

Modernising Child, Youth and Family: Enhancing children and young people's participation

Regulatory Impact Statement

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Social Development. It provides an analysis of options to support children and young people's participation in the new operating model, which is being put in place to respond to vulnerable children, young people and their families.

The proposals recommended in this RIS form part of a broader reform of this operating model. The proposals are expected to be considered by the Cabinet Social Policy Committee (SOC) on 13 April 2016. They are intended to be included within the first stage of reform, as part of the Modernising Child, Youth and Family Bill (No 1) (Bill No 1) that is due to be introduced in the first half of the year.

Legislative changes to give effect to the new operating model will be progressed in two stages:

- Stage One is expected to consist of an initial bill, Bill No 1, comprising the proposals covered by this RIS, amendment to the upper age in the definition of a young person for the care and protection provisions of the Children, Young Persons, and Their Families Act 1989 (CYPF Act), and changes to enable a wider range of professionals to perform functions under the CYPF Act. Separate Regulatory Impact Statements have been prepared for the latter two proposals.
- Stage Two will be 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 (Modernising Child, Youth and Family Bill (No 2) (Bill No 2)).

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

- the proposals set out in the Final Report of the Modernising Child, Youth and Family Expert Panel were developed independently as part of a process that included broad consultation and expert input. However, the process undertaken did not allow for detailed proposals to be the subject of specific consultation with affected agencies
- agency consultation has been undertaken on the impacts on agencies as part of the process of development of this RIS, but this has been done within limited timeframes
- co-design work is being undertaken in partnership with the philanthropic sector to design the independent advocacy service. Legislative proposals included here have been developed ahead of this co-design work. There is a risk that proposals outlined in this RIS could be incompatible with the outcomes of the co-design work. The analysis considers the extent to which this is a risk for different options

- the RIS provides only a general indication of the relative scope and magnitude of the options' operational implications, as further detailed design work of the advocacy service and the broader operating model needs to be progressed before the precise operational impacts can be determined for some options
- due to the time available to develop the options in this RIS, it has not been possible to quantify the impact on the time of the people performing functions under the CYPF Act
- detailed work on the potential cost implications of each option has not been undertaken, and some of the cost implications will be subject to the outcomes of the co-design work underway on the independent advocacy service
- consultation with the Office of the Children's Commissioner (OCC) has not been possible ahead of the release of the Government's response to the Final Report of the Modernising Child, Youth and Family Expert Panel. The analysis considers the extent to which the proposed options impact on the role the OCC may be able to have in the advocacy service
- consultation with philanthropic sector has not been possible ahead of the release of the Final Report of the Modernising Child, Youth and Family Expert Panel. However, members of the secretariat to the Panel are working with the philanthropic sector to develop the advocacy service have been consulted.

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Date

Executive summary

The proposals discussed in this RIS form part of this reform programme proposed by the Government in response to the Modernising Child, Youth and Family Expert Panel's Final Report.

One element of the reforms is the establishment of an independent advocacy service for children and young people.

On 30 March 2016, SOC agreed in-principle and subject to further advice on organisational form and costs, to the establishment of a permanent independent advocacy service [SOC-16-MIN-0023 refers]. SOC also agreed that reform to support the establishment of the new advocacy function would form part of the first stage of reforms to be introduced into the House in the first half of the year [SOC-16-MIN-0024 refers].

Co-design work is currently underway in partnership with the philanthropic sector to design the independent advocacy service.

On 30 March 2016, SOC invited a report back by 30 June 2016 on a number of areas for possible legislative change, including new and amended provisions to further embed the voice of children at an individual and system level, for inclusion in a second Bill to be introduced in September 2016 [SOC-16-MIN-0024 refers].

This RIS covers legislative amendments to support advocacy and to further embed the voice of children at an individual and system level under the CYPF Act. Due to the strong alignment between both sets of proposals they are being considered together.

Seven options were considered for supporting a child-centred approach with a focus on children and young people's participation. Non-regulatory and regulatory options were assessed against the extent to which they embed a child-centred approach in the system and allow children and young people to express views and participate freely. Options were also assessed against their interaction with other legislative provisions and planned reforms, flexibility, and fiscal and operational impact.

The legislative proposal to establish the advocacy service has been developed so as not to pre-empt the outcome of the co-design work currently underway. It is proposed that any additional legislative proposals to support the advocacy service will be progressed as part of the second stage of reforms later in the year.

Voices of children and young people

Based on analysis of these options against key objectives and criteria, there are two preferred options to strengthen the voices of children and young people under the CYPF Act:

- Amend the CYPF Act to ensure children and young people are able to participate in actions and decisions under the Act (option 2). This option strengthens individual-level participation by enabling children and young people to participate in decisions that may significantly affect them. It also recognises that some children and young people may face barriers to participation and may require further support or assistance to do so.

- A new duty under the CYPF Act requiring the Chief Executive (CE) to have regard to the views of children and young people in relation to policies and services provided by the agency (option 3). This option strengthens system-level participation by requiring the CE to consider the views of children and young people at a systemic level.

There will be some compliance costs associated with option 2 in relation to training and education of persons responsible for relevant proceedings and processes under the CYPF Act and ensuring that support and/or assistance is available to those children and young people who may face barriers in their abilities to express views freely. Any costs associated with option 3 are expected to be minor and would come out of baselines.

Establishing the advocacy service

To support the establishment of the advocacy service, the preferred option is to amend the CYPF Act to include a high-level duty on the CE to make services available, and that those services should operate independently (option 4b). The services will fulfil the following functions, with a particular focus on children and young people in care:

- supporting children and young people to express their views on matters that are important to them
- listening to children and young people’s views on the operation and effectiveness of services provided under the Act, and supporting children and young people to contribute to improving them.

Placing the obligation on the CE supports the objectives of embedding a child-centred approach in the system, includes some level of independence, allows for some flexibility in how the services will be delivered, and may help to facilitate further provisions

	<i>Section 9(2)(f)(iv) Active Consideration</i>
as part of the second Bill	

This option involves costs to the agency associated with ensuring the provision of an advocacy service on an ongoing basis, and at sufficient volume to meet demand. There will also be some compliance costs in relation to education and training of agency staff, around how they will interact with the advocacy service.

Together these three options will provide a strong foundation for a child-centred approach that focus on individual and system-level participation of children and young people and that supports the foundation of the advocacy service.

Policy context

Government is embarking on an overhaul of the system for responding to vulnerable children and young people

There are a significant number of children and young people in New Zealand whose basic safety, emotional, physical, social, cultural or development needs are not met at home or in the wider community. For example:

- it is estimated that around 230,000 children and young people currently under 18 may experience vulnerability at some point during their childhood¹
- data indicates that around 20 per cent of children and young people in any birth cohort are known to Child, Youth and Family by age 17.²

Children and young people who have contact with Child, Youth and Family's care and protection and youth justice systems are some of the most vulnerable, as reflected in their disproportionately high likelihood of experiencing certain poor long-term outcomes.

While Government has sought to redesign the service landscape for vulnerable children and their families through the White Paper for Vulnerable Children and the Children's Action Plan, there have been ongoing and significant issues identified with how Child, Youth and Family operates.

On 18 February 2015, SOC noted the draft Terms of Reference of the Modernising Child, Youth and Family Expert Panel [SOC Min (15) 2/2 refers]. The scope set out in the Terms of Reference includes consideration of the extent to which Child, Youth and Family's current operating model is child-centric, and the adequacy of current independent oversight, advocacy and complaints mechanisms.

In April 2015, the Minister for Social Development established the Modernising Child, Youth and Family Expert Panel (the Panel) to develop a plan for the modernisation of Child, Youth and Family.

In its Final Report, the Panel identified a number of issues with the performance of the current system, and proposed significant changes to how the State seeks to meet the needs of vulnerable children and young people.

On 30 March 2016, SOC considered the Panel's Final Report and agreed major reform is required to the CYPF Act and related legislation to give effect to a proposed new operating model [SOC-16-MIN-0024 refers].

The proposals discussed in this RIS form part of the reform programme proposed by the Government in response to the Panel's Final Report. The reform programme involves significant cultural shifts to put children at the centre of the system, legislative and policy

¹ This is based on analysis of the 1993 birth cohort. Centre for Social Research and Evaluation. (2012). *Children's Contact with MSD Services*. Wellington: Ministry of Social Development. Note this is a conservative estimate that assumes the same level of need today as the 1993 birth cohort.

² This is based on analysis of the 1993 birth cohort. Centre for Social Research and Evaluation. (2012). *Children's Contact with MSD Services*. Wellington: Ministry of Social Development.

change, enhancements to service provision, greater engagement of New Zealanders and a wide range of partners, significant new investment, as well as significant changes to the operating model of the core agency involved in the system.

The new operating model will be based on a child-centred approach

On 14 September 2015, Cabinet endorsed the Panel's proposed principles to guide the strategic direction, including "placing the child or young person at the centre of what we do", and endorsed the Panel's building blocks for the development of the new operating model, including "a child-centred system" [CAB-15-MIN-0075 refers]. Cabinet also noted that the Minister has agreed that work begin immediately on engaging the philanthropic sector to develop proposals for a new advocacy service for children and young people in contact with Child, Youth and Family [CAB-15-MIN-0075 refers].

On 30 March 2016, SOC agreed that a bold and urgent overhaul of the system is required and endorsed the overall scale, scope and direction of the reform, including the establishment of a new operating model. One of the key elements of this operating model will be creating a child-centred system [SOC-16-MIN-0022 refers].

SOC has invited the Minister for Social Development to report back by 30 June 2016 on a number of areas for possible legislative change, including new and amended provisions to further embed the voice of children at an individual and system level, and to update current provisions to achieve a better focus on children's rights [SOC-16-MIN-0024 refers].

The Panel has identified the key elements of a child-centred³ approach as comprising:

- children's rights and expectations in care
- support for children, including advocacy
- capturing the voices of children in service and policy design.⁴

Government is establishing an independent advocacy service to help address issues around advocacy in individual cases and input from children and young people in service design and review

On 30 March 2016, SOC agreed in-principle, and subject to further advice on organisational form and costs, to the establishment of a permanent independent advocacy service with the following functions [SOC-16-MIN-0023 refers]:

- system and individual-level advocacy for children in care
- connecting children and young people in care to build a positive care identity
- working with children and young people in care to develop leadership skills and self-confidence.

³ Following the Children's Commissioner's report, 'child-centred' includes children aged under 18. In this report it is outlined that being 'child-centred' is a way of elevating the interests, wellbeing and views of children. See Children's Commissioner (2015). *Being child-centred: Elevating children's interests in the work of your organisation*. Wellington, NZ: Office of the Children's Commissioner.

⁴ Expert Panel on Modernising Child, Youth and Family. (2015). *Modernising Child, Youth and Family: Interim Report*.

SOC agreed that reform to support the establishment of the new advocacy function would form part of the first stage of reforms to be introduced into the House in the first half of the year [SOC-16-MIN-0024 refers].

SOC has invited the Minister for Social Development to report back to SOC with recommendations for legislative reform to support the establishment of the new advocacy function as part of stage one [SOC-16-MIN-0024 refers].

Co-design work is currently underway in partnership with the philanthropic sector which will inform the operating model of the independent advocacy service.

This RIS covers legislative amendments to support advocacy and to further embed the voice of children at an individual and system level. Because of the strong alignment between both sets of proposals they are being considered together and at the same time. Consideration of updating current provisions to achieve a better focus on children's rights will be progressed as part of the second stage of reform.

Status quo

The current system has some provisions for ensuring children and young people's views are considered and providing individual and systemic advocacy

There are some provisions in the CYPF Act that are intended to support children's participation in decision-making. In particular, these include:

- section 5(d), "the principle that consideration should be given to the wishes of the child or young person, so far as those wishes can reasonably be ascertained, and that those wishes should be given such weight as is appropriate in the circumstances, having regard to the age, maturity, and culture of the child or young person"
- section 5(e), "the principle that endeavours should be made to obtain the support of...the child or young person himself or herself to the exercise or proposed exercise, in relation to that child or young person, of any power conferred by or under this Act"
- section 7(2)(b), which sets out that in carrying out duties imposed under section 7, the CE shall promote the establishment of services and adoption of policies that are designed to provide assistance to children and young persons who lack adequate care, or require protection from harm, or need accommodation or social or recreational activities
- section 8, the requirement that a child or young person must be informed as soon as practicable of any action or decision under the CYPF Act that significantly affects them, and of the reasons for it
- section 9, the requirement for an interpreter where a child or young person's preferred language is not English or they are unable to understand English due to a physical disability
- section 10, the duty of the Family Court and Youth Court and counsel representing the child or young person to explain proceedings in a manner and in language that can be understood by the children or young person

- section 11, the duty of the Family Court and Youth Court and counsel representing the child or young person to encourage and assist a child or young person to participate in proceedings to the degree appropriate to their age and level of maturity
- section 22, which specifies that a child or young person is entitled to attend a Care and Protection Family Group Conference unless it would not be in their interests, or it would be undesirable, or if they would be unable to understand the proceedings by reason of age or level of maturity
- section 208(h), the principle that the vulnerability of children and young persons entitles them to special protection during any investigation relating to the commission or possible commission of an offence by that child or young person.

Additionally, the Care of Children Act 2004 contains provisions that support the participation of children in decision-making under that Act. Section 6 provides that a child must be given reasonable opportunities to express views on matters affecting them and that any views expressed must be taken into account. This applies to proceedings involving guardianship, day-to-day care, contact, administration of property belonging or held in trust for the child, or the application of the income of property of that kind.

Within the current statutory care and protection and youth justice systems, there are also some services that advocate for, and support, the interests of children and young people. These are generally limited to certain interactions with the system, including:

- provision for mandatory⁵ appointment of a lawyer for the child or young person (s159), who represents the child or young person in proceedings under the CYPF Act in the Family Court
- provision for mandatory⁶ appointment of a youth advocate (a lawyer) to represent a young person who is appearing before a Youth Court charged with an offence (s323)
- provision for appointment of a lay advocate to appear in support of a child or young person (s163 and s326). The functions of a lay advocate are to make the court aware of all relevant cultural matters and to represent the interests of the child's or young person's whānau, hapū, and iwi (or their equivalents in the culture of the child or young person) to the extent that those interests are not otherwise represented in the proceedings. Lay advocates appointed under section 163 may make representations on behalf of the child or young person at a family group conference and in respect of their detention under secure care or their care in a residence
- provision in regulation 16 of the Children, Young Person, and Their Families (Residential Care) Regulations 1996 for procedures that ensure that any child or young person in a residence who makes a complaint under the grievance procedure has reasonable access to a person who may advocate for or represent the child or young person in relation to that complaint, and who is a barrister or solicitor or youth advocate appointed under section 159 and section 323 of the CYPF Act, or a person nominated by the child or young person.

Some children and young people are supported by health and disability advocates whose functions are specified in the Health and Disability Commissioner Act 1994.

⁵ Unless the child or young person has their own lawyer.

⁶ Unless the child or young person has their own lawyer.

There are also other services available to children and young people that provide some level of advocacy and which are not established in legislation, for example, Youthline and Barnardos.

The current system has mechanisms for universal advocacy for children

The OCC has three key functions under the Children's Commissioner Act 2003:

- advocating for the rights of children and young people
- monitoring, assessing and reporting on services provided to children in care
- raising awareness of, and advancing, the United Nations Convention on the Rights of the Child (UNCROC).

Advocacy provided by the Children's Commissioner covers all children and young people, not just those in care. The Children's Commissioner's general functions are defined under section 12 of the Children's Commissioner Act 2003 and include:

- section 12(1)(f), investigation into decisions, recommendations or any act done or omitted in respect of, a child in that child's personal capacity
- section 12(1)(f), "to act as an advocate for children's interests, rights and welfare generally (except before any court or tribunal), and in that regard, to advance and monitor the application of the Convention⁷ by departments of State and other instruments of the Crown"
- section 12(1)(j), to promote, in relation to decisions that affect the lives of children, participation of children in those decisions, and an approach to children's views.

The OCC currently provides a level of oversight and monitoring of the statutory agency of the CYPF Act. Under section 13 of the Children's Commissioner Act 2003, the Children's Commissioner has the following functions:

- to investigate decisions, recommendations or any act done or omitted under the CYPF Act in respect of a child or young person
- to monitor and assess the policies and practices of the department, or any person, body or organisation exercising powers under the CYPF Act
- to encourage the development of policies and services to promote the welfare of children and young people
- to advise the Minister on any matter that relates to the administration of the CYPF Act
- to keep under review, and make recommendations on, the working of the CYPF Act.

Other jurisdictions have strengthened their legislation to better align with UNCROC

Important decisions about children and young people are made throughout the care and protection process. Best practice requires the explicit recognition of the rights of children and

⁷ United Nations Convention on the Rights of the Child.

young people to participate throughout the process, particularly in the assessment, planning and review processes which impact directly on them.

The right of children to express their opinions, to have their opinions considered in decisions that affect them, and to receive and give information and ideas, are provided for by UNCROC, in particular:

- Article 12 – Right to express views, which includes the right to express views freely in all matters affecting them, and the views of the child being given due weight.
- Article 13 – Freedom of expression, which includes the freedom to see, receive and impart information and ideas of all kinds.
- Article 20 – Children deprived of family environment, which includes the right of such children to receive special protection and assistance from the State.
- Article 23 – Children with disabilities, which includes the right of such children to special care and support.

Other jurisdictions have recognised the importance of giving effect to these rights by strengthening how these are reflected in their legislative frameworks. For example, in Scotland, the Children and Young People (Scotland) Act 2014 specifies that Scottish Ministers must “keep under consideration whether there are any steps which they could take which would or might secure better or further effect in Scotland of the UNCRC⁸ requirements” (s1(1)). Additionally “the rights of children” includes the rights and obligations set out in UNCROC (s4(1)).

Many states in Australia have detailed principles to guide child participation, for example:

- Northern Territory (s11, Care and Protection of Children Act 2007), when a decision involving a child is made the child should be given: adequate information and an explanation should be provided, opportunity to respond to proposed decision, opportunity to express views and wishes freely, be given assistance to do so, and that those wishes and views should be taken into account having regard to the child’s maturity and understanding.
- Western Australia (s10, Children and Community Services Act 2004) and New South Wales (s10, Children and Young Persons (Care and Protection) Act 1998) have similar principles around ensuring children are able to participate in decisions under the respective Acts that are likely to have a significant impact on the child. This involves:
 - provision of adequate information to understand the reason for the decision made
 - opportunity to express views and wishes freely, and any assistance to do so
 - information on how wishes and views will be recorded and taken into account
 - opportunity to respond to the decision made
 - in the application of the principle, due regard must be given to age and level of understanding of the child concerned.⁹

⁸ The Scottish legislation abbreviates the United Nations Convention on the Rights of the Child to UNCRC.

⁹ Note that under s10(1) of the NSW legislation, the responsibility for fulfilling this principle sits with the Secretary of the Department, which differs from the general principle under the WA legislation.

Problem definition

There are opportunities to strengthen the extent to which the system gives effect to children's rights to express their views

The Panel identified that the current system is not sufficiently child-centred and does not give enough consideration to the views of children and young people. Additionally, the Panel identified opportunities to strengthen the extent to which children's and young people's views were obtained and considered as part of processes under the CYPF Act. Some of the issues highlighted as part of the work of the Panel included that:

- young people, who had experience in the care system and who were consulted as part of the Panel's work, felt they did not have a voice in important decisions being made about their future, and that there was a lack of transparency about those decisions
- children and young people with additional barriers such as language or disability or who are very young may need more support to express their views and have them incorporated into decision-making than is currently provided for by the system.

Some of these issues may be practice matters that could be addressed without legislative change. However, comparing international legislation with current New Zealand legislation shows that more could be done to strengthen the extent to which children and young people's rights to express their views are reflected in New Zealand's legislative framework. This would further emphasise the significance that should be given to children's views, and embed this within the core business of the agency. This is also likely to position the agency to make better decisions about children and young people.

Children and young people in care would benefit from a greater level of individual and systemic advocacy than the system currently provides for

The Panel's Final Report outlines that at any one point in time there are about 4,900 New Zealand children in care. Child, Youth and Family data shows that in 2015, 60 percent of children within the care of the Chief Executive of the Ministry of Social Development identified as Māori.¹⁰ Currently, there is no independent nationally consistent advocacy service, providing systemic or individual advocacy specifically for children and young people in care.

Advocacy aims to ensure that children and young people can express their views and be involved in decision-making about their lives:

- Individual advocacy is about making care experiences more positive for children in care and reducing the negative outcomes that children and young people in care can face, including ensuring that information about rights and support services are available.
- Systemic/system-level advocacy is about listening to children and young people in care and to use themes and issues raised by children and young people to drive system changes, including service design and review.

¹⁰ This data represents a snapshot as at the end of December 2015. Retrieved from: <http://www.cyf.govt.nz/about-us/key-statistics/kids-in-care.html>

While there is a lack of independent evaluation of different advocacy approaches, qualitative information is available on the benefits of advocacy for children and young people in care. A 2012 review of the advocacy service provided by the Children's Society in the United Kingdom showed advocacy was effective in supporting and elevating the voices of children and young people in care in 75 percent of cases.¹¹ Experts have also identified the benefits of youth participation, both generally and in the context of care.¹² The establishment of an independent advocacy service would help connect, listen to, empower and advocate for children and young people in the care system.

Being in the care system is a traumatic experience for many children and young people. Consultation with children and young people found that this led to a feeling of powerlessness. In particular, it was found that young people lack understanding of how they could shape and influence services and understand their own experiences within the system.

At the system level, the Panel found that there is no systemic approach to support children and young people to influence positive practice, and ensure safety and suitability of care practice across the country. Specifically:

- children and young people are not involved in the design of services or the system
- the views of children and young people are not sufficiently taken into account in measuring the performance of the system.

At an individual level, the Panel's final report identified that there is currently no mechanism that provides reliable support and advocacy for children and young people in care. Under the current system, advocacy is done to or for the child or young person, rather than done with them. Lawyers for the child and youth advocates are appointed to each child and young person, and children and young people are not able to choose who this person is.

Consultation with young people revealed that they perceived that Child, Youth and Family holds all the power to make decisions despite what children may want or feel is best for themselves. The nature of the relationship between the lawyer for the child and the child or young person did not always provide a strong basis for comprehensive advocacy on behalf of the child or young person on the matters that were important to them; for example, around day-to-day matters. While some children and young people have access to support from informal advocates, such as family members, they often lacked training in effective advocacy and their role is not formally recognised.

Some of these issues may be addressed by broader practice changes that form part of the reform of the operating model, such as workforce changes, including potentially to the role of social workers.¹³

However, it is considered that opportunities for children and young people in care to participate in day-to-day decision-making could be strengthened by providing an additional

¹¹ Pona I and Hansell D. (2012). The value of independent advocacy for looked after children and young people. *The Children's Society*. September 2012.

¹² See, for example, Cashmore J. (2002). Spotlight on practice promoting the participation of children and young people in care. *Child Abuse and Neglect*. 26, 837 – 847; Office of the Children's Commissioner. (2015). *State of Care 2015: What we learnt from monitoring Child, Youth and Family* (p. 44 – 45). ISSN 2463-2821.

¹³ Changes to the role of social workers has not yet been considered by Cabinet.

source of independent advocacy where the child or young person has some choice over who would act as their advocate.

The use of legislation can provide a clear signal of the need to support children and young people’s participation

Legislative amendments would ensure the advocacy service becomes an embedded feature of the new system. Legislation would also help to ensure that the interaction and impact of the voices of children and young people upon the whole system is considered, received and acted upon appropriately by the receiving parts of the system. It is important to note that legislation alone would not achieve the objectives sought relating to children and young people’s participation, and that it would need to be supported by wider reform of the operating model to develop a child-centred system.

Objectives

The proposed options are intended to support a more child-centred system with a focus on children and young people’s participation. Two objectives have been identified for these proposals:

- embeds a child-centred approach in the system
- children and young people are able to express views and participate freely.

There are three further criteria against which options will be considered:

- interaction with other legislative provisions and planned reforms
- flexibility
- fiscal and operational impact.

The following table provides a breakdown of how proposals will be assessed against the objectives and additional criteria.

Objective	How proposals will be assessed against objective
Embeds a child-centred approach in the system	The analysis will consider the extent to which the proposals: <ul style="list-style-type: none"> • ensure children and young people’s rights to participate in processes and matters that may affect them, and have their voices heard • strengthen the State’s obligation to listen to the voices of children and young people at both an individual and systemic level (eg to inform service design and policy) • align with UNCROC, in particular Article 12 (right to express views), Article 13 (freedom of expression), and Article 23 (children with disabilities).
Children and young people are able to express views and participate freely	The analysis will consider the extent to which the proposals: <ul style="list-style-type: none"> • provide an appropriate degree of independence • ensure people with barriers can participate, including children and young people with disabilities or children who are not at an age

where they can clearly express their views

Criteria	How these criteria will be assessed
Interaction with other legislative provisions and planned reforms	The analysis will consider the extent to which the proposals: <ul style="list-style-type: none">• are consistent with other legislative provisions, including section 5(d) of the CYPF Act• will facilitate the next stage of reforms for Bill No 2• will avoid limiting the potential scope of the operating model of the advocacy service which is currently being developed through a co-design process• will have minimal impact on what role the OCC may be able to have.
Flexibility	The analysis will consider the extent to which proposals are able to adapt to changing circumstances.
Fiscal and operational impact	The analysis will consider the fiscal and operational impact of the proposals.

Options and impact analysis

This section analyses the impacts of different options for addressing the problem definition.

In assessing the options, it is important to note that legislative amendments to support the establishment of an advocacy function are intended to be reasonably broad. A co-design engagement process is currently underway on detailed design of the advocacy service, and it is intended that the findings from this process will shape the operating model. Care is required to ensure that any legislative provisions developed for Bill No 1 do not pre-empt the outcomes of this co-design process. Any additional legislative provisions to give effect to the advocacy function that are developed through the co-design process will need to be included in Bill No 2.

Section 9(2)(f)(iv) Active Consideration

There are seven options for supporting a child-centred approach with a focus on children and young people's participation. The options analysed are:

- Voices of children and young people:
 - Option 1 – strengthen practice guidance around the application of section 5(d) of the CYPF Act relating to children and young people's participation (non-regulatory option).
 - Option 2 – amend the CYPF Act to ensure that children and young people are able to participate in actions and decisions under the Act (regulatory option).
 - Option 3 – amend to the CYPF Act to require the CE to have regard to the views of children and young people in relation to policies and services provided by the agency (regulatory option).
- Establishment of the advocacy service:
 - Option 4a – Establish an advocacy service without amendments to legislation (non-regulatory).
 - Option 4b – amend the CYPF Act to include a high-level duty on the CE to make advocacy services available, and that these services should operate independently (regulatory option).
 - Option 4c – amend the CYPF Act to include a high-level duty on the CE to make advocacy services available and to designate an employee to act independently to oversee the delivery of those services (regulatory option).
 - Option 4d – amend the Children's Commissioner Act 2003 to place an obligation on the Children's Commissioner to make advocacy services available (regulatory option).

The following assumptions are common to all the options relating to the establishment of the advocacy service:

- An advocacy service will be established.
- The scope of this work is limited to legislative changes to be included in Bill No 1 that will support the establishment of the advocacy service.

Section 9(2)(f)(iv) Active Consideration

- The advocacy service will provide both individual and systemic advocacy.
- The advocacy service will be independent.
- The service will be a permanent feature of the new system.
- The advocacy service will be available to children and young people in care. The Final Report outlines that at any point in time about 4,900 New Zealand are in statutory care (however, the scope of who the service may be available to may widen or have more specific parameters).

- The individual advocacy function provided by the advocacy service will complement, and not duplicate, the existing roles of the lawyer for the child (s159, CYPF Act), lay advocates (s162, CYPF Act), and youth advocates (s323, CYPF Act).

Although the Children's Commissioner was considered as part of the options, it is noted that the Minister for Social Development is due to report back to Cabinet on the responsibilities of the Office of the Children's Commissioner by 31 October 2016 [SOC-16-MIN-0023 refers]. In its Final Report the Panel's envisaged that the advocacy service would be distinct from the role of the OCC.

We have not included consideration of expanding the role of lawyer for the child or youth advocates as part of this RIS, as a policy decision has been made that an independent advocacy service will be established [SOC-16-MIN-0023 refers]. Any expansion of the role of lawyer for the child could create some duplication with the functions provided by this service. The independent advocacy function is intended to have a distinct but complementary role to that of lawyer for the child and youth advocates.

We have not included consideration of placing a duty on a Minister to ensure the provision of advocacy services. This would be problematic because the Minister would not have direct access to departmental funds with which to fund the service.

Detailed option analysis of the options outlined above is set out on the following pages. The first table sets out options relating to voices of children and young people. The second table sets out options to support the establishment of the advocacy service.

Option and impact analysis for voices of children and young people

Option	Features	Implications and impacts	Benefits	Issues/Risks
<p>Option 1 – strengthen practice guidance around the application of section 5(d) of the CYPF Act relating to children and young people’s participation (non-regulatory option)</p>	<p><i>Description</i></p> <p>Guidance would be issued to practitioners performing functions under the Act to provide more clarity around how children and young people’s views should be obtained. It will include guidance to the effect that children and young people should be encouraged and assisted to express their wishes and views freely, while recognising that some children and young people may face barriers in their ability to express views and wishes (eg age, disability and language).</p> <p><i>Legislative change</i></p> <p>No legislative change would be required.</p> <p>This option would work with any of the other proposed options.</p>	<ul style="list-style-type: none"> Those persons (eg social workers) responsible for relevant proceedings and processes under the Act, excluding judges, would have access to guidance to help give effect to 5(d). Children and young people may have greater clarity around how their views will be obtained and considered. 	<ul style="list-style-type: none"> <i>Embeds a child-centred approach in the system</i> <ul style="list-style-type: none"> This option may go some way towards strengthening the State’s obligation in relation to the voices of children and young people at an individual level as it provides more specific guidance than is defined in section 5(d). Aligns with UNCROC (Articles 12 and 23). <i>Children and young people are able to express views and participate freely</i> – this option may help strengthen recognition that the opportunity for children and young people to express their views may be impacted by their abilities. <i>Interaction with other legislative provisions and planned reforms</i> – this option does not hinder the next stage of reforms. <i>Fiscal and operational impact</i> – costs associated with this option are likely to be small. <i>Flexibility</i> – guidance can adapt to changing circumstances or new issues that may arise. 	<ul style="list-style-type: none"> <i>Embeds a child-centred approach in the system and children and young people are able to express views and participate freely:</i> <ul style="list-style-type: none"> This option may not place a strong enough expectation on persons responsible for functions under the Act to embed a child-child centred approach in the system, or to guarantee children’s free expression of views and participation in the system. Guidance cannot be issued to Judges, which therefore impacts on the extent to which this option will embed a child-centred approach <i>Fiscal and operational impact</i> – There will be some costs associated with this option with providing training for those performing functions under the Act.
<p>Option 2 – amend the CYPF Act to ensure that children and young people are able to participate in actions and decisions under the Act (regulatory option)</p>	<p><i>Description</i></p> <p>In order to enable the participation of children and young people under the CYPF Act, this option would require that children and young people’s views be obtained and considered for actions and decisions that may significantly affect that child or young person under the CYPF Act. To support participation:</p> <ul style="list-style-type: none"> children and young people must be encouraged and assisted to participate children and young people must be given the opportunity to express views freely, and be supported to do so where they face barriers in their ability to express views, such as age, disability and language barriers any views the child or young person expresses must be taken into account. <p>The duties would be performed by the person responsible at the relevant proceedings and processes, eg the Judge for proceedings before a court, or the person directed by the Court to review the plan, or the relevant co-ordinator for the proceedings of a Family Group Conference, or the social worker in other actions.</p> <p><i>Legislative change</i></p> <p>Legislative change would be required to CYPF Act. As the proposed option enhances some of the duties already defined under section 11, this option could replace that section.</p> <p>This option could be combined with option 3 and any of the</p>	<ul style="list-style-type: none"> Those persons (eg social workers) responsible for relevant proceedings and processes under the Act would have to ensure they follow the required avenues for obtaining children’s participation. Children and young people will have assurance that their views will be obtained and considered when they are subject to specified processes and proceedings and any decisions that may significantly affect them under the Act. 	<ul style="list-style-type: none"> <i>Embeds a child-centred approach in the system</i> – this option: <ul style="list-style-type: none"> embeds an approach to ensuring children and young people’s voices are heard at an individual level. It will enable them to participate in processes and proceedings and decisions that may significantly affect them provides certainty that views must be heard and taken into account for specified proceedings and processes under the CYPF Act aligns with UNCROC (Articles 12, 13, and 23). <i>Children and young people are able to express views and participate freely</i> – this option recognises that the opportunity for children and young people to express their views may be impacted by their abilities <i>Interaction with other legislative provisions and planned reforms</i> – this option, as with options 1 and 3: <ul style="list-style-type: none"> is consistent with section 5(d) does not hinder the next stage of reforms, including proposals that may be included in Bill No 2, work on the role of the OCC and the advocacy co-design work currently underway. 	<ul style="list-style-type: none"> <i>Embeds a child-centred approach in the system</i> – this option: <ul style="list-style-type: none"> only covers matters that may significantly affect the child, it does not cover other decisions that may be important to the child or young person on its own, does not go provide for system-level advocacy. <i>Fiscal and operational impact</i> – there will be some costs associated with training and establishment of new processes, and costs for ensuring support and/or assistance is available for children and young people who may face barriers in their ability to express views freely.

Option	Features	Implications and impacts	Benefits	Issues/Risks
options relating to establishing the advocacy service.				
Option 3 – amend to the CYPF Act to require the Chief Executive (CE) to have regard to the views of children and young people in relation to policies and services provided by the agency (regulatory option)	<p><i>Description</i></p> <p>To help ensure the views of children and young people are taken into account at a systemic level, this option would involve adding a new duty in the CYPF Act that requires the CE to ensure, wherever possible, that all policies adopted by the agency, and all services provided by the agency have regard to the views of children and young people.</p> <p><i>Legislative change</i></p> <p>Legislative change would be required the CYPF Act. This duty could be added to section 7(2)(c).</p> <p>This option would work with any of the other proposed options.</p>	<ul style="list-style-type: none"> The CE would be required to take into account the views of children and young people in respect of policies adopted, and services delivered, by the agency. Children and young people will have assurance that their views and wishes will be considered in relation to policies adopted, and services delivered, by the agency. 	<ul style="list-style-type: none"> <i>Embeds a child-centred approach in the system</i> <ul style="list-style-type: none"> This option provides a mechanism for children’s and young people’s views to be considered at a system level. This option strengthens the State’s obligation to listen to the voices of children and young people at a systemic level. Aligns with UNCROC (Article 12). <i>Interaction with other legislative provisions and planned reforms –</i> This option, as for options 1 and 2: <ul style="list-style-type: none"> is consistent with section 5(d) does not hinder the next stage of reforms, including proposals that may be included in Bill No 2, work on the role of the OCC and the advocacy co-design work currently underway. <i>Fiscal and operational impact –</i> any costs associated with this option are likely to be minor and would be expected to be met within baselines of the statutory agency. 	<ul style="list-style-type: none"> <i>Embeds a child-centred approach in the system –</i> this option alone does not have an impact on individual advocacy.

Options and impact analysis for the establishment of the advocacy service

Option	Features	Implications and impacts	Benefits	Issues/Risks
Option 4a – establish an advocacy service without amendments to legislation (non-regulatory option)	<p><i>Description</i></p> <p>This option would involve the establishment of an advocacy service without creating a legislative mandate.</p> <p><i>Legislative change</i></p> <p>No legislative change required.</p> <p>This option could be combined with option 1, 2 and/or 3.</p>	<ul style="list-style-type: none"> An advocacy service will be established, but its ongoing functioning and independence will not be guaranteed. Some children and young people are likely to have access to an advocacy service. 	<ul style="list-style-type: none"> <i>Embeds a child-centred approach in the system</i> <ul style="list-style-type: none"> This option would go some way to providing individual and systemic advocacy for children and young people. As Government policy is that the agency will establish an advocacy service, the CE of the agency has legal responsibility under the State Sector Act 1988 to give effect to the policies of the Government. Therefore this will go towards strengthening the State’s obligation. This option aligns with UNCROC (Article 12). <i>Interaction with other legislative provisions and planned reforms</i> <ul style="list-style-type: none"> This option has no impact on other legislative provisions or planned reforms. This option would allow time for further policy work to be done on the full scope of legislative reforms needed for the advocacy service. <i>Flexibility –</i> this non-regulatory option would allow the service aims and provision to meet changing circumstances and demands. 	<ul style="list-style-type: none"> <i>Embeds a child-centred approach in the system</i> <ul style="list-style-type: none"> This option will mean the service will be available but its existence may be subject to changing agency or Ministerial priorities. Under this option, there will be no legal obligations under the CYPF Act to give effect to the advocacy service. The ability to effect systemic change on behalf of children and young people will be significantly weaker in comparison with options 4b, 4c, and 4d. <i>Children and young people are able to express views and participate freely –</i> by not having the service included in legislation, the coverage and consistency of advocacy services to children and young people cannot be guaranteed. <i>Interaction with other legislative provisions and planned reforms –</i> how the advocacy service intersects with the lawyer for the child and youth advocate will need to be considered as part of developing the operating model for the advocacy service. <i>Fiscal and operational impact –</i> there will be some costs to the agency to establish the advocacy service and costs associated with training for agency staff on how they will need to work with the advocacy service.
Option 4b – amend the CYPF Act to include a high-level duty on the CE to make advocacy	<p><i>Description</i></p> <p>In order to establish a foundation for the independent advocacy service, this option would place a duty on the CE to ensure services are available to fulfil the following functions:</p> <ul style="list-style-type: none"> Supporting children and young people to express their 	<ul style="list-style-type: none"> The CE will be required to fund an advocacy service that provides individual and systemic advocacy to children and young people. Children and young people will have 	<ul style="list-style-type: none"> <i>Embeds a child-centred approach in the system –</i> This option: <ul style="list-style-type: none"> provides the foundation for the establishment of the advocacy service that will go towards both individual and systemic advocacy in comparison to option 4a, placing an obligation on 	<ul style="list-style-type: none"> <i>Children and young people are able to express views and participate freely –</i> This option does not guarantee independence of the service if the duty is on the CE. The service may also not be perceived as having the level of independence required for this type of service.

Option	Features	Implications and impacts	Benefits	Issues/Risks
<p>services available, and that these services should operate independently (regulatory option)</p>	<p>views on matters that are important to them.</p> <ul style="list-style-type: none"> Listening to children and young people's views on the operation and effectiveness of services provided under the Act, and supporting children and young people to contribute to improving them. <p>This duty will have a particular focus on children and young people in care.</p> <p>The legislation will specify that these services should operate independently from other services provided under the Act.</p> <p><i>Legislative change</i></p> <p>Legislative change would be required to establish this duty in the CYPF Act. This could be added to section 7 (Duties of CE).</p> <p>This option could be combined with option 1, 2 and/or 3.</p>	<p>certainty that access to an advocacy service that provides for individual and systemic advocacy, is available.</p>	<p>the CE embeds the provision to ensure the availability of advocacy services</p> <ul style="list-style-type: none"> goes some way to strengthening the State's responsibility aligns with UNCROC (article 12). <ul style="list-style-type: none"> <i>Children and young people are able to express views and participate freely</i> – This option confers some level of independence on the service. <i>Interaction with other legislative provisions and planned reforms</i> – this option: <ul style="list-style-type: none"> is likely to have less impact than option 4c on the co-design work underway on the advocacy service goes toward facilitating provisions that could be included in Bill No 2 and does not preclude further legal amendments around the advocacy service <p><i>Section 9(2)(f)(iv) Active Consideration</i></p> <ul style="list-style-type: none"> <i>Flexibility</i> – This option defines the functions of the service but allows for some flexibility in how the services will be delivered. 	<ul style="list-style-type: none"> <i>Interaction with other legislative provisions and planned reforms</i> <ul style="list-style-type: none"> This option limits the scope of what can be proposed in the next stage of work as the duty is tied to the CE. Therefore it is possible that this option will pre-empt the results of the co-design process and therefore limit the scope of the operating model of the advocacy service. This includes, for example, if the co-design process identifies the Children's Commissioner as the most appropriate duty holder. However, as noted in the adjacent column, this option does not preclude further legislative amendments in the second stage of reforms <i>Flexibility</i> – By setting out the functions of the advocacy service, this option may potentially impact on the ability of the advocacy service to adapt to changing circumstances. <i>Fiscal and operational impact</i> – There will be costs to the agency associated with ensuring the provision of an advocacy service on an ongoing basis, and at sufficient volume to meet demand. There will be some costs associated with training for agency staff on how they will need to work with the advocacy service. <p><i>Section 9(2)(f)(iv) Active Consideration</i></p>
<p>Option 4c – amend the CYPF Act to include a high-level duty on CE to make advocacy services available and to designate an employee to act independently to oversee the delivery of those services (regulatory option)</p>	<p><i>Description</i></p> <p>In order to establish a foundation for the independent advocacy service, this option would place a duty on the CE to make services available to fulfil the following functions:</p> <ul style="list-style-type: none"> Supporting children and young people to express their views on matters that are important to them. Listening to children and young people's views on the operation and effectiveness of services provided under the Act, and supporting children and young people to contribute to improving them. <p>This duty will have a particular focus on children and young people in care.</p> <p>Additionally, the CE would be required to designate an employee to oversee the delivery of those services. In exercising those duties, the employee would act independently and would not be responsible to the CE except in relation to the efficient, effective and economical management of the advocacy service. Further to this, subject to the Act, the services as outlined in this option would operate independently of the CE, agency, purchasers, and providers.</p> <p>This option would be similar to the approach in the Health and Disability Commissioner Act 1994 which provides that the Health and Disability Commissioner may designate one of its employees as the Director of Health and Disability Services Consumer Advocacy (section 24), and it further provides that advocacy services shall operate independently of the</p>	<ul style="list-style-type: none"> The CE will be required to fund an advocacy service that provides individual and systemic advocacy to children and young people. The CE will be required to employ a staff member to provide independent oversight of the services. Children and young people will have certainty that access to an independent advocacy service that provides for individual and systemic advocacy is available. 	<ul style="list-style-type: none"> <i>Embeds a child-centred approach in the system</i> – This option: <ul style="list-style-type: none"> provides the foundation for the establishment of the advocacy service that will go towards both individual and systemic advocacy in comparison with option 4a, placing an obligation on the CE embeds the provision to ensure the availability of advocacy services goes some way to strengthen the State's responsibility aligns with UNCROC (article 12). <i>Children and young people are able to express views and participate freely</i> – By requiring the CE to appoint a staff member to oversee the delivery of the services, this option supports a more independent approach than option 4b. <i>Interaction with other legislative provisions and planned reforms</i> – as with option 4b, this option does not preclude further legal amendments around the advocacy service <p><i>Section 9(2)(f)(iv) Active Consideration</i></p> <ul style="list-style-type: none"> <i>Flexibility</i> – as for option 4b and 4d, this option defines the functions of the service so allows for some flexibility in how the services will be delivered. 	<ul style="list-style-type: none"> <i>Interaction with other legislative provisions and planned reforms</i> <ul style="list-style-type: none"> As for option 4b, it is possible that this option will pre-empt the results of the co-design process and therefore limit the scope of the operating model of the advocacy service, particularly in relation to the appropriate duty holder. Additionally, if the policy work for Bill No 2 identifies proposals inconsistent with this option, this option will need to be revisited. Further clarity will be required on the functions of the designated employee and the extent to which this is defined in legislation. This would be dependent on the co-design work currently underway. <i>Flexibility</i> – By setting out the functions of the advocacy service, this option may potentially impact on the ability for the advocacy service to adapt to changing circumstances. <i>Fiscal and operational impact</i> <ul style="list-style-type: none"> There will be costs to the agency associated with ensuring the provision of an advocacy service on an ongoing basis, and at sufficient volume to meet demand. Compared to option 4b, there are additional costs to the agency of establishing an independent oversight function within the agency, in particular the cost of having a designated employee. There will be some costs associated with training for <p><i>Section 9(2)(f)(iv) Active Consideration</i></p>

Option	Features	Implications and impacts	Benefits	Issues/Risks
	<p>Commissioner, the Ministry, purchasers, health care providers, and disability services providers (section 26).</p> <p>Another comparable example is the Registrar of Companies, who must be appointed under the State Sector Act 1988, but has powers, duties and functions under the Companies Act 1993, the Financial Reporting Act 2013, and the Limited Partnerships Act 2008.</p> <p><i>Legislative change</i> Legislative change would be required to the CYPF Act to establish. This could be added to section 7 (Duties of CE).</p> <p>This option could be combined with option 1, 2 and/or 3.</p>			<p>agency staff on how they will need to work with the advocacy service.</p>
<p>Option 4d – amend the Children’s Commissioner Act 2003 to place an obligation on the Children’s Commissioner to make advocacy services available (regulatory option)</p>	<p><i>Description</i> This option would place an obligation on the Children’s Commissioner to make services available to fulfil the following functions:</p> <ul style="list-style-type: none"> Supporting children and young people to express their views on matters that are important to them. Listening to children and young people’s views on the operation and effectiveness of services provided under the CYPF Act, and supporting children and young people to contribute to improving them. <p>This duty will have a particular focus on children and young people in care.¹⁴</p> <p><i>Legislative change</i> Legislative change would be required to establish this as a statutory function under section 12 in the Children’s Commissioner Act 2003, which sets out the general duties of the Children’s Commissioner.</p> <p>This option could be combined option 1, 2 and/or 3.</p>	<ul style="list-style-type: none"> The Children’s Commissioner would be required to make available advocacy services that provide individual and systemic advocacy to children and young people. Children and young people will have certainty that access to an advocacy that provides for individual and systemic advocacy, is available outside of the services provided by the agency administering the CYPF Act. 	<ul style="list-style-type: none"> <i>Embeds a child-centred approach in the system</i> <ul style="list-style-type: none"> Establishes advocacy services that go towards both individual and systemic advocacy. In comparison with option 4a, placing an obligation on the Children’s Commissioner embeds the provisions to ensure the availability of advocacy services. In comparison with options 4a, 4b, and 4c this option may provide stronger mechanisms for effecting systemic changes due to section 13 in the Children’s Commissioner Act which sets out the Children’s Commissioner’s functions in relation to the CYPF Act. This includes, for example, to review and make recommendations on the working of the CYPF Act (section 13(e)). Aligns with UNCROC (article 12) <i>Children and young people are able to express views and participate freely</i> – compared with options 4b and 4c, this option may provide a greater perception of independence, which is seen as required for this type of service, as the obligation to provide the service will sit outside of the statutory agency. <i>Flexibility</i> – as with options 4b and 4c, this option defines the functions of the service so allows for some flexibility in how the services will be delivered. 	<ul style="list-style-type: none"> <i>Interaction with other legislative provisions and planned reforms</i> <ul style="list-style-type: none"> The SOC paper notes that further advice on the responsibilities of the OCC will be provided in October 2016 [SOC-16-MIN-0023 refers]. This option would pre-empt this advice. We note that in its Final Report, the Panel it envisaged the advocacy service and the OCC would have distinct but complementary and parallel roles. This option significantly expands the current functions of the Children’s Commissioner. Further clarity will be required on the full scope of functions of the Children’s Commissioner, <div data-bbox="2237 1087 2849 1220" style="border: 1px solid black; padding: 5px;"> <p><i>Section 9(2)(f)(iv) Active Consideration</i></p> </div> <p>Further policy work on this would be required and this would be dependent on the co-design process currently underway.</p> <ul style="list-style-type: none"> <i>Fiscal and operational impact</i> – there will be costs to the OCC to ensure the provision of an advocacy service on an ongoing basis, and at a sufficient volume to meet demand. This will involve reviewing the current funding appropriation of the OCC.

¹⁴ The OCC has not been consulted with on this option. As noted in the Agency Disclosure Statement in this RIS, it has not been possible to consult with the OCC ahead of the release of the Government’s response to the Final Report of the Panel.

Discussion of preferred options

Voices of children and young people

The option analysis shows that option 1, a non-regulatory option that proposes strengthening practice guidance around the application of section 5(d), does not go far enough towards embedding a child-centred approach in the system. In particular it does not sufficiently strengthen the obligation of the State in relation to the voices of children and young people under the CYPF Act relative to the status quo.

To support strengthened provisions around children and young people's voices under the CYPF Act, it is recommended that the following proposals are progressed:

- Option 2, amend the CYPF Act to ensure that children and young people can participate in decisions that significantly affect them. This proposal supports embedding a child-centred approach in the system at an individual level. It enables children and young people to participate in processes, proceedings and in any other decisions that may significantly affect them. This option recognises that some children and young people may face barriers to their participation and may require support or assistance to do so.
- Option 3, amend the CYPF Act to require the CE to have regard to the views of children and young people in relation to policies and services provided by the agency. This proposal supports embedding a child-centred approach by strengthening the CE's obligation to consider the views of children and young people at a system level.

Additionally, these two options:

- align with UNCROC (Articles 12, 13 and 23)
- do not hinder other legislative provisions or planned reforms.

Option 2 strengthens children and young people's individual participation and option 3 strengthens system-level advocacy. In combination, these provisions will provide a strong basis within which children and young people will be enabled to participate under the CYPF Act.

There will be some compliance costs associated with option 2 in relation to training and education of persons responsible for relevant proceedings and processes under the CYPF Act and ensuring that support and/or assistance is available to those children and young people who may face barriers in their abilities to express views freely. Any costs associated with option 3 are expected to be minor and would come out of baselines.

Establishment of the advocacy service

Option 4a, which proposes establishing an advocacy service without legislative amendments, does not go far enough to embed a child-centred approach in the system. Although the benefit of this option is that it would allow time for further policy work to be completed on the full set of reforms needed for the advocacy service, the advocacy service's existence may be subject to changing agency or Ministerial priorities. Further to this, there will be no legal obligations under the CYPF Act to give effect to the advocacy service. Therefore, it is not recommended that this option be progressed.

Option 4c proposes that the CYPF Act be amended to place a high-level duty on the CE to make services available and to designate an employee to oversee the delivery of services, who would act independently. This option provides a greater degree of independence than option 4b as it establishes the advocacy service as independent. This option, however, may pre-empt the results of the co-design process currently underway and may, therefore, limit the scope of the operating model of the advocacy service. With this in mind, this option is not recommended.

Section 9(2)(f)(iv) Active Consideration

Option 4d, which requires amending the Children’s Commissioner Act 2003 to place an obligation on the Children’s Commissioner to make advocacy services available, provides a greater perception of independence than options 4b and 4c. However, this option is not recommended as it would result in a significantly expanded role of the OCC. Further policy work would be required to fully understand the impacts of this expanded role and this would pre-empt the co-design of the advocacy service. Additionally, the Minister for Social Development is due to report-back to Cabinet on the responsibilities of the OCC by 31 October 2016 [SOC-16-MIN-0023 refers]. Therefore this option would pre-empt this process.

To support the establishment of the advocacy service, it is recommended that option 4b be progressed. This option proposes an to the CYPF Act to create a high-level duty on the CE to make services available. The services under this option will fulfil the following functions, with a particular focus on children and young people in care:

- supporting children and young people to express their views on matters that are important to them
- listening to children’s and young people’s views on the operation and effectiveness of services provided under the Act, and supporting children and young people to contribute to improving them.

This duty will have a particular focus on children and young people in care and the legislation will specify that these services should operate independently from other services provided under the Act.

This option is recommended, as placing the obligation on the CE supports the objectives of embedding a child-centred approach in the system, confers some level of independence, allows for some flexibility in how the services will be delivered, aligns with UNCROC (article 12), and will have less impact than options 4c and 4d on the co-design work currently underway which will inform the operating model of the advocacy service. Additionally, this option may facilitate further provisions that could be included in Bill No 2 around the provision of the advocacy service.

Although this option specifies that the services should operate independently from other services provided under the Act, there is a risk that placing a duty on the CE may not be perceived as having the level of independence required to enable children and young people to participate freely. This was reflected comments arising out of the workshops with young people and experts in relation to the independence of the proposed advocacy service (as noted in the consultation section of this RIS).

Section 9(2)(f)(iv) Active Consideration

Section 9(2)(f)(iv) Active Consideration

This option involves costs to the agency associated with ensuring the provision of an advocacy service on an ongoing basis, and at sufficient volume to meet demand. There will also be some compliance costs in relation to education and training of agency staff in relation to how they will interact with the advocacy service.

Creation of legislative duties

Under the preferred options, the Chief Executive will be held accountable for meeting the duties in section 7 (options 3 and 4b) and section 11 (option 2) via the existing arrangements, including performance expectations under the State Sector Act 1988, agencies' annual planning and reporting, financial review by the Social Services select committee, and complaints to the Children's Commissioner or the Ombudsmen.

In individual cases or where the failure is widespread, it is also possible that this failure to implement could be subject to judicial review.

Interaction of the preferred options with the functions of the Children's Commissioner

As outlined in the status quo section, the Children's Commissioner Act 2003 contains mechanisms for the Children's Commissioner to provide universal advocacy for all children and young people. This includes advocating for the rights of children and young people and raising awareness of, and advancing, UNCROC.

Under the Children's Commissioner Act 2003, the Children's Commissioner has specific functions in relation to the CYPF Act which includes monitoring, assessing and reporting on services, policies and practices of the department (s13(1)(b)), and a function that allows investigation into decisions, recommendations or any act done or omitted under the CYPF Act in respect of any child or young person in that child or young person's personal capacity (section 13(1)(a)). Outside of this complaints mechanism, the Children's Commissioner does not routinely provide individual advocacy specifically for children and young people in care.¹⁵ Additionally, there is no duty on the Children's Commissioner to ensure that children and young people are supported or assisted through any complaints process.

While there is the ability for "complaints" of children and young people to be escalated to the Children's Commissioner (or the Ombudsmen), the OCC's 2015 State of Care Report notes that "in the previous two financial years, only nine of the formal complaints made about CYF's care and protection services (outside of CYF residences) were made by children".¹⁶ The report goes on to say that this is likely to reflect a complaints system that is

¹⁵ The OCC provides general support on matters, for example education rights, see <http://www.occ.org.nz/childrens-rights-and-advice/education-rights/>

¹⁶ Office of the Children's Commissioner. (2015). *State of Care 2015: What we learnt from monitoring Child, Youth and Family* (p. 42). ISSN 2463-2821.

not sufficiently accessible to children. The lack of visibility in the complaints process is indicative of a system where children and young people are not made sufficiently aware of their rights nor are they supported in a consistent way to ensure those rights are upheld.

It is intended that the proposed advocacy service will provide individual advocacy for children and young people in care. This service will not be a complaints service but, as part of its functions, would provide any support the child or young person may require. Therefore, the service would work in concert with any existing complaints mechanisms.

The system-level advocacy provided by the Children’s Commissioner covers all children and young people. The Children’s Commissioner’s general functions are defined under section 12 of the Children’s Commissioner Act 2003. These are broad in scope, however, and are not duties, and therefore do not go as far as the proposal to place duties on the CE (options 3 and 4b).

Additionally, in contrast with the Children’s Commissioner’s general functions that cover all children and young people, the proposed advocacy service will have a specialist focus on the small group of vulnerable children and young people in care. Therefore, there is likely to be minimal, if any, overlap between the present functions of the Children’s Commissioner and the proposed systemic advocacy function of the advocacy service. It is intended that the proposed preferred options would complement any existing functions, including those of the Children’s Commissioner.

For example, the proposed amendment to the CYPF Act to place a duty on the CE to listen to the voices of children and young people at a systems level (option 3) will strengthen the obligation to take into account any representations made by the Children’s Commissioner on behalf of children and young people.

Section 9(2)(f)(iv) Active Consideration

Consultation

The Panel completed the high-level design of a new operating model, informed by a collaborative process with children, young people, families, caregivers, victims, experts from across the system, and an extensive review of local and international research.

Consultation with children and young people, undertaken as part of the review and co-design process has highlighted that they were not made sufficiently aware of their rights, nor supported in a consistent way to ensure those rights were upheld. They did not have the knowledge or supports they needed to ensure the system keeps them safe and to hold the system accountable for their level of care. Families, caregivers and social workers also expressed difficulties in engaging an “adversarial” system, and how these difficulties affect their ability to advocate for the needs and rights of children and young people.

Collaborative work was also undertaken by Dingwall Trust (with the Voices of Children in Care Network), the philanthropic sector and the secretariat to the Panel to explore the development of an independent advocacy service. This co-design process is still underway.

Key to this process is the co-design engagement phase which is intended to inform the future operating model of the service. This phase has involved workshops and meetings with young people, stakeholders, experts and agency partners. Initial findings from this work have informed the analysis in this RIS.

These initial findings have emphasised the need for actual and perceived independence from the agency providing care, protection and youth justice services. Young people highlighted the need for the service to promote freedom of speech, and act as a “megaphone” to the system. Adult workshop participants and experts noted the need for the service to have funding and accountability structures that are separate from the services advocated about.

There has previously been public consultation on the matter of strengthening participation by children and young people, as part of select committee consideration of the now discharged Children, Young Persons, and Their Families Amendment Bill (No 6). The majority of submitters who commented on this issue supported strengthening the existing principle relating to the participation of children and young people in issues that affect them, as this ensures the rights of children are protected, promotes children’s rights and youth development, and improves alignment with section 6 of the Care of Children Act 2004 and with Articles 12, 13 and 20 of UNCROC.

A small number of submitters did not support proposals to strengthen the existing provisions relating to participation on the grounds that the current provisions are adequate, or that it could be too prescriptive.

Conclusions and recommendations

Following consideration of the options analysis, we recommend the following three options:

- Option 2 – amend the CYPF Act to ensure that children and young people are able to participate in actions and decisions under the Act (regulatory option).
- Option 3 – amend to the CYPF Act to require the CE to have regard to the views of children and young people in relation to policies and services provided by the agency (regulatory option).
- Option 4b – amend the CYPF Act to include a high-level duty on the CE to make advocacy services available, and that these services should operate independently (regulatory option).

Together these three options will provide a strong foundation for a child-centred approach that is focused on the participation of children and young people and that will support the foundation of the advocacy service.

Implementation plan

The proposals form part of broader reform to the operating model for responding to vulnerable children and families. It is proposed that the future operating model be established through a cross-agency Transformation Programme¹⁷ to implement the proposed changes,

¹⁷ SOC agreed that the governance arrangements for the Transformation Programme will include: the CE of the Ministry of Social Development who would be responsible for establishing and managing the Transformation Programme; a reconstituted Vulnerable Children’s Board who will provide advice on the establishment and

operating according to a robust programme management system that includes reporting and monitoring, decision-making protocols, change control, change management, stakeholder management, risk and issues management, and benefits realisation. Detailed information about the implementation plan is included in the Panel’s report, particularly Chapter 9.

The Panel’s Final Report states that the advocacy service is currently being designed collaboratively using a strategic partnership between government and the philanthropic sector and will be jointly funded, with the philanthropic sector already having committed \$150,000 to finalise the design of the service. The Panel’s Final Report outlines that the key features of the new model are expected to be:

- services delivered via an NGO, funded by government and augmented by the philanthropic sector
- a peer network and events for children and young people, using the collective voice of young people as advisors (eg running leadership development programmes)
- use of digital technology to help achieve these objectives.

A full business case detailing the specific functions and costs of the new advocacy service will be completed in May 2017, for consideration by SOC by July 2017.

Section 9(2)(f)(iv) Active Consideration

Funding to meeting additional costs associated with the full business case would be sought in subsequent budgets. Additional statutory mechanisms to give effect to proposals agreed to by Cabinet will be considered as part of the next stage of legislative reform.

Section 9(2)(f)(iv) Active Consideration

Monitoring, evaluation and review

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 Treasury and the State Services Commission to build a detailed performance framework. On 30 March 2016, SOC noted that

management of the programme of work and then provide the Minister for Social Development and the Ministerial Oversight Group with advice on an ongoing basis; and the Ministerial Oversight Group, which would comprise the Ministers of Finance, Health, Justice, Education, Social Development, Corrections, Police, Whānau Ora and Māori Development, will oversee and direct the reform process [SOC-16-MIN-0023 refers].

the Minister for Social Development expects that the performance management framework for the operating model will include the following dimensions [SOC-16-MIN-0022 refers]:

- improved long-term outcomes for those vulnerable children and young people
- reduced liability for future social, economic and fiscal costs
- reduction of churn in the number of care placements and stability of care through long-term relationships in safe and loving homes
- reduction in the rate of statutory response due to increased prevention and intensive support for children and families and whānau
- reduction of re-abuse and re-victimisation (including in care)
- reduction of re-offending rates for youth offenders
- reduction in the over-representation of Māori children and young people in care and the youth justice system
- improved outcomes for Pacific children and young people.

Work is also being progressed to gather data on the voices and experiences of those the system is designed to serve, starting with children and young people, which could be used to inform monitoring of the system.

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