

Chair
Cabinet

VULNERABLE CHILDREN'S BILL: SPECIFIC CARE AND PROTECTION LEGISLATION CHANGES

Proposal

- 1 In September 2012, Cabinet agreed that the White Paper for Vulnerable Children (the White paper) signalled the Government's intention to introduce a Vulnerable Children's Bill to provide for a number of legislative changes to reduce the extent of child abuse and neglect in New Zealand [CAB Min (12) 34/9 refers]. The proposals for inclusion in a Vulnerable Children's Bill are covered in two Cabinet papers:
 - Specific care and protection legislation changes
 - Revised Proposal for Child Harm Prevention Orders.
- 2 Further work is being undertaken on a Cabinet paper to be considered by Cabinet Social Policy Committee (SOC) on 8 May 2013, on safeguarding the children's workforce through mandatory safety checks.
- 3 Further work is also being completed on an additional Cabinet paper to be submitted for SOC on 15 May on governance and safeguarding children's welfare and interests. Any other legislative proposals required for the Vulnerable Children's Bill will also be submitted at this time.
- 4 In this paper I am seeking approval for legislative changes to the Children, Young Persons, and Their Families Act 1989 (CYPF Act), to help improve child protection services and ensure that our most vulnerable children gain the dedicated and specialist support needed to recover and get the best from life.
- 5 I am proposing an approach to information sharing using existing legal frameworks (including Approved Information Sharing Agreements) to support joint working for Children's Teams.
- 6 Proposals for ensuring the safety of subsequent children of an adult who has had a previous child permanently removed or die in their care because of abuse, neglect or serious negligence, are still being considered. These proposals may be submitted for Cabinet consideration in May.

Executive summary

- 7 We released the White Paper for Vulnerable Children in October 2012. The White Paper set a clear action plan to improve outcomes for vulnerable children.
- 8 Volume II of the White Paper reiterates the importance that Government places on having a high-performing child protection service in Child, Youth and Family. Children in care and children requiring other statutory care and protection interventions are noted as priority

groups, as is the need for legislative work to better support this vulnerable group of children and ensure they are at the heart of decision-making.¹

- 9 Children come into care for a variety of reasons and in different ways, so we need to be able to provide care options for the child to best suit their situation, and provide their caregivers with the support needed so they can provide high quality care. We also need to ensure that children who leave care, from the age of 17 to 20 years, are given the support needed to successful transition to living independently and being able to fully participate in life.
- 10 One of the key initiatives under the White Paper is the new Strategy for Children in Care (the Strategy). This Strategy aims to ensure that children in need of care and protection get the services they require from across government, including Child, Youth and Family and the health, education and justice sectors. We need to make sure that we have the legislation in place to give effect to this Strategy.
- 11 I propose to amend the CYPF Act to support the Strategy and better outcomes for children.

Amending the Children, Young Persons, and Their Families Act

- 12 I propose that the following amendments to the CYPF Act are needed to support initiatives under the White Paper:
 - clarify the intended prominence of principle 13(a) that children and young persons must be protected from harm, their rights upheld, and their welfare promoted
 - strengthen the provisions applying to FGC and court plans to drive improved Child, Youth and Family practice by ensuring these plans include clear parental² obligations and consequences, and definite timeframes on decision-making around a child's future
 - include new guardianship provisions to provide increased security for children who leave out-of-home care to live permanently with Home for Life caregivers.
- 13 I also want to take this opportunity to propose several additional legislative changes that will support the Strategy and ensure the Child, Youth and Family response to vulnerable children is appropriate. Some of these proposals were included in the now discharged Children, Young Persons, and Their Families Amendment Bill No 6 (No 6 Bill) but were not seen as urgent in light of other government priorities.
- 14 The following two proposals are required to ensure successful implementation of the Strategy:
 - providing better support for young people, age 17 years to 20 years, leaving state care to live independently (from the No 6 Bill)
 - allowing the appointment of external FGC co-ordinators (new proposal).
- 15 The Vulnerable Children's Bill also provides an opportunity to amend the CYPF Act to support better outcomes for children and contribute to the proposals that strengthen the FGC process. The following proposals were part of the No 6 Bill:
 - ensuring that reasonable steps are taken by a care and protection co-ordinator to make health and education information about a child available to care and protection FGCs
 - clarifying who is entitled to attend a reconvened care and protection FGC
 - extending the situations in which a care and protection FGC must be reconvened

¹ For the purposes of this paper the use of the term "children" or "child" also includes young people if not otherwise state.

² "Parental" refers to a parent, guardian or other person having the care of the child.

- changing provisions relating to disabled children and their families to ensure proper consideration has been given to supporting the child in the home environment before considering out-of-home care arrangements.

Safety of subsequent children

- 16 Proposals for ensuring the safety of subsequent children of an adult who has had a previous child permanently removed or die in their care because of abuse, neglect or serious negligence, are still being considered. These proposals are likely to be submitted for Cabinet consideration in May.

Information-sharing provisions to support joint working for Children's Teams

- 17 Three options were identified for implementing the information-sharing requirements of the Children's Action Plan (the Action Plan), including those components relating to Predictive Risk Modelling. The VCB preferred the first option to use existing legal frameworks to support joint working for the Children's Teams. This was because it uses current legislative settings, including the recent amendments made to the Privacy Act 1993, through the Privacy (Information Sharing) Bill, thus avoiding the need for additional legislation.

Background

- 18 On 24 September 2012, Cabinet agreed that the White Paper signalled the Government's intention to introduce a Vulnerable Children's Bill to amend the CYPF Act and other relevant legislation. Cabinet directed the Vulnerable Children's Board to report to the Ministerial Oversight Group by March 2013 on final policy proposals for inclusion in the Vulnerable Children's Bill, including:
- strengthening parental obligations in relation to the family group conference and court process
 - new guardianship orders for Home for Life caregivers to increase the stability and security of a child's placement enabling the Family Court to direct which guardianship powers reside exclusively with the caregivers, and which are shared with the child's natural parents or other guardians.
- 19 In addition, Cabinet agreed to the development and implementation of a new, multi-agency Strategy to ensure that children and young people in State care get the services and support that they need from across government sectors. Agreed key elements of this Strategy include:
- a care and protection system that is uncompromisingly child-centred
 - clear outcomes and targets to be achieved for children needing State care and protection
 - stronger multi-agency governance arrangements and accountabilities for outcomes for children in State care
 - stronger assessments, integrated care planning, and monitoring and review of integrated care plans for children and young people in care
 - a reinvigorated FGC process, with stronger engagement of health, education, iwi, non-government organisations, and others in the process
 - better support for caregivers, with higher quality assessments, approval, and support for caregivers, including iwi caregivers

- improved transitions for young people moving to independence [CAB Min (12) 34/9 refers].
- 20 The White Paper also signals the need to look at whether the existing principles of the CYPF Act need rebalancing to ensure the welfare of the child is always the overriding consideration. The now discharged No 6 Bill had proposed changes to the CYPF Act to ensure the wellbeing of our most vulnerable children and young people. Some of the proposed changes align with the objectives of the White Paper.
- 21 Behind the White Paper sits the Action Plan which lets New Zealanders know what action is being taken to protect children and when each milestone will be achieved. Cabinet has agreed that initiatives in the Action Plan are supported by information-sharing provisions across agencies to enable the:
- identification of children at risk of abuse or neglect
 - care and protection of children who have been abused or neglected
 - referral and assessment of vulnerable children
 - on-going tracking and monitoring of outcomes for vulnerable children
 - tracking of high-risk adults [CAB Min (12) 34/9 refers].
- 22 Cabinet noted that provisions relating to information-sharing may need to be included in the Vulnerable Children's Bill [CAB Min (12) 34/9 refers].

Proposals for amending the Children, Young Persons, and Their Families Act

- 23 One of the most significant proposals is to amend the Care and Protection principles to clarify the intended prominence of principle 13(a) that children and young persons must be protected from harm, their rights upheld, and their welfare promoted. I am not proposing to fundamentally change the principles under the CYPF Act, but to amend them to ensure that the Act better reflects the importance of this principle when practitioners determine the best interests of a child.
- 24 Other key proposals are:
- strengthening parental obligations and timeframes in relation to care and protection FGC and court processes
 - legal provision to ensure quality, stable and timely permanency outcomes.

Reviewing the principles of the CYPF Act

- 25 The CYPF Act has been in operation for over 23 years and its principles have been recognised by practitioners and academics working in the child protection area as a sound basis to support good social work practice. The courts have seen the CYPF Act as a reflection of the provisions of the United Nations Convention on the Rights of the Child (UNCROC) and, in particular, the Court of Appeal has held that the Act is consistent with international norms and reflects the way in which the New Zealand Parliament has given effect to UNCROC.
- 26 As stated in the White Paper, clarity of the legislation is particularly critical for those working with high-risk situations and facing difficult decisions about abuse and neglect. As such, I asked officials to review the objects and principles of the CYPF Act to see if they can be clarified to better protect our vulnerable children.

Principles of the CYPF Act

- 27 Section 5 of the Act contains the principles applicable to the exercise of powers under the Act as a whole – they apply to care and protection and youth justice. Sections 6 and 13 apply only to care and protection provisions.
- 28 Section 5 contains the principle that wherever possible, the relationship between a child and young person and their family, whānau, hapū, or iwi should be maintained and strengthened. It does not specifically address the need to protect children and young people from harm.
- 29 Section 6 provides that the welfare and interests of the child are the first and paramount consideration in the exercise of care and protection powers. Section 13 contains additional principles applicable to care and protection matters. Section 13(a) provides that principle:
- “that children and young persons must be protected from harm, their rights upheld, and their welfare promoted”*
- 30 Subsequent principles in section 13 relate mainly to the considerations relevant to supporting a child or young person within their family/whānau wherever possible, and the appropriate care options if a child or young person needs to be removed from the home.

The case for change

- 31 The focus on the place of a child within the family/whānau is one of the central tenets of the CYPF Act. Recently, however, questions have been raised as to whether the focus on family/whānau has been to the detriment of the child’s overall best interests.
- 32 Mel Smith, in his 2010 report into the serious abuse of a nine year-old girl, raised the issue of whether the objects and principles contained a conflict leading to a loss of focus on the interests of the child as paramount, and the appearance that the wishes of the parent(s) and/or whānau prevailed over the best interests of the child. He said:
- “As a general rule, it was postulated to me that the provisions in sections 5 and 13 have become dominant in the minds and in the practice of social workers, and others involved in the process, to the possible detriment of the safety, welfare and interests of the child.”*
- 33 Mel Smith noted a lack of research and evaluation of current law and policies in relation to kinship care in New Zealand to indicate whether the current law and practices are meeting children’s needs, welfare and safety. Research into the outcomes for children, considering the safety and stability of children transitioning out of care in New Zealand, is currently being undertaken and will be available in late 2013.³
- 34 A close examination of the CYPF Act reveals an issue with how sections 5 and 13 are drafted. Although the principles in sections 5 and 13 are all relevant to the determination of what is in a child or young person’s welfare and interests, section 5 appears to take precedence over section 13.
- 35 There are also clarity concerns for practitioners. The paramountcy principle does not appear as the first principle, and the reader has to refer to three different and non-sequential sections to determine the principles relevant to a care and protection decision. This does not assist with easy interpretation of the Act.

³ In the United Kingdom, recent research has indicated that around half of children who enter care as a result of abuse and neglect suffer further abuse if returned home, and between a third to a half of children who return home re-enter care or are accommodated again.

- 36 In light of these issues and Child, Youth and Family consideration, officials recommend that appropriate changes be made to ensure that the principles are as child-centred and as clear as possible for practitioners who are required to balance competing considerations, whilst ensuring that all decisions are in the best interests of the particular child concerned.
- 37 While it is unclear whether the principles have caused practice issues, amending how they are expressed provides an opportunity to drive appropriate child-centred practice that ensures:
- that the safety of a child or young person is of primary importance in determining what is in their best interests, but is not elevated to being the sole focus of interventions and resources
 - that practitioners remain child-focussed at all times and ensure that children and young people subject to interventions under the CYPF Act have their full range of needs considered.

Proposals

- 38 I propose to amend the CYPF Act to clarify the intended prominence of the principle currently contained in section 13(a) and to better reflect the importance of this consideration when determining the child's interests. This will ensure that the need to protect children from harm is given at least equal weighting to maintaining and strengthening the relationship between a child or young person and his or her family, whānau, hapū, iwi and family group whenever possible.
- 39 I also propose that the redrafting consider any further restructuring of sections 5, 6 and 13 that could better emphasise the need for the child's welfare to always be paramount. In addition I propose to amend the existing principles to include what is in the child's best interests, specifically considering such factors as the child's age, identity, cultural connections, education and health needs.
- 40 These changes will ensure that the child's full range of wellbeing needs is considered when determining their best interests. In doing so it would draw on the approach taken in the United Kingdom, where the Children's Act 1989 sets out the first principle of the child's best interests guiding all decisions.

The objects of the CYPF Act

- 41 As set out in the White Paper, officials have also considered whether the objects of the CYPF Act need amending to appropriately emphasise the key role of the CYPF Act in preventing children from suffering abuse and neglect. Officials concluded that it was not necessary to amend the objects and that making the suggested changes to the way the principles of the CYPF Act are expressed is sufficient to address concern regarding any insufficiently child-centred and safety-focussed approach by practitioners.
- 42 Consideration of the need to amend the CYPF Act's objects, with regard to the role of other agencies in meeting the needs of children and young people subject to this Act, is dealt in the companion paper: Safeguarding children and legislating responsibilities.

Strengthening parental obligations and timeframes in relation to care and protection FGC and court processes

- 43 Strengthening the provisions applying to FGC and court plans will drive improved Child, Youth and Family practice by ensuring these plans include clear parental obligations and consequences, and definite timeframes on decision-making around a child's future. Strengthening FGC planning will also strengthen the involvement of family/whānau and ensure that agencies are engaged in reviewing plans for children and young people. This supports the Strategy for Children in Care.

Family Group Conference plans

- 44 The FGC is a key part of successful planning for a child as it brings family/whānau and agencies together to form strategies that address the care and protection concerns of the child or young person. The FGC plan provides the basis for a court plan, or may be adopted by the court as a court plan, when court action is required following a FGC. There is currently no legal requirement, however, for a FGC to formulate a plan, or any specification in the CYPF Act as to what a plan must contain.
- 45 The following issues have arisen regarding FGCs:
- practice can be variable in relation to recording parental objectives and responsibilities in plans
 - there is the potential that parents can lack clarity about the changes they must make in order to meet a child's care and protection needs, or the timeframes within which these changes need to be made.

Proposals to strengthen FGC plans

- 46 I propose to strengthen the CYPF Act to require that when a FGC agrees a child or young person is in need of care or protection and formulates a plan, that the plan include:
- the same information as court plans (including the additions proposed to court plans below)
 - a date to reconvene to review its decisions.
- 47 The above changes would ensure that FGC plans are child-centred, sufficiently detailed to clarify expectations, responsibilities and decision-making, provide effective oversight, and are consistent with other plans for the child.
- 48 I propose that where there is no court plan, review timeframes should be consistent with legislative requirements on review of court plans and not exceed six months for a child under seven years and not exceed 12 months for a child seven years or over.
- 49 Child, Youth and Family advise that an additional 5,000 FGCs are likely to be needed as a result of increasing the FGC review requirements. The cost of holding FGCs is also likely to increase if more consideration is given to the preferences of family/whānau.

Court plans

- 50 Before the Court can make certain orders⁴ for a child in need of care or protection, a plan must be obtained. Section 130 of the CYPF Act requires court plans to specify timeframes within which objectives for the child or young person should be achieved, but it does not explicitly require the plan to state the timeframes within which parents and guardians should meet their responsibilities.
- 51 A crucial question relevant to children in out-of-home care is how long a goal of returning a child home should be pursued before a permanent, alternative care arrangement is sought. For example, how long parents should have to make the identified changes and how long children should need to remain in temporary care placements.
- 52 Current Child, Youth and Family policy requires a decision on returning home to be in place within a certain time after a child has come into care. The timeframes are six months for children under five years, and 12 months for children five years and over. Similar timeframes have been recommended and/or implemented in Australian jurisdictions, the United Kingdom and in many of the states within the United States of America.

Proposals to strengthen court plans

- 53 I propose that court plans for children in out-of-home care:
- be required to specify the timeframes for any behavioural changes to be made by any parent or guardian or other person having the care of the child
 - include an analysis of the possibility of the child returning home within a timeframe consistent with the child's need for a stable permanent living arrangement. This information is to be included in the report accompanying the court plan.
- 54 If the analysis indicates a realistic possibility that the child will be returning home, I propose that the court plan also include:
- the steps that parent(s) need to take before the child can return home safely
 - a determination of the period for which returning home will be pursued before a permanent out-of-home placement is sought.
- 55 If the analysis indicates that it is unlikely that the child will be returning home, then I propose that the report identifies the child's long-term needs, including their need for a permanent and stable placement, and options for how the child's needs will be met. These elements will be reflected in the accompanying court plan.
- 56 The aims of making this analysis a requirement of the report and the court plan process include:
- supporting Child, Youth and Family practice improvements in relation to children in state care, including returning children home
 - ensuring return home decisions are only made following a thorough investigation of the situation, alternative options, and whether the parents have made the necessary changes

⁴ Orders include: a services order under section 86; a support order under section 91 in respect of any child or young person; an order (other than an interim order) under section 101 placing any child or young person in the custody of any person; an order under section 110 appointing any person as the sole guardian of a child or young person.

- ensuring that the child's long-term needs are planned for if there is no possibility of the child returning home.

- 57 In addition, I propose that a FGC will be held to review a court plan⁵ before the court considers the reviewed plan. This will ensure there is a clear process involving significant family/whānau in regularly monitoring the child's situation and assessing whether the goals for the child are being achieved.
- 58 I do not recommend that legislation include specific maximum timeframes for making a decision on the child's permanent care. There is a risk that specific timeframes could drive undesirable social work practice, by potentially rushing decisions about a child's future when more time may be needed.

Legal provisions to ensure quality, stable and timely permanency outcomes

- 59 The White Paper states that Government will explore the introduction of a new guardianship order to address the specific needs of children and their caregivers for on-going security of care, and security of future support if needed. Proposals outlined in this section to support children in permanent placement are the outcome of this investigation.

Current provisions for permanency outcomes

- 60 When children are placed permanently with their caregiver, that placement is generally secured by parenting and guardianship orders under the Care of Children Act 2004 (CoCA). Guardianship rights and responsibilities include determining important matters such as changes to the child's place of residence (including travel) that will impact on the child's relationship with their parent or guardian, name, non-routine medical treatment, education, culture, language, and religion.
- 61 Guardianship orders encourage co-operative parenting. When new guardians are appointed, they share guardianship with the child's existing guardians. Guardians are required to consult on guardianship-related decisions, including some relatively minor matters such as taking a child for a short holiday to another country. Disputes between guardians may be resolved by an application to the Family Court.
- 62 Services orders under the CYPF Act are sometimes used in conjunction with CoCA parenting and guardianship orders to ensure the ongoing provision of financial support from Child, Youth and Family for children permanently placed in a caregiver's care.
- 63 It is proposed later in this paper that the legislation set out an obligation on the Chief Executive of the Ministry of Social Development to consider the provision of support, in certain circumstances, when a new guardianship order is in place. This should lessen the need for services orders (see paragraph 76).

Rationale for introducing new guardianship options

- 64 In many cases the legal situation of shared guardianship is not reflected in practice. The parent(s), for example, may play little or no ongoing role in the life of the child. Parenting and guardianship orders under CoCA are not always flexible or secure enough to address the long-term needs of children moving into permanent care away from their parents.⁶

⁵ This should not apply to the review of plans for services or additional guardianship orders.

⁶ Smith, S: *Protection and Identity: Finding the right balance to belong*. New Zealand Family Law Journal, March 2012.

- 65 The need for new guardianship provisions was identified during the Family Court Review. Officials agreed that the best place to address this issue was through the White Paper reforms.
- 66 The Family Court Proceedings Reform Bill, as currently drafted, will go some way to improve this situation as it proposes a change to CoCA and the CYPF Act so that leave of the Court is required to bring an application challenging a parenting or guardianship order within two years of a court decision. Leave may only be given if there has been a material change in the child's circumstances. This Bill will also amend the CYPF Act so that the Court can dismiss proceedings that are contrary to the child's welfare and best interests, or are vexatious.
- 67 A parent's guardianship rights can be permanently removed by court order under CoCA. However, the threshold for removing a guardian is high and needs to be met in respect of each parent as guardian.

Approach in other jurisdictions

- 68 Adoption orders are commonly used in the United Kingdom, the United States of America, Canada, and Australia to secure permanency. New Zealand seldom uses adoption orders to secure permanency as it severs the legal relationship between child, birth parent(s) and birth families. Neither adoption nor guardianship orders under CoCA, however, are sufficiently flexible to be able to always meet the needs of children when securing permanency.
- 69 The United Kingdom has introduced Special Guardianship Orders to provide an alternative legal status for children. The orders offer greater security than long-term fostering, but without the absolute legal severance from the birth family that results from an adoption order. Many of the states in the United States and some Australian and Canadian states have introduced similar provisions.
- 70 The intention of these orders is that the guardian will have clear responsibility for all the day-to-day decisions about caring for the child and their upbringing. The order retains the basic legal link with the parents (that is, the parents remain the child's legal parents) but their ability to exercise parental and guardianship responsibilities is limited.

Proposal to introduce new guardianship provisions in the CYPF Act

- 71 I propose that a new type of guardianship order be available in the CYPF Act for caregivers of children who:
- have been the subject of a declaration that they are in need of care and protection, are in the custody and/or guardianship of the Chief Executive, a Child and Family Support Service or an Iwi Social Service, and are to live permanently with a new family (Home for Life), or
 - are the subject of a FGC plan that agrees they cannot return home and will live permanently with a new family, and of a declaration by the Court that they are in need of care and protection.
- 72 New guardianship orders will allow guardianship rights to be limited to the extent necessary to achieve stability and security of care for the child. Parent(s) will be expected to seek legal advice if an application is made for a new guardianship order with regard to their child.

- 73 The requirement in the CYPF Act that a declaration that the child is in need of care and protection is required before the Court can make orders, would also apply to new guardianship provisions. This means it will not be available in private family law disputes or where families have made private arrangements for a child to live away from a parent.
- 74 I propose that the new guardianship order be able to specify which guardianship rights will be shared with existing guardians, and which will be held only by the new guardians. In instances where it is appropriate for parent(s)' guardianship responsibilities to be limited, this would not prohibit appropriate contact orders being made, or the ability of the child to maintain relationships with other family members. Parents would retain their right to be informed of important decisions relating to their child, such as a significant medical condition, change of school, or change of residence.
- 75 The new provisions would acknowledge that when a child has been in need of care or protection and is unable to return home, the parents' relationship with their child will be different from that of parents whose child lives at home or is expected to return home. As stated earlier, in some cases parents may have little involvement with the child or in key decisions affecting the child's life. The ongoing role played by the parent(s) should be based on what is best for the child and not on the rights and responsibilities that parent(s) may want to retain.
- 76 I propose that new guardianship provisions:
- include a statement that the purpose of the order is to provide the child with a safe, nurturing, stable, and secure environment that enhances their best interests
 - provide the new caregivers with day-to-day care of the child
 - limit the circumstances in which guardianship under the new order can be challenged
 - state clearly the obligations on guardians to inform parent(s) and other guardians of major decisions where parents do not have guardianship right and responsibilities
 - not require review
 - include a requirement to notify the agency that previously held custody if the placement is in difficulty or breaks down
 - cease once the child turns 18 years of age.
- 77 I propose that amendments to the legislation would include an obligation for the Chief Executive of the Ministry of Social Development to consider the need for, and where necessary to ensure, the provision of ongoing or one-off support, including financial support, when a new guardianship order is in place, that:
- cannot be met by existing sources of government support, and
 - is over and above what it is reasonable to expect the caregiver to fund, and
 - arise as a result of the child's care and protection needs, or as a result of extraordinary health or developmental needs.
- 78 This provision relating to financial support will also be available to caregivers seeking guardianship under CoCA as part of the Home for Life programme, as it is recognised that some caregivers may still prefer this option. It is intended that this provision will replace the need for caregivers to seek services orders by assuring them of ongoing support from Child, Youth and Family once they take guardianship and custody of the child.

- 79 I propose that the court would be required to consider the report of a social worker before making one of the new guardianship orders. This report would be required to provide an analysis of the child's needs, both now and ongoing, and include the child's views.
- 80 The report would also include if and why the orders are recommended, which guardianship decisions should remain joint decisions with the parent, whether any guardianship should reside solely with the caregiver and the reasons for this.⁷
- 81 To ensure the stability of orders, I propose that the leave of the Court be required before an application to review a new guardianship order can be lodged. This could only be considered where there has been a significant change in the child's circumstances or by agreement between the applicants and any guardians of the child.
- 82 It is most appropriate to insert these provisions in the CYPF Act instead of CoCA because they relate to children who have been found to be in need of care or protection (that is, under section 14 of the CYPF Act) rather than children who are the subject of proceedings to decide parenting arrangements following their parents' separation.

Additional key changes through the Vulnerable Children's Bill

- 83 I want to take this opportunity to propose additional key changes to care and protection legislation to support the Strategy. Better support for young people transitioning to independent living was included in the now discharged No 6 Bill. The No 6 Bill was introduced by the previous administration and had been reported back to the House following the Select Committee process. Many of the Youth Justice proposals in the No 6 Bill were introduced as part of Fresh Start. Other proposals were not seen as urgent in light of other government priorities.
- 84 The following two proposals are required to ensure the successful implementation of the Strategy:
- providing better support for young people, age 17 years to 20 years, leaving state care to live independently (from the No 6 Bill)
 - allowing the appointment of external FGC co-ordinators (new proposal).

Better support for young people transitioning to independent living

- 85 The No 6 Bill proposed changes to support young people transitioning out of care to independent living.⁸ There is currently no legal obligation under the CYPF Act towards young people once they leave the custody of the Chief Executive, or an approved organisation, at the age of 17 unless a guardianship order remains in place.⁹
- 86 Many young people who have been in long-term care move into adult life without adequate preparation or support. A key aspect of the Strategy for Children in Care is ensuring that when children and young people transition out of care, this is well planned and supported.

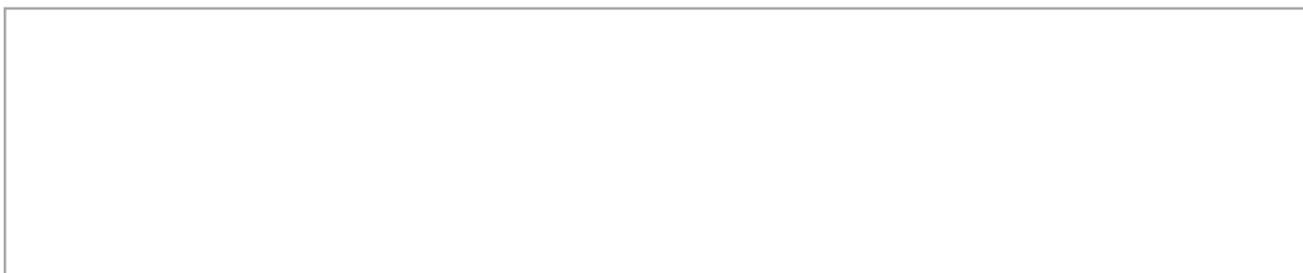
⁷ Although a new guardianship provision will be very important for some children and their caregivers, it may not be the preferred option for the caregivers of all children achieving permanency. Parenting and guardianship orders under CoCA will continue to be an option, as will adoption for some specific circumstances. Which orders are applied for should be a decision made by the caregivers after consulting their legal advisor, and should support their commitment to provide a stable, secure and loving home to meet the child's best interests.

⁸ These are young people who are unable to return home or remain with caregivers.

⁹ Some young people in this target group will be enrolled in the Work and Income Youth Service which targets 16-17 year olds and 16-18 year old parents who are receiving financial assistance from the Government, and at risk 16-17 year olds who have disengaged from education, employment or training.

87 I propose that the CYPF Act is amended to include the following provisions from the No 6 Bill that will better support young people transitioning to independent living:

- a new requirement for the Chief Executive of the Ministry of Social Development or an approved organisation to consider the need for, and where necessary to ensure, the provision of ongoing or one-off support, including financial support, when young people are transitioning to independent living
- extend these provisions to young people up to the age of 20 years
- enable the use of extended care agreements to support the transition of young people, aged 15 to 17 years, to independent living.¹⁰



89 This proposal will build on and enhance the services already available through the Youth Service and will extend the obligation that already exists under the Social Security Act 1964 for this Service.

90 It will provide better support for approximately 400 care leavers per year once the service is fully implemented. This will be part of the ongoing costs of implementing the Strategy for Children in Care for which funding is yet to be decided.

Appointment of external FGC co-ordinators

91 I propose that the Chief Executive of the Ministry of Social Development is enabled to appoint co-ordinators for Care and Protection and Youth Justice FGCs, who are not subject to the State Sector Act 1988. It is envisaged that the appointment of co-ordinators external to the Ministry of Social Development would be incremental, with schemes being piloted first to evaluate their potential.

92 External appointment of FGC co-ordinators would offer greater flexibility in working with family/whānau, and give communities a greater degree of participation and accountability for the process. External FGC co-ordinators who are iwi representatives, for example, may better support FGCs to be more culturally responsive. Child, Youth and Family is working with iwi to develop a model for this to occur.

93 There are, however, risks involved, particularly how to maintain an appropriate degree of oversight of external co-ordinators. Child, Youth and Family proposes to manage this through contractual terms and monitoring, offering appropriate training and support to external appointments, and by clarifying expectations on the Chief Executive to fund FGC decisions.

¹⁰ This will enable agreements to be used as an alternative to court action where parents are in agreement with the young person coming into care, and there is no intention for the young person to return home but to transition from care to independent living.

¹¹ These costings assume an average cost of \$3,500 per year, per young person, and that young people will require fewer services as they approach 20 years of age.

- 94 The current threshold for the Chief Executive to refuse to give effect to FGC decisions is very high.¹² Child, Youth and Family presently manages this risk through specific instructions to its co-ordinators. Any services agreed to at a FGC are subject to site manager approval.
- 95 I propose to make a further amendment to the CYPF Act to ensure that the Chief Executive is not required to implement a decision from a FGC which requires the provision of services that are not practicable or reasonable.
- 96 The Chief Executive would still be required to implement decisions that are reasonable, and necessary to meet the needs of the child or young person. This will make sure the FGC's value as a family-led, decision-making body is maintained.

Additional changes to support better outcomes for children

- 97 It is also appropriate to use this opportunity to make additional changes to the CYPF Act that will support better outcomes for children and contribute to the earlier proposals made in this paper to strengthen the FGC process. The following proposals were also included in the now discharged No 6 Bill:
- ensuring that reasonable steps are taken by a care and protection co-ordinator to make health and education information about a child available to care and protection FGCs
 - clarifying who is entitled to attend a reconvened care and protection FGC
 - extending the situations in which a care and protection FGC must be reconvened
 - changing provisions relating to disabled children and their families to ensure proper consideration has been given to supporting the child in the home environment before considering out-of-home care arrangements.
- 98 Other care and protection amendments in the No 6 Bill are either no longer required or are not sufficiently pressing to consider them for inclusion.

Taking reasonable steps to provide health and education information to FGCs

- 99 The No 6 Bill proposed that health and education information about a child or young person be made available to FGCs. An amendment was later made to the youth justice provisions of the CYPF Act through the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill 2010, requiring co-ordinators to take reasonable steps to provide this information.
- 100 I propose that the equivalent change for care and protection FGCs be carried forward in the Vulnerable Children's Bill. This will ensure consistency across the CYPF Act, and directly supports proposals in the White Paper to strengthen assessments, to ensure the full range of needs for a child is considered and addressed. It also complements the Strategy for Children in Care's emphasis on ensuring greater participation of health and education agencies in the FGC process.
- 101 The Ministry of Education has advised that currently there are no regulatory or legal levers that ensure that a school or early childhood service will provide educational information for a FGC. Similarly, the Ministry of Health has advised that the decision to share or disclose personal health information about an individual rests with the health professionals or providers who hold that information, taking into account the obligations under the Health Information Privacy Code 1994.

¹² Under sections 34 (care and protection) and 268 (youth justice) of the CYPF Act.

102 Child, Youth and Family is working with the Ministries of Health and Education to develop processes that will better support the provision of information from schools, early childhood services, and health professionals for FGCs. Officials are also considering costs that may arise to support professionals from these sectors attending a FGC.

Clarification of entitled members able to attend a reconvened FGC

103 The No 6 Bill proposed to clarify which members of a FGC were entitled to attend a reconvened FGC. I propose that the CYPF Act is amended to clarify that an entitled person who is unable to attend a FGC is still entitled to attend when that conference is reconvened or meets again.

104 This is to ensure that every opportunity is available for the right people to be involved at every stage. It will also link to proposals to strengthen the process for reviewing plans, as a reconvened FGC will be used to consider the issues involved.

Extending the situations in which a FGC must be reconvened

105 Currently the CYPF Act provides that a co-ordinator may reconvene a FGC at their initiative or at the request of at least two members of the conference. This leaves the decision whether to reconvene at the discretion of the co-ordinator. A co-ordinator may decide not to reconvene the FGC even if two members of the FGC request it or if the FGC plan breaks down and a new plan is required.

106 I propose the CYPF Act be amended to require that, in addition to the existing provisions, the FGC co-ordinator be required to reconvene a FGC at the request of a social worker or agency where there has been a change in the circumstances requiring reconsideration of the plan for a child.

107 Discretion to reconvene a FGC in other circumstances would remain in place. This proposed legislative change will support other legislative and practice changes relying on the reconvening of FGCs.

Support for disabled children and their families

108 Although the focus of the White Paper was not on children with disabilities, the White Paper noted that work between the Ministries of Health and Social Development would continue as a parallel and complementary workstream. Disabled children who require attention under the CYPF Act will come within the definition of vulnerable children in the White Paper.

109 A number of changes proposed in the No 6 Bill were aimed at improving and clarifying the provisions in the CYPF Act relating to disabled children and their families/whānau. The changes proposed aimed to ensure proper consideration has been given to supporting the child in the home before considering out-of-home arrangements.

110 The changes proposed were to:

- include an assessment that access to family supports, funded by the Ministry of Health or provided by other disability services, has been properly explored prior to a referral for an out-of-home care agreement under the CYPF Act
- give due consideration to whether a care agreement is the most appropriate care option within the objects and principles of the CYPF Act (when such a request is made)

- halve the maximum length of the extended care agreement for disabled children including extension agreements, from up to two years to up to one year
- ensure that a FGC must, rather than may, be held to consider whether a care agreement is entered into, extended or terminated early.

111 I recommended the above proposals from the No 6 Bill be included in the Vulnerable Children's Bill. The changes would ensure that the legislation assists in ensuring children and families/whānau are supported to have disabled children remain at home, as a first option, before out-of-home care is considered. By halving the maximum length of an agreement for out-of-home care from two years to one, a more frequent review of the child's needs and the appropriateness of out-of-home care will be ensured.

Safety of subsequent children

112 Proposals for ensuring the safety of subsequent children of an adult who has had a previous child permanently removed or die in their care because of abuse, neglect or serious negligence, are still being considered. These proposals are likely to be submitted for Cabinet consideration in May.

Proposal for Information-sharing provisions to support joint working for Children's Teams

113 Cabinet has agreed that initiatives in the Action Plan be supported by information-sharing provisions across agencies to enable the:

- identification of children at risk of abuse or neglect
- care and protection of children who have been abused or neglected
- referral and assessment of vulnerable children
- on-going tracking and monitoring of outcomes for vulnerable children
- tracking of high-risk adults [CAB Min (12) 34/9 refers].

114 Three options were identified for implementing the information-sharing requirements of the Action Plan, including those components relating to Predictive Risk Modelling:

- Information-sharing option one: Use existing legal frameworks, including Approved Information Sharing Agreements (AISA), for Children's Teams, and make no changes to current legislative frameworks for statutory services
- Information-sharing option two: Use existing legal frameworks, including AISA, for Children's Teams, and make changes to current legislative frameworks for statutory services
- Information-sharing option three: Include new information-sharing provisions within the CYPF Act for both Children's Teams and statutory services.

115 Option one is preferred because it uses current legislative settings including the recent amendments made to the Privacy Act 1993, thus avoiding the need for additional legislation.

116 Existing legislative provisions will be trialled in the Children's Team demonstration sites and if barriers that restrict the information-sharing required for effective implementation of the Action Plan are identified, further legislative provisions may be required.

117 It is not expected that amendments to primary legislation will be required for the New Zealand Police-led workstream on tracking high risk adults. If legislative changes are required, these will be effected through other legislative processes.

Consultation

118 This paper was prepared by the Ministry of Social Development.

119 The following agencies have been consulted: the Ministries of Justice, Health, Education, and Business, Innovation and Employment, the Police, Te Puni Kōkiri and Treasury. The Department of the Prime Minister and Cabinet was informed.

Publicity

120 Officials will provide my office with advice on a communication strategy to support the introduction of legislation if required.

Human rights implications

121 There are no apparent inconsistencies with the New Zealand Bill of Rights Act 1990 in relation to the proposed amendments.

122 These proposals will help to increase New Zealand's alignment with United Nations Convention on the Rights of the Child (UNCROC). In particular, they will help to progress the following recommendations of the Committee on the Rights of the Child:

- that New Zealand maintains a focus on the child during legal proceedings.

Regulatory impact analysis

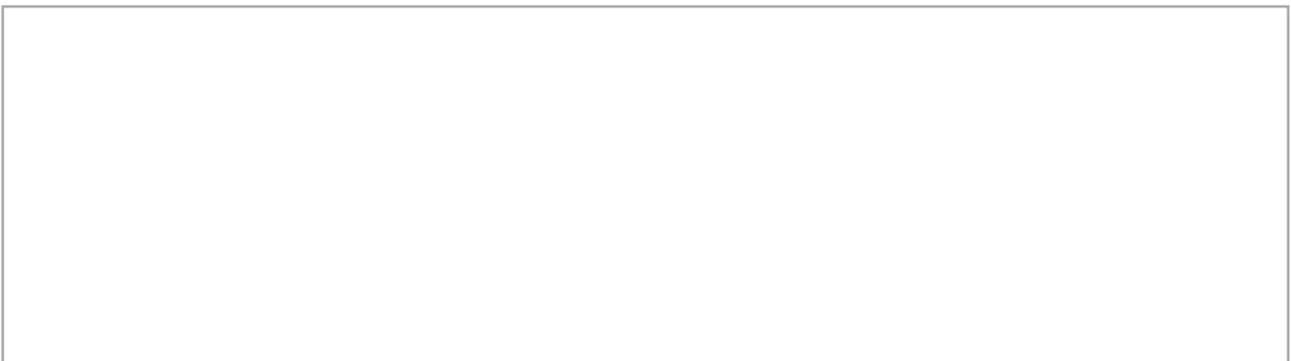
123 A Principal Advisor, not otherwise involved in the preparation of this Regulatory Impact Statement (RIS), has reviewed it and considers that the information and analysis summarised in the RIS prepared by the Ministry of Social Development and associated supporting material, meets the quality assurance criteria.

Gender implications

124 There are no specific gender implications of the proposals in this paper.

Disability perspective

125 Although the focus of the White Paper was not on children with disabilities, disabled children who require attention under the CYPF Act will come within the definition of vulnerable children in the White Paper. A number of proposed amendments specifically support disabled children and their families/whānau.



Recommendations

128 It is recommended that the Committee:

- 1 **note** that Cabinet agreed that the White Paper signalled the Government's intention to introduce a Vulnerable Children's Bill to provide for a number of legislative changes to reduce the extent of child abuse and neglect in New Zealand [CAB Min (12) 34/9 refers]
- 2 **note** that Cabinet agreed to the development and implementation of a new, multi-agency Strategy to ensure that children and young people in State care get the services and support that they need from across government sectors [CAB Min (12) 34/9 refers]
- 3 **note** that the Vulnerable Children's Board has recommended the following proposals to improve child protection services and address some of the key elements of the Strategy for Children in care, ensuring that our most vulnerable children gain the dedicated and specialist support needed to recover and get the best from life
- 4 **note** that Cabinet has agreed that initiatives in the Action Plan will be supported by information-sharing provisions across agencies, and that these provisions may need to be included in the Vulnerable Children's Bill [CAB Min (12) 34/9 refers]

Amendments to the Children, Young Persons, and Their Families Act

Principles of the CYPF Act

- 5 **note** that the care and protection principles of the CYPF Act are contained in three different sections (sections 5,6 and 13) which can impede decision-making in high-risk situations
- 6 **note** that the recommendations below focus on clarifying the principles to better protect our vulnerable children
- 7 **agree** that the CYPF Act be amended to clarify the intended prominence of the principle currently contained in section 13(a), *"that children and young persons must be protected from harm, their rights upheld, and their welfare promoted"*, and better reflect the importance of this consideration when determining the child's interests
- 8 **agree** that any redrafting of the principles of the CYPF Act applicable to Care and Protection (sections 5,6 and 13) serve to emphasise the need for the child's welfare and interests to always be paramount, with the principles in section 5 and 13 being required considerations in that assessment
- 9 **agree** to add to the existing principles relevant to the determination of what is in the child's best interests by specifically referencing well-being considerations such as the child's age, identity, cultural connections, education and health needs
- 10 **note** that it is not necessary to amend the objects of the CYPF Act to emphasise the key role of the CYPF Act in preventing children from suffering abuse and neglect

Strengthen Family Group Conference plans

- 11 **agree** that where a care and protection FGC plan is formulated, it include:
 - 11.1 the same information as court plans (including the additions proposed to court plans below)
 - 11.2 a date to reconvene to review its decisions
- 12 **agree** that where there is no court plan, timeframes should be consistent with legislative requirements on review of court plans and not exceed six months for a child under seven years and not exceed 12 months for a child seven years or over

Strengthen court plans

- 13 **agree** that before any court order (other than an interim order) for out-of-home care is made, a social worker's report that includes an analysis that considers the possibility of the child returning home within a timeframe consistent with the child's need for a stable permanent living arrangement, must be obtained
- 14 **agree** that, if the analysis indicates there is a realistic possibility of the child returning home, that the court plan specifies:
 - 14.1 the steps that parent(s) need to take before the child can return home safely
 - 14.2 the timeframes for any behavioural changes to be made by any parent or guardian or other person having the care of the child
 - 14.3 a determination of the period for which returning home will be pursued before a permanent out-of-home placement is sought
- 15 **agree** that if the analysis indicates it is unlikely that the child will be returning home, that the social worker's report covers the child's long-term needs, and options for how they will be met
- 16 **agree** that a FGC will be held to review a Court plan before the court considers the reviewed plan, with the exception of reviews of plans for services or additional guardianship orders

New guardianship provisions

- 17 **agree** that a new type of guardianship order be available for caregivers of children who:
 - 17.1 have been the subject of a declaration that they are in need of care and protection, are in the custody and/or guardianship of the Chief Executive, a Child and Family Support Service or an Iwi Social Service, and are to live permanently with a new family (Home for Life), or
 - 17.2 are the subject of a FGC plan that agrees they cannot return home and will live permanently with a new family, and of a declaration by the court that they are in need of care and protection
- 18 **note** that the requirement in the CYPF Act that a declaration is made by the Court before the Court can make final orders would also apply to new guardianship provisions

- 19 **agree** that the new guardianship order be able to specify which guardianship rights will be shared with existing guardians, and which will be held only by the new guardians
- 20 **agree** that that new guardianship provisions:
- 20.1 include a statement that the purpose of the orders is to provide the child with a safe, nurturing, stable and secure environment that enhances their best interests
 - 20.2 provide the new caregivers with day-to-day care of the child
 - 20.3 state clearly the obligations on guardians to inform parent(s) and other guardians of major decisions where parents do not have guardianship right and responsibilities
 - 20.4 limit the circumstances in which guardianship under the new order can be challenged
 - 20.5 not require review
 - 20.6 include a requirement to notify the agency that previously held custody if the placement is in difficulty or breaks down
 - 20.7 cease once the child turns 18 years of age
- 21 **agree** that, when a guardianship order is in place, the Chief Executive of the Ministry of Social Development will consider the need for, and where necessary to ensure, the provision of ongoing or one-off support, including financial support, that:
- 21.1 cannot be met by existing sources of government support, and
 - 21.2 is over and above what it is reasonable to expect the caregiver to fund, and
 - 21.3 arises as a result of the child's care and protection needs or as a result of extraordinary health, education or developmental needs
- 22 **agree** that the court be required to consider the report of a social worker before making one of the new guardianship orders
- 23 **agree** that the leave of the Court be required before an application to review a new guardianship order can be lodged, and this only be considered where there has been a significant change in the child's circumstances or by agreement between the applicants and any guardians of the child
- 24 **agree** that it is most appropriate to add these provisions to the CYPF Act instead of CoCA because they relate to children who have been found to be in need of care or protection rather than to all children who have some instability of care

Additional key changes through the Vulnerable Children's Bill

Transition to independent living

- 25 **agree** that provision is made:
- 25.1 for the Chief Executive of the Ministry of Social Development or an approved organisation to consider the need for, and where necessary to ensure, the provision

of ongoing or one-off support, including financial support, when young people are transitioning to independent living

25.2 for these provisions to be extended to young people up to the age of 20 years

25.3 to enable the use of extended care agreements to support the transition of young people between 15 and 17 years of age to independent living

Appointment of external FGC co-ordinators

26 **agree** that the Chief Executive of the Ministry of Social Development is enabled to appoint FGC co-ordinators who are not subject to the State Sector Act 1988

27 **agree** that the Chief Executive of the Ministry of Social Development is enabled to decline to implement a FGC decision which requires the provision of services that are not practicable or reasonable

Additional changes to support better outcomes for children

Taking reasonable steps to provide health and education information to FGCs

28 **agree** that FGC co-ordinators are to take reasonable steps to ensure health and education information about a child or young person is made available to care and protection FGCs

Clarification of entitled members able to attend a reconvened FGC

29 **agree** to clarify who is entitled to attend a reconvened FGC

Extending the situations in which a Care and Protection FGC must be reconvened

30 **agree** that the FGC co-ordinator is required to reconvene the FGC at the request of a social worker or agency where there has been a change in circumstances requiring reconsideration of the plan for a child

Support for disabled children and their families

31 **agree** that proper consideration is given to supporting a disabled child in the home before considering an out-of-home care arrangement by:

31.1 including an assessment that access to family supports funded by the Ministry of Health or provided by other disability services have been properly explored prior to a referral for an out-of-home care agreement under the CYPF Act

31.2 giving due consideration to whether a care agreement is the most appropriate care option within the objects and principles of the CYPF Act (when such a request is made)

31.3 halving the maximum length of the extended care agreement for disabled children including extension agreements, from up to two years to up to one year

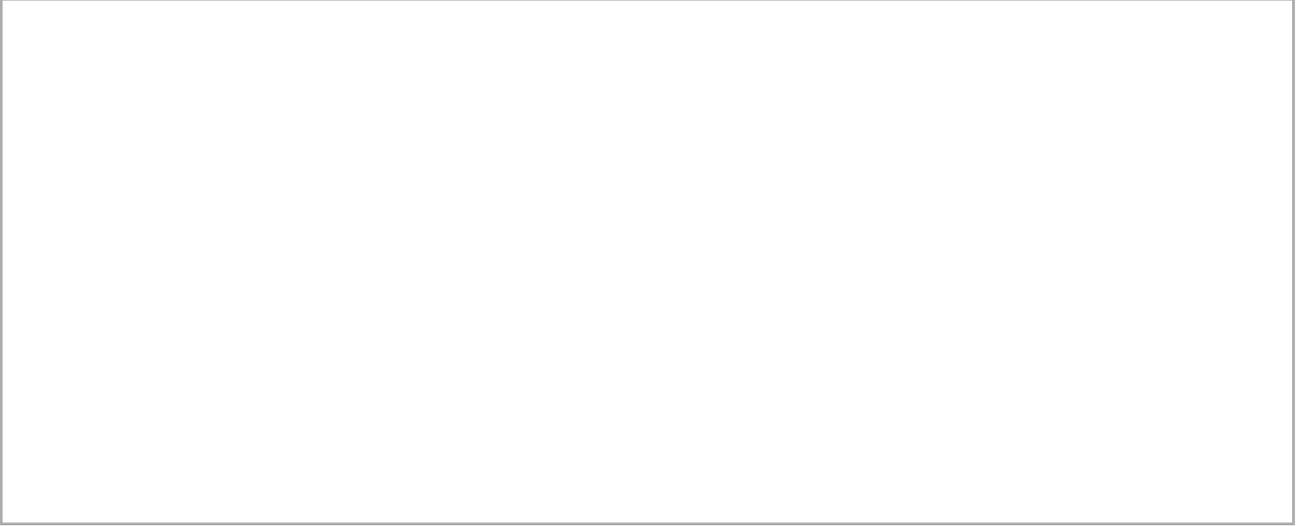
31.4 ensuring that a FGC must, rather than may, be held to consider whether a care agreement is entered into, extended or terminated early

Safety of subsequent children

- 32 **note** that proposals for ensuring the safety of subsequent children of an adult who has had a previous child permanently removed or die in their care because of abuse, neglect or serious negligence, are still being considered. These proposals are likely to be submitted for Cabinet consideration in May

Information-sharing provisions to support joint working for Children's Teams

- 33 **note** that information-sharing provisions across agencies are required for the implementation of the Children's Action Plan, particularly in relation to the operation of Children's Teams
- 34 **note** that there are three options for implementing the information-sharing requirements of the Children's Action Plan and that these are:
- 34.1 Information-sharing Option 1: Use existing legal frameworks (including Approved Information Sharing Agreements) for Children's Teams, and make no changes to current legislative frameworks for statutory services
- 34.2 Information-sharing Option 2: Use existing legal frameworks (including Approved Information Sharing Agreements) for Children's Teams, and make changes to current legislative frameworks for statutory services
- 34.3 Information-sharing Option 3: Include new information-sharing provisions within the CYPF Act for both Children's Teams and statutory services
- 35 **note** that Information-sharing Option 1 is preferred because there are no evident barriers to implementation and it uses current legislative settings, thus avoiding the need for additional legislation
- 36 **agree** to Information-sharing Option 1 and use existing legal frameworks (including Approved Information Sharing Agreements) for Children's Teams, and make no changes to current legislative frameworks for statutory services at this stage
- 37 **note** that existing legislative provisions (including Approved Information Sharing Agreements) will be trialled in the Children's Team demonstration sites and that, if barriers are identified that restrict the information-sharing required for effective implementation of the Children's Action Plan, further legislative provisions may be required
- 38 **note** that it is not expected that amendments to primary legislation will be required for the New Zealand Police-led work stream on tracking high risk adults, and if legislative changes are required, these will be effected through other legislative processes



Hon Paula Bennett
Chairperson, Ministerial Oversight Group
Date signed: