

# **Regulatory Impact Statement**

## **Investing in Children: Information Sharing**

Ministry of Justice

7 September 2016

## Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Justice on behalf of the Investing in Children team within the Ministry of Social Development. It provides an analysis of options to facilitate better information sharing across agencies and professionals for the purpose of promoting the wellbeing, welfare and safety of children and young people.

The options in the RIS are a response to significant weaknesses in the current statutory settings for information sharing about vulnerable children and young people.

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

- Stage One: the Children, Young Persons, and Their Families (Advocacy, Workforce, and Age Settings) Amendment Bill (Bill No 1). Bill No 1 was introduced and referred to the Social Services Committee on 15 June 2016.
- Stage Two: consists of a more complex and wide-ranging set of legislative reforms to give effect to the new operating model. These are to be included in a second Bill (Bill No 2) expected to be introduced into the House in November 2016.

The proposals in this RIS are part of the wide-ranging reform included within stage two of reform (Bill No 2). The proposals are expected to be considered by the Cabinet Social Policy Committee (SOC) in September 2016. The proposals in this RIS cover two primary areas of legislative reform:

- The powers available to the Ministry for Vulnerable Children, Oranga Tamariki when responding to reports of concern under section 15 of the Children, Young Persons and Their Families Act 1989
- the legal authorisation of two-way information exchanges between agencies and professionals with responsibilities for the welfare and safety of children and young people.

In light of the interests at stake, current legal settings, the safeguards built into these proposals, and the experience with a similar regime in New South Wales, we are satisfied that the social costs of the framework – which will be primarily encroachments on privacy – are justified and significantly outweighed by the social benefits the framework facilitates. These benefits will, over time, include the reduced placement of children into statutory care or protection, which can cause considerable distress for children and their families.

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

- The analysis has been undertaken ahead of detailed design work to implement the legislative reforms. This may create some risk of creating disproportionate degrees of flexibility in information sharing; however, the options include strong safeguards to protect privacy interests, and they can be adapted over time through the issuance of guidance by the Minister responsible for the Ministry for Vulnerable Children, Oranga Tamariki.
- In the absence of detailed design for the implementation of the options only indicative costs can be provided at this time, based on the experience in New South Wales. Further decisions on the reasonable costs for implementing the framework will be made during the development of the operating model for the Ministry for Vulnerable Children, Oranga Tamariki.

- We do not have access to strong empirical evidence about the number of children and families that may be affected by the proposal, or the value they attach to their privacy.
- Agency consultation has been undertaken on the impacts on Government agencies as part of the development of this RIS, but within limited timeframes.
- There has been no engagement with non-governmental agencies and professional bodies impacted by the reforms, though engagement is planned before legislation is introduced into the House.



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Ministry of Justice

7 September 2016

Date

## Executive summary

1. The proposals discussed in this Regulatory Impact Statement (RIS) form part of the far-reaching reform programme proposed by the Government in response to the Modernising Child, Youth and Family Expert Panel's Final Report (the Report).<sup>1</sup> Cabinet has agreed to establish a new operating model for working with vulnerable children, young people and their families and whānau.
2. One of the critical enablers of the new operating model is the framework that governs inter-agency information sharing. The Minister of Social Development has been invited to report-back on legislative proposals to implement the new operating model, including a bespoke information sharing framework within the Children, Young Persons and Their Families Act 1989 (CYPF Act) to promote the safety and wellbeing of vulnerable children and young people, for inclusion in a second Bill now scheduled for November 2016 [SOC-16-MIN-0024 refers].
3. The information sharing framework connects to other components of the operating model to ensure that vulnerable children and young people and their families are identified earlier, their needs are fully assessed, and they're offered the right supports at the right time.
4. This RIS covers proposals to achieve the following:
  - expand the powers of the Ministry for Vulnerable Children, Oranga Tamariki to compulsorily acquire information when performing statutory investigations or responses to reports of concern
  - set a clear expectation that any agency or person with responsibilities for the welfare and safety of children and young people can use and share personal information about a child or young person
  - move away from a passive regime where agencies have a discretion to exchange information, to a proactive regime where information should be exchanged unless there are compelling reasons not to
  - remove the uncertainty, and any consequential liabilities, facing professionals over the information they can exchange through an extension of the immunity for good faith disclosure already provided under the CYPF Act.

### *The case for legislative change*

5. The evidence shows that under current legal settings:
  - **information only flows one-way** into Child, Youth and Family, and this impedes the necessary two-way flow of information needed across all agencies with responsibilities for the wellbeing of children and young people;
  - **data-sets are not linked** across agencies to detect patterns of neglect and abuse early enough, and this means our interventions and systems of care are not having the beneficial impact they otherwise could, including preventing deaths;

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<sup>1</sup> Expert Panel. (2015). *Final Report: Investing in New Zealand's Children and Their Families*. <https://www.msd.govt.nz/documents/about-msd-and-our-work/work-programmes/investing-in-children/investing-in-children-report.pdf>

- Child, Youth and Family's **powers to acquire information are deficient** because they are either too narrowly cast in terms of the agencies covered, or are too bureaucratic to be practical in day-to-day operations; and
  - the **interface between the CYPF and Privacy Acts has proven to be complex** – as a consequence many of the professionals working with vulnerable children and young people are unclear about what information they are allowed to share, with whom, and in what circumstances.
6. The development of a bespoke information sharing framework within the CYPF Act is seen as the most effective and proportionate option to respond to these concerns, as it:
- sets a clear expectation that information sharing to promote the welfare and safety of children and young people is expected by all agencies and professionals with responsibilities for their wellbeing
  - overrides known legal impediments to beneficial information sharing about vulnerable children and young people
  - consolidates all information disclosure provisions relating to child welfare in one statute, which will increase the accessibility and usability of the law
  - has been tested and found successful in the field, in a country with a similar legal system and analogous social challenges.
7. These proposals should be read in the context of other reforms and measures introduced as a response to the Report. That is, the information sharing proposals are intended to support the wider suite of policies aimed at improving outcomes for vulnerable children and young people.

## Background and problem definition

8. Government has determined that a far-reaching reform of care and protection and youth justice services is required to achieve better outcomes for vulnerable children through an unequivocally child-centred approach.
9. The changes proposed represent a fundamental shift, driving the most significant and comprehensive changes since the Children, Young Person, and Their Families 1989 (the CYPF Act) was passed.
10. Nearly thirty years ago, the CYPF Act sought to reset the model from the previous one relying solely on professional determination to one with much greater involvement of families in decision making.
11. Results, however, have not been as envisaged, with 20 per cent of children now known to Child, Youth and Family by age 17, with many cycling through the system from notification to re-notification, statutory care and, in some cases, arrest and entry to the youth justice system.
12. Outcomes for children and young people across the system have been poor, at considerable long-term fiscal and social costs, with approximately:
- 60 per cent of children known to care and protection services left school without at least a Level 2 NCEA qualification

- 20 per cent of children known to care and protection were subsequently referred by the Police due to youth offending
  - 70 per cent of children with care and protection contact are on an benefit for some period by age 21
  - 20 per cent of children with care and protection contact received an adult community sentence by age 21
  - 10 per cent of children with care and protection contact received an adult custodial sentence by age 21.
13. Such outcomes have led to Child, Youth and Family being reviewed and restructured some 14 times. This has occurred without major legislative reform to support practice and accountability change and, notably, without fundamental improvements for vulnerable children.
14. To address this situation Government has endorsed the most far-reaching reforms since the 1989 CYPF Act to embed and enact a much more child-centred and investment approach focused care and protection and youth justice system.

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

15. The CYPF Act 1989 sought to establish a new model of social work, with a much stronger focus on family participation and decision making than under the earlier Children and Young Persons Act 1974.
16. Alongside setting the practice framework, the CYPF Act informs public understanding and expectations of the role of the care and protection system in particular critical decision making regarding if, when and how to report suspected abuse and neglect, the level of harm at which such reporting is expected, and the role of the agency in areas such as prevention. Legislative change in a number of comparable jurisdictions has been used to reset these decisions and expectations.
17. Significant reform to the 27-year-old CYPF Act offers an approach to support and strongly signal to those on whom the success or failure of these reforms rest: practitioners, organisations, departments and the public. In doing so this creates an opportunity to send a clear message and change the behaviour of actors within the care and protection and youth justice system.
18. As with the 1989 CYPF Act, the current proposed legislative reforms are taking place contemporaneously with the development of the detailed operating model that sits under the Act.
19. With this in mind, legislative options seek to direct behavioural change and enable operational development, rather than unduly prescribe the operating protocols for information sharing where this is not seen as necessary to achieve the policy intent. Non-legislative options have been considered as part of this analysis, but we would note that the reform programme will, by necessity, require some changes to legislative settings for information disclosure.
20. The reform programme, including proposals in this RIS, involve significant cultural shifts to put children at the centre of the system, legislative and policy change, enhancements to service provision, greater engagement of New Zealanders and a wide range of partners, new

investment, as well as significant changes to the operating model of the core agency involved in the system.

21. There are two parts to the reform programme;
  - Stage One is the Children, Young Persons, and Their Families (Advocacy, Workforce, and Age Settings) Amendment Bill (Bill No 1). Bill No 1 makes better provision for children’s and young persons’ participation and views in processes and proceedings under the CYPF Act and enables a wider range of professionals to perform functions under the CYPF Act.
  - Stage Two consists of a more complex and wide-ranging set of legislative reforms to give effect to the proposed new operating model, as part of a second bill amending the CYPF Act (Bill No 2).
22. This RIS is part of the second stage of reforms and focuses on the information sharing framework needed to facilitate the behavioural changes and improvements in the impact of services contemplated by the new operating model.
23. Proposals in this RIS have been considered, amongst other criteria, whether the option:
  - best supports the policy intent;
  - provides the strongest signal and greatest support to achieve the policy intent;
  - provides sufficient flexibility and durability to support the finer detail of the operational model and future developments.

### **Status Quo and problem definition**

24. Under the current operating model for Child, Youth and Family the powers, duties and responsibilities for child welfare and safety are concentrated with a small group of decision-makers, comprising:
  - Child Youth and Family social workers,
  - the Family Group Conference,
  - the chief executive of the Ministry of Social Development.
25. The information sharing framework that supports this model is embodied in key provisions of the CYPF Act.

### ***The CYPF Act only facilitates the one-way disclosure of information***

26. Section 15 of the Act allows any person to notify Child, Youth and Family or Police about a concern over the wellbeing or safety of a child or young person. This provision appears to be working well in assisting Child, Youth and Family and Police to execute specific aspects of their statutory duties. Nevertheless, section 15 only facilitates a one-way flow of information into Child, Youth and Family. It does not authorise the two-way and multiple-party information exchanges needed across agencies with responsibilities for the wellbeing and care of children and young people.

### ***The two-way exchange of information is essential, not a “nice to have”***

27. The legal authorisation of two-way information exchanges, including the linking of data-sets from multiple sources, is essential for child welfare agencies to form a comprehensive view of the risks and needs of children and young people. This includes high quality sharing of information through conversations and face-to-face exchanges between professionals, which are impeded by current legal settings. Some frontline practitioners report these conversations used to be common place before the enactment of the Privacy Act in 1993.

28. Access to high quality and more timely information through multiple-agency sharing will facilitate preventative interventions predicated on a social investment approach. Most importantly, it will allow child welfare agencies to take earlier action to prevent non-accidental deaths and other serious harms. The Child and Youth Mortality Review Committee’s 2012 submission on the Green Paper for Vulnerable Children stated:

*Many death reviews highlight deficits in systems to share information across organisations and disciplines. When data from different service sources is linked after death, we frequently recognise where the system of care could have been improved before death. Data needs to be linked better to support the care of the living.*

29. The Chief Social Worker advises that there are currently significant barriers in communication between agencies about the needs of vulnerable children, and this is negatively impacting on the quality of assessments and decision making. Consequently services are too often inadequate, or agencies do not sufficiently plan together for children's safety.

30. Effective multiple-agency information exchanges have been demonstrated to provide a much richer and accurate assessment of the risks and needs of vulnerable children and young people. A United Kingdom study observed that pulling together different strands of evidence from multiple agencies can have a significant impact on the number of child protection cases escalated to a more serious rating.<sup>2</sup> The current law does not provide a solid legal basis to facilitate this type of multiple-agency information sharing.

### ***The other information disclosure powers available to Child, Youth and Family have shortcomings***

31. In addition to section 15 of the CYPF Act, other information disclosure powers are available to Child, Youth and Family (sections 59-66 of the Act) to support decisions about whether children and young people should be placed in statutory care and protection.

32. The shortcomings of these provisions include:

- the coverage of section 66 is confined to state sector agencies, and excludes critical sectors such as licensed early childhood education providers and other parties who may hold relevant information about vulnerable children and young people. This has been identified by Child Youth and Family as a material impediment to their statutory responses to reports of concern;
- the production orders available in section 59-65 are rarely used by Child, Youth and Family because they are perceived to be overly bureaucratic, costly, and are unlikely to

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<sup>2</sup> A study of five London Boroughs found the implementation of multi-agency safeguarding hubs (MASHs) resulted in a higher proportion of cases being escalated to a more serious rating (6% to 11%) than when risk assessment are conducted by agencies relying solely on the information they have to hand – see UK Home Office (2014) *Multi Agency Working and information Sharing Project - Final Report*, July 2014, p 8.



be timely enough to support investigations, which magnifies the shortcomings created by the limited coverage of section 66. In short, the production order process is not fit-for-purpose.

### ***The interface between the CYPF and Privacy Acts has proven too complex to facilitate consistent frontline practice***

33. The interface between the CYPF and Privacy Acts has proven to be too complex. A 2011 Ministerial inquiry into the serious abuse of a nine year old girl concluded that the law, policies and processes relating to information sharing for child welfare and protection purposes are still not well understood, particularly by front line staff and their managers and that “different agencies (and their legal advisers) take different approaches.”<sup>3</sup>
34. Unlike overseas jurisdictions, there is no general enabling provision in the CYPF Act that authorises agencies to share information with each other lawfully, outside of a notification of concern. While agencies wanting to share information with each other may invoke the “serious threat” exceptions in the Privacy Act<sup>4</sup>, the threshold for a “serious threat” is difficult to apply in practice, particularly in situations of chronic abuse or neglect. The statutory interpretation of “serious threat” makes reference to the “time at which the threat may be realised” which reflects its provenance as a provision primarily designed to address imminent threats of harm rather than chronic, escalating harm.
35. As a consequence of current legal settings many of the professionals working with vulnerable children and young people – both inside and external to Child, Youth and Family – are unclear about what information they are allowed to share, with whom, and in what circumstances. Many professionals and agencies default to not sharing information to manage their organisational and professional risk, often to the detriment of children and young people.

### ***The current focus on serious risk is incompatible with the policy intent on the reforms***

36. Current legal settings – in both the CYPF Act and Privacy Act - focus on the most serious end of the risk spectrum. This is incompatible with the adoption of a social investment approach and the policy intent to intervene much earlier, to minimise the need for more intrusive state intervention such as referral to statutory care or protection. The framework needs to be realigned to bring an appropriate focus on prevention, remediation and addressing children’s long-term needs, as well as addressing immediate threats.

## **Objectives**

37. In light of the Expert Panel and Government deliberations, the success of the new information sharing framework should be judged by the extent to which it:
  - shifts the threshold for information exchange towards promoting the safety, welfare and well-being of children and young people, and away from averting threats of serious harm,

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<sup>3</sup> Report to Hon Paula Bennett, Minister for Social Development and Employment, [Following An Inquiry Into The Serious Abuse Of A Nine year Old Girl and Other Matters Relating To The Welfare, Safety and Protection Of Children In New Zealand](#), conducted by Mel Smith CNZM, 31 March 2011, page 72.

<sup>4</sup> These exceptions relate to *Information Privacy Principles* 10 (limits on use of personal information) and 11 (limits on disclosure of personal information)

- enables greater information exchange between a broader range of people and agencies with responsibilities for the wellbeing and safety of children, young people and their families, beyond the two statutory care and protection agencies,
- removes the uncertainty, and any consequential liabilities, facing professionals over what information they can exchange, with whom, and in what circumstances, and
- moves away from a passive regime where agencies have a discretion to exchange information, to a proactive regime where information will be exchanged unless there are compelling reasons not to.

38. To develop the options that meet these objectives, two primary objectives and two secondary objectives have been developed:

*primary*

- **effectiveness** - information is shared and used to create a full picture of a situation to promote the safety, welfare and well-being of children and young people
- **proportionality** – information is exchanged when the benefits to children and young people outweigh the negative impacts in terms of encroachments on privacy

*secondary*

- **ease of use** - removes the uncertainty facing professionals over what information they can exchange, with whom, and in what circumstances
- **cost-effective** – is good value for money in that it is effective in achieving the desired outcomes at a relatively low cost.

## Options and impact analysis

39. To meet the objectives, five options have been identified for comparison with the status quo. For the purposes of analysis, these options are presented as mutually exclusive ways of achieving the same outcome. However, it should be noted that better guidance would likely form a part of any regulatory reform. The table below outlines the options and the degree of change from the status quo. The degree of change notes the scale of change from existing concepts in the current legislative framework.

Option	Description and change from status quo
1. More guidance	There would be no legislative change, and instead additional guidance would be provided to front-line practitioners about using the information disclosure provisions in the Children, Young Persons and Their Families Act 1989 (CYPF Act) and Privacy Act 1993
2. A Code or Codes of Practice	There would be no legislative change, and instead one or more of the child welfare and protection agencies would ask the Privacy Commissioner, in accordance with Part 6 of the Privacy Act, to issue a Code or Codes of Practice that exempt them from the <i>Information Privacy Principles</i> that need to be overridden in order to share information
3. Approved Information Sharing Agreements (AISAs)	There would be no legislative change, and instead the child welfare and protection agencies would negotiate one or more AISAs in accordance with Part 9A of the Privacy Act to share information for specific child welfare and protection purposes
4. New framework in the Privacy Act	Bespoke child welfare and protection information sharing provisions would be enacted either as exceptions to the <i>Information Privacy Principles</i> or as a new Part to the Privacy Act
5. New framework in the CYPF Act	New child welfare and protection information sharing provisions would be enacted in Part 2 of the CYPF Act

### Option Analysis

40. The following table provides impact analysis of each option. The impacts are rated either: significant, moderate, or minimal. This enables the analysis to weight the outcomes and determine the overall impact of option.

Options – compared with status quo	Advantages	Disadvantages	Overall impact
<p><b>1. Further guidance</b></p>	<p><b>Minimal</b></p> <ul style="list-style-type: none"> <li>• <b>Effectiveness</b> – In the absence of changes to current legal settings, education and guidance is likely to generate only marginal benefits for practitioners, vulnerable children and young people.</li> <li>• <b>Proportionality</b> – A reliance on guidance would be proportional to the extent current legal protections of privacy interests would be retained.</li> <li>• <b>Ease of use</b> – Guidance may clarify some common difficult situations that practitioners face.</li> <li>• <b>Cost-effective</b> – The costs of guidance would be modest, and agencies would also avoid any transactions costs associated with implementing the other options.</li> </ul>	<p><b>Significant</b></p> <ul style="list-style-type: none"> <li>• <b>Effectiveness</b> – Guidance alone will not address the reactive, incident based model that underpins both the CYPF and Privacy Acts. It is unlikely to reduce the uncertainty agencies experience over inter-agency information sharing. Nor does it provide a general immunity from criminal, civil and disciplinary proceedings for good faith disclosures needed to manage practitioners’ legal risks. Guidance will not address the full range of needs of children at the earliest opportunity, or achieve the prevention of harm.</li> <li>• <b>Proportionality</b> – The existing legal framework means that even when the social benefits of information sharing outweigh the costs in terms of privacy, information will not be shared due to current legal impediments or complexities. Guidance is an inadequate response.</li> <li>• <b>Ease of use</b> – A focus on guidance will not overcome the complexity and uncertainty experienced by front-line practitioners when making decisions about whether to share personal information. Risk aversion will remain the default position for many agencies.</li> <li>• <b>Cost-effective</b> – any additional expenditure on guidance would represent poor value for money as it is unlikely to shift the cultures and risk-averse behaviours of relevant agencies.</li> </ul>	<p>In the absence of law reform, reliance on guidance will be ineffective and represent poor value for money.</p> <p>Nevertheless, fit-for-purpose guidance is an essential element of any new regulatory system to drive the desired behavioural changes.</p>
<p><b>2. Code or Codes of Practice</b></p>	<p><b>Minimal</b></p> <ul style="list-style-type: none"> <li>• <b>Effectiveness</b> – Control of this mechanism sits with the Privacy Commissioner. A Code could be an effective partial solution if the objectives and interests of all parties to the Code – including the Government and the Privacy Commissioner – were well aligned. It could achieve the buy-in from stakeholders through their engagement in its development.</li> <li>• <b>Proportionality</b>– Operating within the Privacy Act will restrict the amount of disproportionate information sharing that is possible, as determined by the scope of the Code.</li> <li>• <b>Ease of use</b> – Codes have some flexibility in how they can be designed within the Privacy Act framework.</li> <li>• <b>Cost-effective</b> – The costs of this mechanism would be comparable to the preparatory work required for law reform.</li> </ul>	<p><b>Moderate</b></p> <ul style="list-style-type: none"> <li>• <b>Effectiveness</b> – the substance of any Code is ultimately determined by the Privacy Commissioner. If the Commissioner and Government have different views about the impediments to information sharing about vulnerable children, it’s unlikely a Code would be enduring. A Code cannot: <ul style="list-style-type: none"> <li>– provide a general immunity from criminal, civil and disciplinary proceedings for good faith disclosures</li> <li>– override other primary legislation, such as the restrictions on the use of National Student Numbers in the Education Act</li> <li>– address current deficiencies in the CYPF Act</li> </ul> Given a Code cannot deliver all aspects of the Government’s policy intent it would have to be accompanied by law reform.</li> <li>• <b>Proportionality</b> – because a Code it cannot remove all legal barriers to information sharing it will result in sub-optimal sharing.</li> <li>• <b>Ease of use</b> – There is a risk that the consultation process for the code results in the introduction of procedural safeguards that, in practice, make it difficult to use by frontline practitioners.</li> <li>• <b>Cost-effective</b> – The costs of using the Code mechanism are primarily borne by the Privacy Commissioner, and may divert the Commissioner’s resources from other activity.</li> </ul>	<p>A Code would be a transparent instrument that has the potential to be supported by stakeholders whose interests are reflected in its provisions.</p> <p>There is a high risk, however, a Code would not meet the Government’s expectations. Even if a Code was well aligned with the government’s policy intent, it would most likely need to be accompanied by other law reform.</p>

Options – compared with status quo	Advantages	Disadvantages	Overall impact
<b>3. Approved information sharing agreements</b>	<p><b>Minimal</b></p> <ul style="list-style-type: none"> <li>• <b>Effectiveness</b> – there are very limited benefits of this approach in regards to effectiveness.</li> <li>• <b>Proportionality</b> – Operating within the Privacy Act will restrict the amount of disproportionate information sharing that is possible as determined by the scope of the AISA.</li> <li>• <b>Ease of use</b> – AISAs have flexibility in how they can be designed within the Privacy Act framework.</li> <li>• <b>Cost-effective</b> – there are no benefits of this approach in regards to cost-effectiveness. It is likely to impose higher costs on participating agencies than the legislative reform options.</li> </ul>	<p><b>Moderate</b></p> <ul style="list-style-type: none"> <li>• <b>Effectiveness</b> – [Section 9(2)(g)(i) OIA] An AISA cannot: <ul style="list-style-type: none"> <li>– provide a general immunity from criminal, civil and disciplinary proceedings for good faith disclosures</li> <li>– override other primary legislation, such as the restrictions on the use of National Student Numbers in the Education Act</li> <li>– address current deficiencies in the CYPF Act</li> </ul> Given an AISA cannot deliver all aspects of the Government’s policy intent it would have to be accompanied by law reform.</li> <li>• <b>Proportionality</b> – In theory, an AISA would be proportional as it would reflect the consensus of all participating agencies. It cannot, however, remove all legal barriers to information sharing so will result in sub-optimal sharing.</li> <li>• <b>Ease of use</b> – It is unlikely that an AISA could be designed that meets the ongoing operational requirements of the sector.</li> <li>• <b>Cost-effective</b> - If an AISA was pursued it would impose considerable transaction costs on the parties to any negotiation, with little prospect of achieving a successful outcome.</li> </ul>	<p><b>[Section 9(2)(g)(i) OIA]</b></p> <p>Pursuing this option will impose significant costs on child welfare and protections agencies, with a low prospect of a satisfactory outcome being achieved.</p>
<b>4. New framework in Privacy Act</b>	<p><b>Significant</b></p> <ul style="list-style-type: none"> <li>• <b>Effectiveness</b> – A framework enacted in the Privacy Act should serve to clarify the legal position around sharing information with respect to that Act.</li> <li>• <b>Proportionality</b> – The framework would be set within the Privacy Act, which would provide parameters to ensure information is shared proportionately.</li> <li>• <b>Ease of use</b> – It should be possible to enact provisions that remove most ambiguity for frontline practitioners.</li> <li>• <b>Cost-effective</b> – The cost of the design and implementation is likely to be a cost-effective means of achieving regulatory reform.</li> </ul>	<p><b>Moderate</b></p> <ul style="list-style-type: none"> <li>• <b>Effectiveness</b> – Enactment in the Privacy Act will not address the complexity and uncertainty with respect to interaction with the CYPF Act. Further, other statutes override the Privacy Act so there may be some potentially beneficial sharing that cannot occur due to existing barriers.</li> <li>• <b>Proportionality</b> – The Privacy Act applies to all agencies in New Zealand, so care would be needed to limit coverage to child welfare and protection agencies. The new settings would set broader grounds for information sharing. To preserve proportionality safeguards would need to be built into the framework to protect privacy interests.</li> <li>• <b>Ease of use</b> –The interactions between the Privacy Act and CYPF Act would likely see complexities continue, impeding the ease of use.</li> <li>• <b>Cost-effective</b> – Some agencies, especially the Ministry for Vulnerable Children, Oranga Tamariki, will face increased requests for information from other child welfare and protection agencies.</li> </ul>	<p>A fit-for-purpose framework could be enacted in the Privacy Act but, on balance, it would be more appropriate for the framework to be enacted in the CYPF Act so all the relevant information disclosure provisions are consolidated into one Act.</p>

Options – compared with status quo	Advantages	Disadvantages	Overall impact
<p><b>5. New framework in CYPF Act</b></p> <p><b>To maximise its impact this option would be combined with option 1. Guidance</b></p>	<p><b>Significant</b></p> <ul style="list-style-type: none"> <li>• <b>Effectiveness</b> – A framework enacted in the CYPF Act consolidates the powers available to front-line practitioners in one Act, which provides much needed clarity. It would, where necessary, override the Privacy Act and build on the information disclosure provisions already in the CYPF Act.</li> <li>• <b>Proportionality</b> – Creating the framework in the CYPF Act ensures the provisions apply only for the purposes of child welfare and protection, and to those agencies with responsibilities for children and young people. Would remove barriers to beneficial sharing occurring and provide means to assess when it is beneficial to share. Clear parameters within the design would be established and tailored to the sector.</li> <li>• <b>Ease of use</b> – It should be possible to enact provisions that remove ambiguity for frontline practitioners, and the consolidation of all relevant provisions in the CYPF Act should provide added clarity.</li> <li>• <b>Cost-effective</b> – The cost of the design and implementation is likely to be a cost-effective means of achieving regulatory reform.</li> </ul>	<p><b>Minimal</b></p> <ul style="list-style-type: none"> <li>• <b>Effectiveness</b> – There is a risk is that without investment in the cultural change needed to drive a change in behaviours law change by itself will prove insufficient to improve the consistency of frontline practices may persist. There is a risk that some children and families may disengage from using publicly funded services because of fears about how their personal information may be used. This risk will be monitored as part of the evaluation of the framework’s impact.</li> <li>• <b>Proportionality</b> – The new settings would set broader grounds for information sharing. To preserve proportionality safeguards would need to be built into the framework to protect privacy interests.</li> <li>• <b>Ease of use</b> – Regulatory changes can take some time to embed in effectively, which highlights the importance of effective guidance and training. There is a danger that, with time, the operating procedures for information sharing will become more bureaucratic and costly for participating agencies, which requires ongoing vigilance over the day-to-day practice.</li> <li>• <b>Cost-effective</b> – Some agencies, especially the Ministry for Vulnerable Children will face increased requests for information from other child welfare and protection agencies.</li> </ul>	<p>A bespoke framework enacted in the CYPF Act is the most effective, proportionate option, and is consistent with the approach adopted in comparable jurisdictions.</p>

### ***Discussion of Preferred Option***

41. The analysis concludes that Option 5 – the establishment of a bespoke information sharing framework in the Children, Young Persons and Their Families Act 1989 (the Act) – is the most effective, proportionate and practical option. In light of this analysis, the proposed information sharing framework seeks to mitigate any risks by:
- using proven models to improve likelihood of effectiveness, proportionality and cost-effectiveness – by introducing new information sharing provisions that have been successfully enacted in other jurisdictions, specifically the request-based system in Chapter 16A of the Children and Young Persons (Care and Protection) Act 1998 in New South Wales; and
  - supporting a frontline-friendly framework (ease of use) - by building on rather than replacing the information disclosure provisions already in the Act, specifically sections 15, 16 and 59-66.

## **Costs and Benefits**

### ***Benefits***

42. The information sharing framework should provide the following benefits from the status quo arrangements:
- It will facilitate a much richer and accurate assessment of the risks and needs of vulnerable children and young people. For example, a United Kingdom study observed that pulling together different strands of evidence from multiple agencies can have a significant impact on the number of child protection cases escalated to a more serious rating.
  - It will facilitate more efficient and accurate needs and risk assessment, thereby giving social workers better tools to support them in performing their statutory functions.
  - It will allow child welfare and protection agencies to offer the right supports and interventions for vulnerable children and families much earlier than they do now which, in turn, will reduce the forward liability that would otherwise arise because of delays in providing the right supports.

### ***Encroachments on Privacy***

43. The benefits of the framework need to be weighed against the social costs it will impose, most notably encroachments on the privacy of vulnerable children and young people, along with their family members and other people in a close personal relationship with them.
44. In weighing these social costs, it should be borne in mind that there is little reliable evidence about the value individuals attach to their privacy. An economic analysis of valuations that people assign to their own privacy indicates that “individuals constantly make privacy relevant decisions which impact their well-being, and this research suggests that they do so inconsistently.”<sup>5</sup> This analysis cautions against placing too much reliance

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<sup>5</sup> Alessandro Acquisti, Leslie K. John, and George Loewenstein (2013) “What Is Privacy Worth?” [\*The Journal of Legal Studies\*](#), Vol. 42, No. 2 (June 2013), pp. 249-274

on studies of revealed preferences that conclude “our society, quite simply, does not place much value on privacy.”<sup>6</sup> Context is critical. There are few fields as sensitive as child welfare and protection, whereas privacy valuations are conducted in the context of commercial exchanges. The adverse consequences of encroachments on privacy in a child welfare context might include:

- the social stigma that may arise from being the subject of any inquiry or statutory response;
- the harm that may arise from false accusations or inferences of being a perpetrator of child neglect or abuse;
- the risk some families may be less inclined to engage with social services and other supports due to concerns about how their personal information will be used.

45. Given the high stakes involved, the vulnerable children’s framework includes a number of important privacy safeguards, including:

#### ***Section 66***

- The power to compulsorily collect information (section 66) will, in practice, only be exercised by the Ministry for Vulnerable Children, Oranga Tamariki for the purpose of conducting statutory investigations and responses under Part 2 of the Act.
- Section 66 cannot be used to collect information to investigate offences, and information collected through this power cannot be admitted as evidence in proceedings (other than under Part 2 of the CYPF Act). This prohibition is a critical safeguard for parents and adults who may be concerned about revealing potential incriminating information.
- Information collected under section 66 cannot be shared with other child welfare and protection agencies or independent persons where the information was disclosed to the Ministry for Vulnerable Children, Oranga Tamariki in breach of a professional duty of confidentiality. This prohibition recognises the sensitivity of some information acquired through a mandatory power. Child welfare and protection agencies or independent persons will still have a right to request this information under the new presumptive provision, but any professional receiving a request will need to determine whether any of statutory grounds for declining a request apply (they cannot apply this filter to section 66 requests).

#### ***Limitations Imposed by Purposes***

- The specific purposes for holding, using and disclosing information under the framework are set out in Part 2 of the CYPF Act, which immediately limits the information of relevance and the uses it can be put to (e.g. information about a child with non-accidental injuries will be relevant, but not whether they have also been diagnosed with a common cold)

#### ***General Principle of Engagement***

- The framework establishes the statutory principle that children and young people should be engaged about intended information sharing whenever practical and desirable. This principle applies to the entire risk spectrum, not just low risk scenarios. It does not, however, establish consent as a statutory requirement. This would create undue risk for children and young people at risk of harm, and would negate the need

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<sup>6</sup> Ibid.



for legislative reform. Nonetheless, in many situations a consent-based approach will be both practical and desirable. The setting of expectations about the appropriate use of consent can best be given expression through the issuance of guidance tailored for specific professions and situations, rather than through codifying detailed requirements in legislation. At the high end of the spectrum, such as cases of serious child abuse, practitioners will face starker choices about whether to engage with a family about information sharing

#### ***Enabling provision***

- The new enabling provision will allow linked data-sets of identifiable personal information sourced from multiple agencies to be analysed for operational purposes, primarily for the purpose of risk and needs assessment. Given it will not always be practical to engage with children, young people and their families about the use of their personal information in analysis of this nature, any child welfare and protection agency undertaking activity of this nature will be required to be transparent about the information they use, the purposes for which it is used, and the privacy protections they have implemented. This transparency will allow these activities to be subject to public scrutiny.

#### ***Presumptive Provision (“must share unless”)***

- There will be an obligation on any supplier of information to hold a “reasonable belief” the information will assist the recipient to fulfil any of the purposes specified in Part 2, and requires any requestor to provide sufficient evidence about the purpose served by the proposed disclosure. Reasonable belief is an objective criterion that can be tested in legal proceedings.
- A child welfare and protection or independent person will have a number of grounds for declining a request for information, including where disclosure is likely to increase the risk of a child or young person being subject to harm, ill-treatment, abuse, neglect or deprivation, and where a child has expressly not given consent to disclosure and disclosure is not in their best interests.

#### ***Information Privacy Principles still apply***

- The privacy protections in the Privacy Act will continue to apply, unless overridden by the legislative reforms. Accordingly, all information exchanges authorised by the legislative reform will still be subject to the relevant *Information Privacy Principles*, including:
  - *Principle 5 (Storage and security of personal information)* which requires any agency holding personal information to ensure there are reasonable safeguards against loss, misuse or unauthorised disclosure of information
  - *Principle 6 (Access to personal information)* which entitles any individual to have access to information held about them, and to correct any errors under *Information Privacy Principle 7*
  - *Principle 8 (Accuracy of personal information)* which stipulates that an agency must not use or disclose personal information without taking reasonable steps to check it is accurate, complete, relevant, up to date, and not misleading.

46. Given the safeguards that have been built into the proposals, we are satisfied that any social costs created by the framework will be outweighed by the social benefits it facilitates. These benefits include, over time, the reduced placement of children into statutory care or

protection (though in the initial period placements may spike given the evidence better risk assessment will see more children meet the threshold for statutory care or protection).

### **Fiscal Costs**

47. **[Section 9(2)(f)(iv) OIA]** This cost will arise in two areas:

- **Compliance costs**, specifically those arising from the new request-based information sharing provisions. These costs will be heavily concentrated in the Ministry for Vulnerable Children, Oranga Tamariki because it will have the largest holdings of personal information about vulnerable children and young people and will be subject to the most requests. The experience in New South Wales suggests the Ministry for Vulnerable Children, Oranga Tamariki may require between 10-15 FTE to process information requests from other child welfare and protection agencies and independent person **[Section 9(2)(f)(iv) OIA]**.

Other child welfare and protection agencies and independent persons may also experience increased compliance costs, but the impact will be widely dispersed with most agencies and practitioners only making or being the subject of requests on an infrequent basis. Given the dispersed nature of these costs we do not propose any agency outside the Ministry for Vulnerable Children, Oranga Tamariki should be compensated for the additional compliance burden associated with the framework.

- **Training and guidance**, for child welfare and protection agencies and independent persons using the new framework. This is essential to achieve a change in mindsets and behaviours, and will need to be sustained over a number of years to embed the new ways of sharing information. **[Section 9(2)(f)(iv) OIA]**

48. Further decisions on the reasonable costs for implementing the framework will be made during the development of the operating model for the Ministry for Vulnerable Children, Oranga Tamariki. Fiscal allocations will be confirmed through the Budget process and align with wider decisions on services and the funding for the new Ministry.

### **Cost Benefit Analysis**

49. Given the information sharing framework is an enabler for the wider reforms to Child Youth and Family, there are challenges in undertaking a formal cost benefit analysis of the framework in isolation. This is because the benefits derived from the framework are largely in the form of the earlier consumption of services and supports facilitated by the Ministry for Vulnerable Children, Oranga Tamariki, along with the better matching of services to a child's assessed needs. These benefits will serve to reduce the forward fiscal liability, but they may already be captured in the modelling of specific service lines and the overall reform package. Undertaking a separate analysis creates the risk of double counting benefits.

50. Notwithstanding these grounds for caution, **[Section 9(2)(f)(iv) OIA]** our assessment is that it will more than 'pay for itself' in terms of social costs avoided in the event there are two fewer preventable deaths each year that can be attributed to the framework's impact.<sup>7</sup>

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<sup>7</sup> This estimate is derived from Ministry of Transport value of statistical life (VOSL) estimates, which measure the loss of life and life quality component of the social costs of road crashes. The Ministry estimates the VOSL at **[section 9(f)(iv)OIA]** per fatality at June 2015 prices. A transport related social cost estimate is not a perfect proxy for fatalities arising from child abuse or suicide. The VOSL for a child's death, for example, is likely to be higher than the average social cost of a road fatality.

## Consultation

51. Throughout the development of the proposals contained in this RIS, we have sought and incorporated feedback from the:
- Ministry of Social Development, including Child, Youth and Family and the Children's Action Plan Directorate
  - Ministry of Health
  - Ministry of Education
  - Ministry of Justice
  - Te Puni Kokiri
  - New Zealand Police
  - Department of Corrections
  - The Treasury
  - State Services Commission
  - Social Investment Unit
  - Government Chief Privacy Officer
  - Accident Compensation Corporation
  - Housing New Zealand Corporation
52. We also have consulted with a limited group of external stakeholders, and incorporated their feedback where possible:
- Members of the Māori Reference Group
  - Office of the Children's Commissioner
  - Office of the Privacy Commissioner

### ***Privacy Commissioner***

53. The Privacy Commissioner agrees that, of the options considered, an information sharing framework in the Children, Young Persons and their Families Act 1989 is the most appropriate option to address the identified information sharing needs.
54. However, the Commissioner is concerned that introduction of compulsory information sharing without a clear understanding of the operating model, and without first consulting with affected agencies, may lead to negative unintended consequences, such as deterring some vulnerable families from seeking support services. This could lead to worse outcomes for children. The other elements of the proposed framework (the enabling information sharing provision coupled with a broad immunity for disclosures made in good faith) would be sufficient to address the information sharing problems identified.

### **External Stakeholders**

55. In the time available it has not been possible to consult other agencies and representative professional bodies affected by the proposed framework, including District Health Boards,

school boards, licensed early childhood education providers, community housing providers, non-government organisations, health practitioners and children’s workers.

56. Given this, we have undertaken a stakeholder analysis that draws on the positions and statements made by stakeholders and representative bodies in past consultation processes, specifically the:

- *Green Paper on Vulnerable Children (the “Green Paper”)* in 2012 which, amongst other things, discussed information sharing, and generated ~10,000 submissions
- The *Vulnerable Children’s Approved Information Sharing Agreement* in December 2014, which at that time proposed a broad coverage of agencies, including non-governmental organisations (NGOs), and specified similar purposes to those proposed for the vulnerable children’s framework (subsequently this AISA was significantly narrowed in terms of participating agencies and purposes) The consultation generated 19 submissions.

57. Where appropriate we have also drawn from other sources.

### ***Young People***

58. Young submitters (generally 13-24 year olds) on the Green Paper said it was “okay” for people who are working with the child to share personal information, but specified they should first ask for the child or young person’s permission. Submissions commonly argued it is acceptable to share information if it is needed to protect a child from harm, so long as that information is correct and the child’s privacy is protected as much as possible.

### ***General public***

59. Green Paper submissions show the balance of public opinion was for information to be shared in order to keep children safe. Most submissions that addressed information sharing were in support of sharing the minimum of information to keep children safe. Support for sharing all information was low in comparison, as was total opposition to information sharing. Many submissions discussed the need for protocols to guide information-sharing to preserve family privacy where possible.

60. Almost all Green Paper submissions supported monitoring vulnerable children in some way. There were diverse views on how much monitoring should take place. Common ideas included having as much monitoring as possible and monitoring at a minimum level to ensure child safety, with a small number of submissions opposing any form of monitoring

### ***Frontline social workers***

61. The Ministry of Social Development conducted targeted consultation with **Child, Youth and Family operational staff** about the proposal. The feedback was very supportive, with staff noting the legislative framework:

- is well aligned with the Expert Panel recommendations, and sends a strong message about the new agency and the ways of working that will be expected across the sector
- will open up the opportunities for information sharing that have been challenging to date

62. We expect social workers working outside of Child, Youth and Family will value the two-way information flows created by the enabling and presumptive provisions.

63. Support from frontline social workers may not be matched by their professional body **Aotearoa New Zealand Association for Social Workers (ANZSW)**. In 2011 ANZSW opposed a legislative proposal for the mandatory reporting of child abuse, even though ANZSW's own survey evidence indicated overwhelming support for mandatory reporting from its membership (84% support). This suggests Ministers may want to invite ANZSW to test its views with its membership should ANZSW adopt an unsupportive stance.

#### **Health sector**

64. We anticipate a number of influential health bodies will support the intent of the legislative framework.

- **District Health Boards (DHBs)** have adopted child protection policies which commentators have characterised as mandatory reporting in all but name. Many have dedicated child protection teams that are vocal in their advocacy of system improvements to prevent child abuse. Given this, we expect DHBs to be generally supportive of the framework.
- the **Child and Youth Mortality Review Committee (CYMRC)** is expected to lend its support. The CYMRC's submission on the Green Paper stated:

*"Many death reviews highlight deficits in systems to share information across organisations and disciplines. When data from different service sources is linked after death, we frequently recognise where the system of care could have been improved before death. Data needs to be linked better to support the care of the living."*

- In its 2013 submission on the Vulnerable Children Bill the **Paediatric Society of New Zealand** recommended a review of the Privacy Act's AISA provisions on the grounds that "the process to establish an AISA is so resource intensive (both in time and cost) that it prevents most agencies progressing with an application". In the event AISAs were found to be too onerous, the Society recommended that relevant legislation be amended to:

*"a presumption of information sharing within and between agencies where child protection concerns are present (similar to those in New South Wales)"*

- the **Royal Australasian College of Physicians** was broadly supportive of the VC AISA but stressed informed consent must be sought wherever possible
- the **New Zealand Nurses Organisation (NZNO)** is expected to be supportive. Its submission on the VC AISA stated:

*"We suggest that the focus should be on building trusted relationships and reciprocal communication between multi disciplinary teams."*

*"Nurses are well aware of both the benefits and risks of sharing sensitive health information, and also the frustration of not having access to information that could inform the delivery of health care."*

*"Robust information sharing protocols would go a long way towards assuring continuity of primary health care for vulnerable children."*

- The **New Zealand Medical Association** is expected to be supportive, but may emphasise the need to preserve trust in the therapeutic relationship and the use of consent wherever possible. Its submissions on the Green Paper and VC AISA stated:

*“Strengthening data collection and information sharing will help to identify and provide care for vulnerable children.”*

*“The NZMA has expressed concern in the past that the current system is reactionary rather than preventive and that there is little inter-agency coordination.”*

*“We believe that it (the VC AISA) will contribute towards improved inter-agency coordination as well as facilitate a more proactive approach to identifying and providing care for vulnerable children.”*

*“Our main concern relates to the possible negative implications of broader information sharing, namely, the possible erosion of trust between at-risk children and/or their parents/caregivers and those individuals/agencies tasked with helping them. Developing ways to mitigate this possible erosion of trust requires careful consideration.”*

65. We anticipate some health bodies will have reservations about the legislative framework.

- **[Section 9(2)(g)(i) OIA]**

- The Ministry of Health advises that **midwives** are wary of sharing information regarding women in pregnancy if there is a risk that it will result in the removal of a baby from its mother at birth, or within a short time after birth. With regard to the VC AISA the New Zealand College of Midwives stated:

*“Midwives are concerned that trust between themselves and the women that they provide care for will be undermined by the AISA and that this will make them less able to work effectively with vulnerable women and their families / whanau.”*

*“The AISA has the potential to change the nature of a midwife’s role to one of surveillance rather than the supportive and enabling health professional role.”*

*“Midwives have expressed concerns for their personal safety at times when they have made a CYFS notification as CYFS have not understood the role of the midwife or the context in which she provides care, and failed to maintain her safety in their processes of investigation or care planning.”*

Since that statement the implementation of the Maternity Clinical Information System in five DHBs and the rollout of a similar system across primary Lead Maternity Carers has demonstrated to midwives the benefits of information sharing. The overall comfort of midwives with the proposals in this RIS could be influenced by the extent to which they are embraced as key partners under new operating model for the Ministry for Vulnerable Children, Oranga Tamariki. Lead maternity carers are in a unique position to work with families during the critical pre-natal and post-natal period of a child’s life.

### **Education sector**

66. The education sector is likely to be unhappy about the lack of consultation to date, and some early learning sector bodies may be unsupportive.

67. The Ministry of Education advises that:

- as a matter of principle, the sector will be concerned about the lack of consultation to date, which may affect their trust in the government’s intentions. Given the education system changes occurring at the moment – including the Funding

Review's work on risk indicators – there is a risk the sector may perceive this as “drip feeding” components of an overall strategy in a non-transparent way.

- after some initial concerns, the education sector is likely to support the general concept, especially if they can see that the Ministry for Vulnerable Children will support them to get the information they need to be able to better support the education of children and young people.
- the education sector is likely to be concerned about the additional workload potentially involved in answering information requests as well as the additional accountability that the new Ministry may place on them in relation to delivering responses to children.
- As part of the implementation of Children's Teams, some concern and challenge was expressed by some of the special education professionals. They are likely to emphasise the need to preserve trust in therapeutic relationships (especially important in smaller communities), the need to ensure the broader safety and wellbeing of the child (including privacy), and the importance of informed consent.

68. We anticipate a mixed response from early learning sector representative bodies, with some welcoming conversations about the intent of the framework, and others being unsupportive. The **Early Childhood Council** (which represents over 1,000 independent early childhood centres) stated in its submission on the VC AISA:

*“The Early Childhood Council recommends ....that any legal framework does not unduly force childcare centre teachers and other staff to breach customer/client confidentiality unless there is a clear threat to the safety of the child.”*

*“The ECC is especially concerned regarding the potential adverse impact on trust between centres and the caregivers of our most at risk children, many of whom are disinclined to trust institutions of any kind.”*

*History has demonstrated that frequently when such agencies (e.g. Child, Youth and Family) are involved, the centre finds that both the child and their family “disappear” from their community.”*

#### **Non-governmental organisations**

69. Some NGOs will be supportive but others are likely to be sceptical. The submissions on the VC AISA attracted support from:

- **National Council of Women**, which stated:

*“there need to be better protocols for speedy information transfer among agencies at local and national level - covering issues as diverse as housing, health, justice, courts, education and social welfare”.*

- **Rural Women NZ** which stated:

*“the information sharing proposal covers a broad church of agencies which will breakdown silos and create a greater collaborative environment.”*

70. NGOs involved in the direct delivery of children's services are likely to be more cautious about information sharing. Some NGOs emphasise that their clients primarily use them because they are not government agencies, which is why they are resistant to the notion of sharing client data with the government.

71. NGOs delivering children’s services often emphasise that securing client consent for information sharing is best practice in terms of ethics and transparency. This view was expressed by **Stand Children’s Services** (specialist home and school social services for 5-12 year olds), **NZ Family Works** (child & family services provided by Presbyterian Support) and **Plunket** in the context of the VC AISA consultation.

### Further Stakeholder Engagement

72. The Ministries of Justice and Social Development intend to undertake targeted engagement with key external stakeholders and professional bodies on the practical impact of the vulnerable children’s framework, in concert with the targeted engagements planned for the family violence information sharing framework

## Conclusions and recommendations

73. This analysis of options has highlighted that a new framework in the CYPF Act will best meet the objectives stated. To mitigate any risks of negative or unforeseen implications, the preferred option has been based on an existing information sharing frame (New South Wales) that has been evaluated as successful. The framework will also be tuned through time through the issuance of Codes to support frontline practice.
74. The key features of the framework are:
- It will apply to Part 2 of the CYPF Act, thereby limiting its coverage to the purposes specified in that Part.
  - The powers available to the Ministry for Vulnerable Children, Oranga Tamariki to collect information when responding to a notification of concern or proceedings under Part 2 will be expanded by extending the coverage of section 66 to any person, or agency (as defined in the Privacy Act), rather than just state sector agencies.
  - A new enabling provision will allow any agency or person in the sector to use and share personal information it holds for the purposes of child welfare and safety specified in Part 2.
  - There will be a new presumptive provision that agencies and persons in the sector must share personal information about a child or young person when requested to do so by another authorised agency or person, unless there are good grounds for not doing so.
  - A broad definition of the ‘child welfare and protection sector’ (the sector) will be adopted for the purposes of information use and sharing, including social sector departments, some Crown entities, district health boards, school boards, licensed early childhood services, government funded NGOs, health practitioners, and children’s workers (as defined in the Vulnerable Children Act 2014).
  - A general principle is established that children and young people should be informed about intended information sharing, and their views sought, unless it is impractical or undesirable to do so. In practice this means child welfare agencies will normally be expected to adopt consent based information sharing at the lower end of the risk spectrum. We expect that guidance on engaging with children and young people will be set out in Codes of Practice issued by the Minister responsible for the Ministry for Vulnerable Children, Oranga Tamariki.



- A general principle is established that the welfare and interests of a child and young person takes precedence over any professional duty of confidentiality. This principle is intended to provide certainty to any person who might have conflicting expectations in their professional standards.
- There will be an immunity from civil, criminal, or disciplinary proceedings for all information disclosures made under Part 2 of the CYPF Act, so long as they are not made in bad faith.

## Implementation plan

75. Successful implementation of the preferred option will be reliant on individuals and agencies within the wider sector understanding their roles and responsibilities under the reformed framework. For many practitioners a change in mindsets and behaviours is required. There is a pressing need to reduce the risk aversion that currently biases many practitioners towards not disclosing information. Further, the Office of the Children’s Commissioner has queried whether all the agencies and professionals that will constitute the child welfare and protection sector for information sharing purposes have the necessary expertise to work directly with children, engage effectively with them, and understand their rights.
76. Law change will send a strong message that will encourage information sharing, and this signalling effect was one of the primary benefits of the law reforms in New South Wales. The law reform needs to be reinforced by a cultural change programme that provides sustained guidance and training to frontline practitioners. Without an investment in cultural change there is a risk that current inconsistencies in information sharing practices, including in the engagement of children and their families, will persist.
77. The Ministry for Vulnerable Children, Oranga Tamariki, alongside the Government Chief Privacy Officer, will work to create an operational framework and cultural change programme that:
- ensures there is sufficient capacity, and efficient systems in place, to manage an anticipated increase in requests for information from other agencies and professionals;
  - provides detailed guidance to frontline practitioners on using the new framework in ways that protects privacy interests and also avoids overly bureaucratic responses to compliance with the framework;
  - promotes efficient and effective engagement with children, young people and their families about information sharing under the framework.

## Monitoring, evaluation and review

78. These proposals form part of a large set of reforms to develop a new operating model for responding to vulnerable children, young people and their families. The success of the new system will be measured in a variety of ways by the agency responsible for the new operating model. Further work will be required with the Treasury and the State Services Commission to build a detailed performance framework.
79. A strategic evaluation plan is currently being developed. This plan will include an outcomes framework and intervention logic as well as setting out a schedule of evaluation activity

that will take place over the next five years. The schedule will include a full range of activity, from regular performance monitoring and reporting, to process and effectiveness/impact evaluations, trials and a commitment to continuous improvement and learning under an investment approach.

80. The evaluation activity will include specific lines of inquiry about the impact of the new information sharing framework, including whether the framework has had any unintended adverse impacts, such as materially increasing the disengagement of vulnerable children and their families from accessing and using public services.
81. The Ministry for Vulnerable Children, Oranga Tamariki will also engage regularly with the Government Chief Privacy Officer and Privacy Commissioner about the state of information sharing in the child welfare and protection sector. They will also continue to examine cases and data regarding information sharing provided by these officers.
82. The Privacy Commissioner will be able to enquire and investigate any information sharing practices or operational protocols, through either a proactive investigation or a complaint from a member of the public.