or young person • obtaining updates, at least once a term, on the child's or young person's attendance • having in place alternative educational arrangements where a child or young person has been excluded from school.

³² Children between the ages of 0 to 6 are able to enrol in early childhood education. Licensed services include education and care services, kindergartens, kōhanga reo, and playcentres. Certificated services can include playgroups. Early learning services can be teacher-led, parent-led or whānau-led. The interpretation of different services types is set out in [section 309](#) of the Education Act 1989.

³³ Under [section 20\(1\)](#) of the Education Act 1989, a child is required to be enrolled at school by their sixth birthday. Enrolling a child aged 5 at school aligns with best practice.

³⁴ Six to 15 years inclusive is consistent with section 20(1) of the Education Act 1989 which requires every person who is not an international student to be enrolled at a registered school at all times during the period beginning on the person's sixth birthday and ending on the person's 16th birthday.

Component	The action or step I recommend the chief executive must take
	<p>To ensure children and young people have the supports they need to be successful in their educational or training journey, services and supports must be provided to address their assessed educational development and goals. This would include the provision of equipment and items not funded by the school, including stationery, school bag and school uniform, and paying school related costs such as donations or fees for early learning services. This also includes promoting a coordinated approach to the child's or young person's educational needs with other agencies.</p> <hr/> <p>The chief executive must ensure caregivers are provided with the assistance necessary to enable them to assist the child or young person to succeed in education. This would include providing information about things they should do to encourage and support the child's or young person's educational activities and progress and providing additional resources to enable them to support the child's or young person's learning through the home environment and other informal learning.</p> <hr/> <p>The child's or young person's educational progress must be monitored and regular contact maintained with the child's or young person's school or education provider. This would include, for example, where updates on the child's or young person's educational progress raises any concerns with that child's or young person's progress or their educational goals are at risk, that the chief executive must be satisfied that there are steps in place to address these concerns.</p>

Appendix 3: Details of recommendations for caregiver and care placement assessment and support

Caregiver approval

Component	The action or step I recommend the chief executive must take
Information to be provided	<p>The chief executive must provide prospective caregivers with information covering a range of matters. This includes information covering the assessment and approval process, the level of care expected and consequences if this is not met, the impact caregiving may have on their family life, and the support, training and resources that will be available to them both within and outside the Ministry. It would also include information on managing day to day care arrangements, appropriate behaviour management and discipline and managing contact with guardians and family members.</p>
Assessment of caregivers and caregiving household	<p>The chief executive must assess prospective caregivers and the caregiving household to ensure they are suitable to provide the standard of care expected under the Oranga Tamariki Act 1989. The purpose of the assessment would be to assess the ability of the prospective caregiver and caregiving household to meet the needs of a child or young person who comes into their care and provide a safe, stable and loving home.</p> <p>The chief executive must undertake safety checks on prospective caregivers, consistent where appropriate with those applied to the core children's workforce under the Vulnerable Children Act 2014 and the Vulnerable Children (Requirements for Safety Checks of Children's Workers) Regulations 2015 (for example, requiring identity confirmation and Police vetting). The chief executive must also seek consent to undertake safety checks on other adult members of the caregiving household.</p> <p>This assessment would also include consideration of:</p> <ul style="list-style-type: none"> • the prospective caregivers' capability, motivation and experience in providing care • the skills, abilities and attributes of caregivers that would enable them to meet both the day to day needs and any particular needs of a child or young person, including cultural competency • the safety and appropriateness of the physical caregiving environment, including the standard of accommodation and whether adjustments would need to be made or special equipment provided in order for the environment to be suitable • the needs, strengths and circumstances of prospective caregivers and the caregiving household and how those may affect the care they provide, including any physical or mental health needs • the support and capability needs of prospective caregivers and the caregiving household and what would need to be provided to assist them to meet the needs of a child or young person • the identity and makeup of the caregiving household, including frequent visitors to the household, and the possible impact of other household members on a child or young person placed there, as well as any needs or circumstances which would cause the placement of a child or young person to have a negative impact on other household members.
Timeframe for review	<p>The chief executive must review caregivers' approval periodically.</p>

Component	The action or step I recommend the chief executive must take
	A review would be triggered if a critical incident has taken place, such as an allegation of abuse or neglect against a caregiver, or where there is a significant change in circumstances to the caregiving household.
Provisional approval in situations of urgent placements	<p>There may be situations where a child or young person needs to be urgently placed and provisional approval of a caregiver may be necessary. In these situations, and where a caregiver has not completed the full approval process, the following minimum requirements would apply:</p> <ul style="list-style-type: none"> • Police and record checks of the prospective caregivers, and for other adult members of the caregiving household, the chief executive must seek consent to undertake these checks • interview with the prospective caregivers • visit to the prospective caregivers' homes • any other actions necessary to be satisfied the prospective caregivers could provide the required level of safety.
	The full assessment of the caregiver must be completed as soon as possible, and the caregiver's provisional approval must be regularly reviewed until full approval is granted. If there are concerns that full approval would not be granted, the placement decision must be immediately reviewed.

Caregiver support plan

Component	The action or step I recommend the chief executive must take
Caregiver support plan	<p>The chief executive must ensure caregivers have a support plan based on their assessment that includes:</p> <ul style="list-style-type: none"> • the support that will be provided to assist caregivers and the caregiving household to meet the needs of a child or young person, both their day to day needs, as well as any particular needs • the training that will be provided to caregivers to help build their capability to meet the needs of a child or young person • how regularly caregivers' approval status, their ability to meet the needs of the child or young person who is in their care, and their support and capability-building needs will be reviewed.
Timeframe for review	To ensure the caregiving household continues to be able to meet the needs of the child or young person who is in their care and to identify if any additional support is required, the caregiver support plan must be reviewed at a frequency based on the assessed needs of caregivers and the caregiving household and the frequency, and the reasons for it, must be set out in the plan.

Caregiver support and capability-building

Component	The action or step I recommend the chief executive must take
Support and assistance	The chief executive must provide caregivers and care placements with support or assistance to access support, including where a caregiver requests this. This support should be reflective of the needs of the child or young person, including to provide a safe, stable and loving home.

Training

The chief executive must ensure that training is available that is directed to ensuring the caregiver is able to meet the needs of a child or young person and to build their capability as a caregiver. This includes support and assistance to access training including financial support.

Any training a caregiver has participated in must be recorded in their plan.

Access to support person

Caregivers need to feel that they have someone they can talk to, who is able to provide practical, emotional and advocacy support. To help address this, caregivers must have access to a support person who can help them understand their role as a caregiver and what will be expected of them.

Appendix 4: Details of recommendations for supporting children and young people to have a greater voice in their care experience

Component	The action or step I recommend the chief executive must take
Enabling children and young people to make informed decisions	<p>When a child or young person enters care and whenever their plan is reviewed, the chief executive must explain a range of matters to them (including by providing information) that will help the child or young person to understand what they can expect in care. These matters would include, for example:</p> <ul style="list-style-type: none"> • why they are in care • what they can expect when they are in care from both the Ministry and their caregivers • how their whānau, hapū, iwi, and family group will be involved in their care • their right to privacy and confidentiality • how they can provide feedback and make complaints • independent services that are available to them. <p>These matters must be explained in a manner and language that can be understood by the child or young person.</p>
Providing feedback and making complaints	<p>Children and young people must be supported to raise issues and make complaints. This could be, for example, supporting them to make a complaint through the Ministry's complaints mechanism. This may include assisting them with understanding the process, making a complaint and addressing the impacts of a complaint.</p>
Responding to concerns of abuse or neglect	<p>The chief executive must respond to any information that raises concerns in relation to a risk of harm caused by abuse or neglect of a child or young person in care. The response must be made in a timely manner.</p> <p>This information must be consistently recorded and reported.</p> <p>The chief executive must also inform the child or young person of the outcome of any concerns raised.</p> <p>Appropriate steps are to be taken with parties to the allegation; this would include having regard to the impact on the ongoing relationship between the child or young person and their caregiver.</p> <p>The chief executive must provide information to the independent monitor on reports of abuse or neglect it has received under this proposal and how those cases were handled.</p>
Ensuring children and young people have their own belongings	<p>The chief executive must ensure that children and young people are able to have their own personal belongings. This includes clothing, a bag and bedding, and somewhere to store their belongings.</p>
Maintaining records of important life events for children and young people while they are in care	<p>The chief executive must collect and maintain records relating to important events and achievements in the child's or young person's life. This could include, for example, photos, artwork and school reports.</p> <p>This must be done in consultation with the child or young person and have regard to their culture, age and other circumstances such as disability.</p>

Care leavers must be provided with a copy of these records when they leave care and know where they can access these records in the future.

Appendix 5: Details of recommendations for supporting children and young people during care transitions

Placement decisions

Component	The action or step I recommend the chief executive must take
Matters to be consider and assess when placing a child or young person	<p>When making a decision to place a child or young person in a care placement, the chief executive must:</p> <ul style="list-style-type: none"> consider and assess the extent to which the care placement is able to meet the needs of the child or young person have a plan for providing the support required if the care placement is not able to fully meet the needs of the child or young person without support.
Providing information about the child or young person	<p>To support the caregiver or care placement to be prepared for a child or young person coming into their care, information about that child or young person must be provided before the child or young person arrives, in order to ensure they understand the child's or young person's needs and what level of care will be required to meet those needs.</p>

Assessment, planning and monitoring during transition phases

Component	The action or step I recommend the chief executive must take
Assessment and planning	<p>As soon as the chief executive knows that a child or young person is to have a care transition, the chief executive must undertake an assessment of the necessary steps required for the child or young person to experience a positive care transition and this must be reflected in a plan.</p> <p>The plan must be developed in consultation with the current and intended caregiver and record the steps they have agreed to take.</p>
Monitoring	<p>The chief executive must ensure there is sufficient monitoring and support during these phases, based on the needs of that child or young person.</p>
Services and supports	<p>It is important that children and young people are provided with services and supports necessary to assist them to experience a positive care transition. This should include:</p> <ul style="list-style-type: none"> explaining to the child or young person why a care transition is happening providing information in advance to the child or young person and the current and intended caregivers providing the opportunity to visit the new care environment and meet the new caregiver before the transition ensuring the child or young person is able to take their personal belongings with them assisting the maintenance/re-establishment of an ongoing relationship with the current caregiver if it is in the best interests of the child or young person.

Support to prepare young people for moving to independence

Component	The action or step I recommend the chief executive must take
Assessment and planning to identify life skills	<p>As part of the assessment and provision of advice and assistance that a young person may need to move toward independence after leaving care, required under section 386A of the Act, an assessment and plan must be undertaken to identify what life skills that young person already has and those they may need to help them move toward independence. Life skills could include, for example, personal care and health, managing money, and maintaining safe and positive relationships.</p> <hr/> <p>In accordance with section 386A this proposal would apply to young people who, after the age of 14 years and 9 months, are or have been, at any time for a continuous period of at least 3 months, in the care or custody of the chief executive, and are still in the care or custody of the chief executive.</p>
Obtaining official documentation	<p>Young people, before they reach the age of 18, must be assisted to obtain official documentation. This may include photo identification, a certified copy of their birth certificate, an IRD number, a bank account, and verifying a young person's identity online to enable them to access key government services.³⁵ They should also be made aware about their legal requirement to enrol on the electoral roll.</p>
Support to access services	<p>Young people moving to independence must be provided with support before they reach 18 to enable them to understand how to access key services and assistance after they leave care (for example relating to health, education, housing and employment) and be supported to access these.</p>

³⁵ In practice this would involve assisting the young person to have a RealMe account.

Appendix 6: Details of recommendations for monitoring and reporting on compliance with the regulations

Manner in which the regulations are monitored and reported on by the independent monitor

Component	The action or step I recommend be included in the regulations
Assessment framework	<p>The independent monitoring body must establish a framework for monitoring and reporting on compliance with the regulations by the chief executive (and delegates) or any body or organisation approved under section 396 that has the legal custody of a child or young person under Parts 2 or 4 of the Act.</p> <hr/> <p>The framework must provide clarity as to how compliance will be assessed and include details of the sources of information and key indicators of performance that will be used to assess compliance. Consideration must be given to how the framework aligns with the systems in place for internal self-review and continuous improvement.</p> <hr/> <p>The framework must be developed in consultation with the chief executive and any approved organisation under section 396 having the custody of children and young people under the Act.</p> <hr/> <p>The assessment framework may identify particular priorities based on areas of focus for performance improvement such as by regulation subject, locality or by reference to particular groups of children and young people.</p>
Sources of information	<p>Multiple sources of information must be used to assess compliance. It must include information obtained directly from children and young people in care about their experience of care in areas covered by the regulations. It may also include, but is not limited to:</p> <ul style="list-style-type: none"> • reviews of the provider’s policies, documents, reports and service feedback • site assessments • feedback, interviews and participation from children, young people, their families and whānau, staff and caregivers • stakeholder feedback, including from advocacy services • the provider’s self-assessment • data collected by the provider or through other mechanisms • information from complaints and reviews.
Assessment and subsequent reporting	<p>The manner of assessment and subsequent reporting must:</p> <ul style="list-style-type: none"> • support the achievement of the purposes of the Oranga Tamariki Act 1989 with particular regard to sections 4(1)(a)(ii) and (e),³⁶ and must include analysis of the nature and degree of compliance found and its associated impacts on the fulfilment of those purposes. • contribute to the overall knowledge base with respect to the performance of the care system and have regard to the measures and indicators of performance developed by the Ministry or other children’s agencies to assess the performance of the care system.

³⁶ Section 4 sets out the purposes of the Act. Section 4(1)(a)(ii) refers to establishing, promoting or co-ordinating services that advance positive long-term health, educational, social, economic, or other outcomes for children and young person. Section 4(1)(e) refers to ensuring that, where children and young persons require care under the Act they have a safe, stable and loving home from the earliest opportunity and have support to address their needs.

Component	The action or step I recommend be included in the regulations
	<ul style="list-style-type: none"> support the Ministry and other approved organisations under section 396 having custody of children and young people under the Act to work towards continuous service improvement, both through identification and follow up in areas where there are compliance concerns but also where there are opportunities for further improvement beyond minimum compliance.
Requests for information	The chief executive and approved organisations under section 396 of the Act with custody must provide any information requested by the monitoring agency that is reasonably required for the purposes of assessing compliance.
Reporting requirements	<p>The independent monitor must report every three years to the Minister on compliance with the regulations in order to provide an overall assessment of the state of the care system.</p> <hr/> <p>This report must also include:</p> <ul style="list-style-type: none"> numbers of children and young people in care and the length of time spent in care a profile of the characteristics of children and young people in care, including ethnicity, age, disability and health needs information on the number of placement changes experienced by children and young people in care complaints and incidents of abuse and neglect in care and procedures followed in resolving these matters, including information provided by the chief executive on reports of abuse or neglect and how those cases were handled, and those escalated to any independent review mechanism identification of areas of good practice as well as areas recommended as a focus for improvement the particular situation for Māori children and young people in terms of the levels of compliance with the regulations an assessment of the state of the systems in place for self-monitoring and continuous improvement operated by chief executive and other organisations with the custody of children and young people.
Supplementary reports	Aside from the required three yearly report, the independent monitor may provide the Minister with supplementary reports at its own initiative or at the Minister's request. Unlike the three yearly report which must contain a comprehensive assessment of the state of care, these reports may focus on specific areas of interest.
Reports of non-compliance	The independent monitor must report any issue of non-compliance that places a child or young person at immediate risk as a matter of urgency to the organisation having care. That organisation would then be required to report to the Minister on the outcome as soon as practicable thereafter.

Internal monitoring and reporting requirements

Component	The action or step I recommend be included in the regulations
Monitoring compliance	<p>The chief executive and other approved organisations under section 396 of the Act with the custody of children and young people must:</p> <ul style="list-style-type: none">• self-monitor compliance. The system for self-monitoring must be designed to ensure the collection of information which will support the independent monitor to fulfil its monitoring role• have systems in place for continuous improvement. The continuous improvement system must identify and address areas of practice requiring improvement.
Reporting requirements	<p>The chief executive and other approved organisations under section 396 of the Act with the custody of children and young people must report:</p> <ul style="list-style-type: none">• to the Minister and independent monitor every three years, following the independent monitor's report to the Minister, on the findings of their self-monitoring, including response to findings of areas of non-compliance and on the identification of and progress in advancing areas for service improvement, and a plan setting out the actions to be taken• from time to time as requested by the Minister.