

Modernising Child, Youth and Family: Vulnerable children workforce settings

Regulatory Impact Statement

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Ministry of Social Development. It provides an analysis of options for new workforce settings to enable more professionals to perform a broader set of functions in the Government's proposed new operating model for vulnerable children and young people. As well as, the connected objectives of providing appropriate flexibility for the agency to deliver services via strategic partners and supporting the Chief Executive as the single point of accountability for vulnerable children and young people.

The legislative changes proposed by the Government in response to the recommendations of the Modernising Child, Youth and Family Expert Panel 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)).

The Regulatory Impact Analysis has been undertaken on the basis that workforce settings are a small part of a proposed system transformation. They will be accompanied by significant changes to the operating model for working with vulnerable children and families, which will have an impact on individuals and families. The bulk of the legislative changes required to give effect to the proposed operating model are included in the second stage of reforms, and will be subject to further Regulatory Impact Analysis at that stage as required.

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

- the analysis has been undertaken within fairly tight timeframes ahead of detailed design work, thereby limiting the options that could be feasibly considered. This increases the risk of creating unnecessary degrees of flexibility; however, the options considered are enabling provisions, which can respond to adaptations over time
- the recommendations of the Expert Panel were developed independently as part of a process that included broad consultation and expert input. However, detailed consultation on this specific proposal could not be undertaken with affected agencies and individuals
- the limited consultation with affected agencies has meant that key affected stakeholders have not had an opportunity to shape the proposal, which presents an implementation risk that the proposal is perceived as undermining the role of Child, Youth and Family social workers, leading to an adverse reaction to the wider transformation programme

- agency consultation has been undertaken on the impacts on Government agencies as part of the development of this Regulatory Impact Statement, but within limited timeframes
- a general indication only of the relative scope and magnitude of the options' operational implications has been provided as this will depend on further detailed design work, being undertaken as part of the business case for the new operating model
- the cost implications of each option have not been analysed as the change enables rather than prescribes workforce changes and these will depend on future design proposals.

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Executive summary

In response to the final report of the Modernising Child, Youth and Family Expert Panel, the Government has proposed significant changes to how the State seeks to meet the needs of vulnerable children and young people. This Regulatory Impact Statement provides an analysis of options for new workforce settings to enable more professionals to perform a broader set of functions in the new operating model. It also considers the related objectives of providing appropriate flexibility for the agency to deliver services via strategic partners and supporting the Chief Executive of the children's agency as the single point of accountability for vulnerable children and young people.

The current legislative framework allocates duties and powers of decision to a number of different actors, with certain key functions being the preserve of persons employed by the department as social workers and Police constables. In practice, although the Police have an important role to play in particular areas, the majority of child protection functions and certain youth justice functions under the Children, Young Persons, and Their Families Act 1989 (CYPF Act) are performed by social workers.

The allocation of key functions to social workers and Police constables serves as a protection for the public and seeks to ensure that only suitably qualified persons are able to wield the coercive statutory powers of the State. However, the explicit naming of social workers is not common to comparable jurisdictions such as England and Australia.

The new operating model for responding to vulnerable children and young people envisages that while social workers would remain the main professionals discharging functions under the CYPF Act, there would be flexibility for other professionals to play core roles in helping to identify and meet the needs of vulnerable children and young people, where they are better or equally positioned to perform those functions.

Feasible regulatory and non-regulatory options to address these concerns were assessed against the extent to which they enable other professionals to perform a broader range of functions under the Act, provide appropriate flexibility for the agency to deliver services via strategic partners and support the Chief Executive as the single point of accountability. Options were also assessed against durability, risk management and safety, and promotion of the professional competency of social workers.

The preferred option is to amend the CYPF Act to vest the functions currently residing with social workers instead in the Chief Executive. Under the provisions of the State Sector Act 1988 this will enable the Chief Executive to delegate, in writing, their functions to employees in the department and elsewhere in the public service who are not social workers, and persons outside the public service with the appropriate Minister's prior written approval. In addition, further constraints on these delegation powers are recommended to ensure the appropriate transparency and limitations on the use of coercive powers:

- that the Chief Executive would only be able to delegate functions to people who have the interpersonal skills, training, and experience to be suitably qualified to perform those functions
- that if delegating outside the State sector, the Chief Executive be required by the legislation to have contractual requirements in place to support the appropriate exercise of the delegation and to enable the person with delegated authority to be held to account
- that the legislation require those exercising delegated authority to have regard to any guidance issued by the Chief Executive

- that the Chief Executive be required to maintain a publicly accessible register of delegations to ensure transparency and clarity for the sector and the public.

To ensure that the legislation continues to reflect the special nature of the contribution of social workers in the child protection system, an amendment is also proposed to provide that the Chief Executive be deemed to have delegated the relevant functions to social workers unless they have specified otherwise in the publicly available register of delegations.

Further work on the detailed design of the new operating model will consider decisions on future roles, responsibilities, services and investment, in partnership with those to whom the functions may be delegated. Any delegations will take account of issues such as the availability of a particular class of professionals and the cost implications. The particular operational decisions taken will also influence the protective measures the Chief Executive will need to put in place around matters such as dispute resolution and complaints (ie for children, young people and families), and training and competency assessment.

Policy context

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, ongoing and significant issues have been identified with how Child, Youth and Family operates.

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 [SOC Min (15) 2/2 refers]. The scope of the Expert Panel, as described in the Terms of Reference, included the interactions, alignments and responsibilities of Child, Youth and Family, Children's Teams and other relevant services.

On 14 September 2015, Cabinet noted the Panel's Interim Report and noted that the Report signals the need for a substantial, multi-year programme of transformational, system-wide change in order to deliver on our aspirations for vulnerable children and young people [CAB Min (15) 75 refers]. Cabinet also endorsed a child-centred system and an investment

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 *ibid.*

approach for vulnerable children and young people as two of the building blocks for the new operating model [CAB Min (15) 75 refers].

In its final report of December 2015, 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.

The Expert Panel's recommendations involve the introduction of an investment approach to tilt the focus of the system towards children's wellbeing and away from immediate minimisation of risk of harm; and strategic partnership with caregivers, providers and other agencies to agree and work towards shared goals for children. It would 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, significant new investment, as well as significant changes to the operating model of the core agency involved in the system.

Workforce related elements of the proposals included creating a single point of accountability for vulnerable children and young people, flexibility for the agency to deliver services via strategic partners and enabling a broader set of professionals to perform key functions associated with the objectives of the CYPF Act.

On 30 March 2016, the Cabinet Social Policy Committee (SOC) considered the Expert 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 Minister for Social Development was invited to report to SOC with recommendations for legislative change to enable a broader set of professionals to perform functions under the CYPF Act, with the intention that these reforms be introduced into the House in the first half of this year. It is intended that the Cabinet Legislation Committee consider the draft Bill at a meeting in early May. The options identified in this paper have been developed and assessed against these timing parameters.

Status quo

The current legislative framework allocates duties and powers of decision to a number of different actors, with certain key decisions being the preserve of persons employed by the department as social workers. Many of these key functions are also accorded to Police constables. Other functions are conferred directly on the Chief Executive of the department, on Family Group Conference (FGG) co-ordinators (Care and Protection Co-ordinators and Youth Justice Co-ordinators) and the courts.

The following summarises the key functions and the individuals upon whom the functions are conferred:

- a number of general duties are conferred on the Chief Executive of the department including to ensure the objects of the Act are attained
- reports of child abuse and neglect may be made only to a social worker or constable
- the social worker or constable who receives the report of abuse or neglect may investigate or arrange for the investigation of the report
- Care and Protection Resource Panels (CPRPs) must be consulted during care and protection investigations. CPRPs are advisory committees made up of persons from occupations and organisations (including voluntary and statutory organisations, cultural

groups, government departments, and government agencies) that are concerned with the care and protection of children and young persons

- the social worker or constable may refer the matter for an FGC if they believe the child or young person is in need of care or protection, and will be entitled members of the FGC
- other agencies may also refer concerns directly to an FGC, and will be entitled members of the FGC if one is convened
- FGC co-ordinators are conferred the obligation and powers to convene an FGC
- the Chief Executive is generally required to implement FGC plans and decisions
- powers to secure the safety of children and young people at risk by applying for warrants, declarations that a child or young person is in need of care or protection, and certain court orders are conferred on social workers and constables. Any other person may apply for a declaration with the leave of the court
- certain powers to act to protect children and young people without warrant are reserved for constables
- the Chief Executive and certain approved organisations may be appointed by court order under the Act to have custody or guardianship of a child or young person, and that status carries a number of powers and obligations
- only social workers are able to prepare reports required to support the making of certain courts orders, including custody orders
- any person may be directed to prepare and review court plans to support an order.

There are also a number of functions and powers under the youth justice provisions of the Act. The functions of Chief Executive of the department and social workers relate mainly to custody of young persons and supervision of Youth Court orders. The Police exercise a large number of the youth justice functions, including those relating to the prosecution of offending.

In practice, social workers are responsible for the majority of decision-making and case management: social workers receive reports of concern, conduct investigations, manage cases, initiate court action and act as the Chief Executive's delegate in the exercise of their custody and guardianship duties.

The CYPF Act defines a social worker as a person employed under Part 5 of the State Sector Act 1988 in the department as a social worker. A person employed by the department as a social worker is not required by legislation to be a registered social worker under the Social Workers Registration Act 2003. However, in practice, 76 percent of the 1,400 current Child, Youth and Family frontline social workers are registered, with the department's policy being to work towards full registration.³

There are specific risks inherent in the State taking an active intervention role in working with vulnerable children and young people. On the one hand, failure to intervene can result in preventable harm to children; on the other hand, intervention can be highly disruptive for children and families and cause trauma and additional harm to already vulnerable children and young people.

³ As at 29 February 2016, there were 1,402 frontline social workers employed by Child, Youth and Family, and 1,072 (76%) were registered.

There appear to be mainly historical reasons for the use of “social worker” in the wording of the CYPF Act. It was carried over from the previous 1971 Act which sought to distinguish the functions and roles of the new department from the former home of these functions in the Department of Education. However, the allocation of key functions to specific classes of professional (social workers and Police constables) serves as a protection for the public and seeks to ensure that only suitably qualified and skilled persons are able to wield the coercive statutory powers of the State. This avoids incompetence and misuse of State powers and has an added benefit of transparency for the public about who has these powers. However, there are a number of other methods to ensure this protection, such as training, setting and enforcing standards, employment and contracting powers and occupational regulation. There are also other methods for ensuring transparency for these functions.

The explicit naming of social workers as professionals with responsibility for discharging functions under the Act, to the exclusion of other professionals or employees or agents of the agency, is not common to comparable jurisdictions, such as England and Australia. In these jurisdictions responsibility tends to sit with the relevant Chief Executive.⁴

The social work profession comes from a tradition that promotes pro-social change with individuals and families. Through principles of social justice, human rights, respect for the diversity and experience of individuals, groups and communities, the profession seeks to empower people to take greater control and improve their life circumstances. Within the statutory services, social work also requires specialist skills in undertaking assessment of risk and needs, in working with the individuals, their wider family and whānau, and other services to develop and implement robust plans to enable change and to recognise when and how the use of statutory power is in a child’s best interests.

Scope

Given the timeframes for this analysis, the following have been excluded from consideration:

- the role of the FGC Co-ordinator as a distinct role within the Act
- review of references to ‘constables’ in the legislation – the future role for Police under the new operating model will be considered as part of the next stage of design work. This will include considering the ongoing value of being able to draw on policing resources as an emergency backstop, particularly outside of usual operating hours (noting, however, the intention to move towards a 24/7 operating model). This work will also need to take account of the legal framework within which individual officers operate, whereby decision-making powers are conferred on individuals rather than at a system-level, and the constitutional standing of constables in common law
- provisions that reference Court-directed social work reports, given the interaction with the Care of Children Act 2004, which contains similar provisions.

Future policy work will review whether any amendments to these are required.

⁴ In some cases the equivalent role is Director-General, or Secretary. In England, responsibility sits with the Local Authority; executive arrangements for these vary.

Problem definition

1. The current Act assigns some key powers and duties to social workers and does not enable other professionals to discharge those functions.

The proposed new operating model envisages considerable flexibility to be able to provide a responsive, holistic and child-centred response to vulnerable children, young people and families. This model envisages that social workers would remain the main professionals discharging functions under the CYPF Act, but that there would be flexibility for other professionals to play core roles in helping to identify and meet the needs of vulnerable children and young people, where they are better or equally positioned to perform those functions. This might be because they have an established and trusted relationship with the child, young person and/or their family, plus the appropriate skills, knowledge and capabilities.

The need to utilise the skills of a broader range of professionals is expected to become more of an issue under the new operating model because of the new functions associated with prevention, and identifying and meeting the full range of needs for children, including remediation, growth and development.

Research and expert input that informed design work on the proposed operating model to date has emphasised the potential benefits of a multi-disciplinary approach to child protection work and decision-making. There is a growing body of evidence recognising the value of creating multi-disciplinary teams whose main task it is to undertake intensive assessments and then therapeutic work based on the findings of their assessment.⁵ These approaches are applied in comparable jurisdictions such as United Kingdom and in the operating model for the recent New Zealand development of Children's Teams, which provide a specialist multi-agency response to highly vulnerable children and young people below Child, Youth and Family's intervention thresholds.

The Act enables more flexibility than is currently utilised for other professionals and persons to perform certain functions. For example, better use could be made of Care and Protection Resource Panels to enable more meaningful multi-disciplinary input into decision-making than is currently the case. The ability for a social worker to arrange for investigations to be undertaken by others could be used to involve other professionals in the assessment process.

However, there are specific powers and duties conferred on social workers (and constables) where there is no current flexibility, for example receiving a report of concern, applying for court orders without leave and executing a warrant. These restrictions may limit the development of the proposed operating model in a way that is best able to respond to the specific needs of children, young people and families.

⁵ Munro, E. (2011). *The Munro review of child protection final report: a child centred system*. Retrieved from: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/175391/Munro-Review.pdf p 104 which discusses the evaluation of a Family Drug and Alcohol Court in the Inner London Family Proceedings Court. Refer also to a recent review of the FGC process which noted that "good outcomes are achieved when the process is well managed, family are well prepared and know what to expect from the conference and a range of professionals are fully engaged." Te Awatea Violence Research Centre (2014). *Evaluation of Family Group Conference Practice and Outcomes*. Retrieved from: <http://www.cyf.govt.nz/documents/working-with-others/evaluation-of-fgcs-scoping-study-25-9-14.pdf>

Although detailed design work still needs to occur, there are good arguments for adopting a model where a range of other professionals such as child psychologists, paediatricians or youth workers work as a team to support and make decisions relating to a child or young person and their family. In this case, the team might, for example, decide jointly that safety concerns have escalated to a point where court intervention is required. One of the other professionals, rather than the social worker, might be better placed to initiate and manage the court process because of their specific expertise and knowledge, and the particular circumstances of the child or young person and their family. The Act is not currently set up to easily enable this: only social workers and constables have the right to apply for court orders without leave.

The right to apply for court orders without leave is not a function that forms a core part of the key skills and competencies of the social work profession to the exclusion of others. This and certain other functions in the Act that involve the exercise of State power to intervene into family life could reasonably be delivered by appropriately skilled and trained individuals from a range of backgrounds, whereas care and protection social work skills and competencies centre on undertaking assessment of risk and needs, in working to implement robust plans to enable change, and using statutory power in a child's best interests.

2. The current model promotes in-house service delivery by employed social workers and limits the ability of the agency to deliver services via strategic partners who may be better equipped to provide child-centred responses.

The proposed new operating model recognises that no single agency on its own will ever have the expertise and ability to deliver the range of services needed to improve outcomes for vulnerable children and young people. As well as delivering services itself, the core agency will also directly purchase services, engage all New Zealanders, have a range of strategic partners and build the capacity and capability of the provider market. On 30 March 2016, SOC endorsed strategic partnering as a key element of the reform to give effect to a proposed new operating model [SOC-16-MIN-0022 refers].

Again, although detailed design work still needs to be undertaken, the current provisions in the Act may restrict the ability to be responsive to delivery models that best meet the needs of children, young people and families. A clear example is the limitation on who may receive a report of concern (ie a social worker employed by the department or constable). This limits the ability of the Chief Executive to use strategic partners, such as iwi or non-government organisations to deliver elements of an intake system.

3. The legislation should clearly reflect the Chief Executive as the single point of accountability for vulnerable children and young people.

The proposed operating model envisages a single point of accountability for meeting the needs of vulnerable children and young people. On 30 March 2016, SOC endorsed creating a single clear point of accountability as a key element of the reform to give effect to a proposed new operating model [SOC-16-MIN-0022 refers].

The current formulation in the Act does not clearly place authority on the relevant agency-head to create a system-level response to deliver on that accountability. The current legal settings confer authority on social workers to make the core decisions enabling the State to intervene into the lives of vulnerable children and families. While the Chief Executive can expect social workers, in exercising their decision-making powers, to take account of departmental guidance and policies and to co-operate with reasonable supervision and

direction, in practice confusion can arise where a social worker's decision is contrary to advice provided by supervisors and others, such as Care and Protection Resource Panels. While the current legal position provides a number of options to the Chief Executive, the practice perception is that the final decision rests with a social worker.

Similarly, while legal authority for frontline decision-making rests with individual social workers, their decisions can inevitably be constrained by system-level factors beyond the immediate individual case at hand, and which are outside of their control, such as availability of services.

Both of these issues were identified in recent consultation with practitioners.

Objectives

The Expert Panel's final report set out six high-level system objectives for a child-centred system:

- ensuring that children have the earliest opportunity for a loving and stable family
- addressing the full range of needs for each child
- preventing victimisation of children
- helping children to heal and recover
- supporting children to become flourishing adults
- helping children and young people to take responsibility for their actions and live crime-free lives.

Specific mechanisms to achieve these high-level objectives include:

- enabling multi-disciplinary and multi-agency case management and decision-making
- harnessing the collective expertise and specialist skill sets from a whole network of agencies and participants
- empowering and supporting professionals to exercise judgment within a practice framework, whether they are employed by the agency or engaged via contract or other partnering mechanisms
- moving from direct service delivery by employees of the agency to strategic partnerships, over time
- enabling social workers and other professionals to focus their time and effort on serving and supporting families rather than fulfilling functions that could reasonably be shared with other practitioners
- a single clear point of accountability.

To reflect these objectives and mechanisms, the following primary objectives have been identified for this piece of work:

- Enabling other professionals to perform a broader range of functions under the Act.
- Providing full flexibility for the agency to deliver services via strategic partners.
- Ensuring the legislation supports the Chief Executive as the single point of accountability.

These will be included as criteria against which the options will be assessed along with three further criteria:

- Durability.

- Risk management and safety.
- Promoting the professional competency of social workers.

Objectives and criteria

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

Objective	How proposals will be assessed against objective
Enabling other professionals to perform a broader range of functions.	The analysis will consider the extent to which proposals enable the new operating model to harness expertise and specialist skill sets from a broad range of professionals and staff members.
Providing appropriate flexibility for the agency to deliver services via strategic partners.	The analysis will consider the extent to which proposals provide full flexibility for the agency to deliver services via strategic partners who may be better equipped to provide child-centred responses.
Ensuring the legislation supports the Chief Executive as the single point of accountability.	The analysis will consider the extent to which proposals enable the new operating model to ensure that accountability for making decisions and performing functions clearly sits with the Chief Executive as the single point of accountability.
Additional criteria	How these additional criteria will be assessed
Durability	<p>The analysis will consider the extent to which proposals are likely to achieve sustained change in the direction sought and:</p> <ul style="list-style-type: none"> • support the long-term transformation required to implement the new operating model for vulnerable children and young people • minimise the risk of foreclosing options to be considered in future design work • minimise the risk of possible repeal and replacement due to future design work.
Risk management and safety	<p>The analysis will consider the extent to which proposals are likely to ensure:</p> <ul style="list-style-type: none"> • that staff working with children, young people and their families are competent to do so • that the public has confidence that this is the case • that the public, social workers and other professionals are clear about who has the authority to perform statutory functions

	<ul style="list-style-type: none"> • that the powers and duties set out in the CYPF Act are discharged appropriately • that checks and balances within the system are strengthened.
Promoting the professional competency of social workers	The analysis will consider the impact of the proposal on the role and competency of social workers and the impact the change could have on the social work profession.

The analysis considered the Policy Framework for Occupational Regulation as adopted by Cabinet [CO (99) 6 Policy Framework for Occupational Regulation 08/06/1999]. The proposals are broadly in line with the intent of the framework which requires that risks to the public from incompetent or reckless practice are managed, with a preference for non-regulatory means if these are sufficient. Managing these risks are a key criteria for our analysis.

Our analysis has equally weighted the criteria.

Note that for the purposes of this analysis, it has not been possible to consider, on a provision-by-provision basis, whether particular functions should be reserved for social workers; both because of the time constraints and because detailed design has not yet been completed. It is possible that some functions may be reserved for social workers in the new operating model, notwithstanding the power to delegate more widely.

Impact

The impact of the proposal depends to a large degree on the detailed design of the new operating model, which will determine details of future roles, responsibilities, services and investment. This design work has not yet been completed and the proposal is primarily intended to be enabling. Because of this, detailed analysis of the impacts and costs of each option have not been undertaken. Detailed design will need to work through the impacts of particular changes on the different individuals, agencies and processes involved.

Each of the options considered below would enable, to a lesser or greater extent, a broader range of professionals to perform specified functions under the Act. This would have the following common high-level impacts.

Economic

Child, Youth and Family is the major employer of social workers, employing around 40 percent of New Zealand social workers. While this is not expected to change in the near term, the proposal could enable the agency to employ more, or contract more to, other professionals. This could increase demand for those professionals and potentially reduce the demand for social workers. However, the wider reform is expected to somewhat expand the overall market for services to vulnerable children and young people. This could potentially balance out or perhaps lead to an increase in demand for social workers.

Fiscal

Utilising the skills of a wider range of professionals could result in significant costs if more of them were more costly professionals such as child psychologists. However, for some functions, the use of less costly professionals could reduce costs. If increased demand for relevant professionals led to skill shortages in any profession, the cost of filling roles could

increase. Final fiscal impacts will depend on detailed design. The need for additional investment is anticipated.

Compliance

The status quo requires someone employed as a social worker or constable to perform certain functions. The law does not require a person employed as a social worker to be registered under the Social Workers Registration Act 2003. It is, however, Child, Youth and Family policy to move towards registration of its social worker workforce. The impact on compliance will depend on the makeup of other professionals performing functions under the new operating model. The burden could be broadly similar if comparable professionals with their own occupational registration requirements are used.

Cultural

Opening up the key functions of the CYPF Act to a broader range of professionals could be expected to diversify the professional culture of the agency and wider operating model. Combined with a focus on cultural expertise and strategic partnership this could potentially also lead to a greater uptake of Māori and Pacific practitioners with different skillsets over time.

Options analysis

Option	Features and implications	Objectives and criteria						Summary
		Enable more professionals to perform functions	Ensure Chief Executive accountability	Flexibility for partnering	Durability	Risk management and safety	Social work professionalism	
1. Employ other professionals as social workers (non-regulatory option)	The Act has limited specifications around who the Chief Executive can employ as a “social worker”. This flexibility could be used to employ a range of professionals as “social workers” to allow for other professionals to perform these functions.	A work-around that could partially meet the objective. However, it would cut across recognition of the specialist contribution of social workers. Other professionals might reject roles as social workers under the legislation.	Accountability still sits with the individual professional.	No.	The intent of providing flexibility for other professionals to play core roles would likely require changes to legislation once detailed design was complete.	Current risk management through employment processes would be retained.	Considering any professional a social worker for the purpose of undertaking these functions undermines the status and integrity of the social work profession.	This option does not sufficiently meet our criteria.
1A. Make use of existing flexibility (non-regulatory option)	The Act has a number of mechanisms to enable more professionals to perform a broader set of functions. For example, a social worker can arrange for someone else to undertake an investigation of child maltreatment. Other agencies may refer concerns directly to an FGC, or seek court orders with leave of the court.	Would partially meet the objective, but still limits the full performance of the functions to social workers.	Accountability could be diffused by involving other agencies in functions without system-level accountability in place.	No.	Detailed design is likely to run up against the limitations of this option and require legislative changes.	The diffusion of accountability could potentially limit CE control over functions, and the diffusion of roles could be confusing for the general public.	The legislative role of social work would remain unchanged but there would be practical impacts on the social work role.	This option does not achieve the objective of placing accountability at the appropriate level or provide appropriate flexibility for partnering.
2. Chief Executive accountability (preferred option)	Replace references to social workers in the Act with the Chief Executive or their delegate to have a single line of accountability and exercise of statutory power. This will enable the Chief Executive to delegate functions to employees in the department and elsewhere in the public service who are not social workers, and persons outside the public service with the appropriate Minister's prior written approval. Other risk management measure include that: <ul style="list-style-type: none"> the Chief Executive only delegate functions to people who have the interpersonal skills, training, and experience to be suitably qualified that if delegating outside the State sector, the Chief Executive have contractual requirements in place to enable them to be held to account those exercising delegated authority to have regard to any guidance issued by the Chief Executive a publicly accessible register of delegations be maintained to ensure transparency and clarity for the sector and the public. 	Opens up the department to employing other professionals for their specialist skills, and the CE to delegating to agencies and individuals outside the department, as enabled by the State Sector Act 1988.	System level accountability is vested in the CE but delegated agents of the department can undertake functions.	Yes.	Aligns with detailed design and shouldn't require legislative changes.	This option would require the CE to develop robust policy and procedures to ensure that other professionals, particularly external delegates, have the right skills for the right tasks, and to ensure clarity for the sector and the public. The proposed risk management measures provide sufficient assurance that this would be achieved.	Achieves the objectives without distorting the definition of social worker. The role of the social work profession in the new operating model would need to be clearly defined.	Achieves the objectives while meeting our other criteria.

Option	Features and implications	Objectives and criteria						Summary
		Enable more professionals to perform functions	Ensure Chief Executive accountability	Flexibility for partnering	Durability	Risk management and safety	Social work professionalism	
2A. Limit CE delegation to employees	Replace references to social workers in the Act with the Chief Executive or their delegate, but require delegates to be employees of the department.	Opens up employing other professionals for their specialist skills	Raises accountability to the CE. Only employees can undertake functions.	No.	Detailed design may run up against the limitations of this option and require legislative changes.	Current risk management through employment processes would be retained. This protects the public from the possibility that the CE could delegate functions to an external agency which might then fail to competently carry out these functions.	Achieves the objectives without distorting the definition of social worker.	This option places accountability at the appropriate level, but fails partnering objective.
2B. Limit CE delegation to employees or classes of persons listed on a Schedule in the Act.	<p>Replace references to social workers in the Act with the Chief Executive or their delegate, but require delegates to be employees of the department or professionals listed in a schedule of the Act.</p> <p>This allows the Chief Executive to delegate functions to external parties, but allows the Executive to control the classes of professionals outside of the department that can perform these functions, through amendment to the schedule by Order in Council.</p>	Opens up employing others for their specialist skills and delegating to agencies and individuals outside the department as enabled by the State Sector Act 1988.	System level accountability is vested in the CE but delegated agents of the department can undertake functions.	Somewhat, but flexibility would be limited by the legislative Schedule.	Agility, durability and flexibility within the system unless descriptions in the Schedule were kept at very general level.	A Schedule in the Act would be publicly transparent.	Achieves the objectives without distorting the definition of social worker.	This option places accountability at the appropriate level, and somewhat enables partnering, however using the Order in Council mechanisms could hinder the agility, durability and flexibility within the system.
3A. Officer of the department	Replace references to social workers in the Act with an "officer of the department". This would allow more professionals to undertake functions under the Act but retains the protections of requiring these functions to be undertaken by employees of the department.	Opens up employing other professionals for their specialist skills.	While CE accountability would apply, the perception of individual accountability would remain.	No.	Detailed design may run up against the limitations of this option and require legislative changes.	Current risk management through employment processes would be retained.	Achieves the objectives without distorting the definition of social worker.	This option does not place accountability at the appropriate level or provide appropriate flexibility for partnering, and could limit future design work.
3B. Designated individual – defined as an employee or professionals listed on a schedule in the Act	<p>Replace references to social workers in the Act with a "designated individual". This would allow more professionals to undertake functions under the Act but retains the protections of having these functions be undertaken by employees of the department or specified professionals.</p> <p>This would allow the department to delegate functions to an external agency, but adds a formal process for specifying which classes of professionals can perform these functions outside of the department. This adds a protection to the public from incompetence. Changes to the schedule would require an Order in Council.</p>	Opens up employing others for their specialist skills and delegating to agencies and individuals outside the department, as enabled by the State Sector Act 1988.	While CE accountability would apply, the perception of individual accountability would remain.	Somewhat, but flexibility would be limited by the legislative Schedule.	Agility, durability and flexibility within the system unless descriptions in the Schedule were kept at very general level.	A Schedule in the Act would be publicly transparent	Achieves the objectives without distorting the definition of social worker.	This option does not place accountability at the appropriate level and only somewhat enables partnering. The Order in Council mechanism could hinder the agility, durability and flexibility within the system.

Discussion

In summary, it is considered that:

- regulatory options (2, 2A, 2B, 3A, 3B) are best placed to adequately **enable a broader set of professionals to perform functions** under the Act
- options 2, 2A, 2B explicitly **support the Chief Executive as the single point of accountability**
- options 2, 2B, and 3B allow full flexibility to use **external strategic partners**.

In relation to the criteria:

- **durability** is greatest for options 2, 2B, and 3B, as these are likely to align with the changes envisaged in detailed design
- some options provide for **risk management and safety** by using existing employment methods; where strategic partnering is envisaged, option 2 builds a number of measures onto the risk management measures set out in the State Sector Act 1988 to ensure oversight and public transparency; 2B and 3B provide a schedule to the Act for this purpose
- regulatory options (2, 2A, 2B, 3A, 3B) minimise compromising the **social work profession**.

Preferred option

Option 2, amending the CYPF Act to vest the functions currently residing with social workers instead in the Chief Executive, best meets objectives and additional criteria. This option means that under the provisions of the State Sector Act 1988 the Chief Executive will be able to delegate in writing their functions, including to:

- employees (and contractors and secondees) in the department and elsewhere in the public service who are not social workers
- persons outside the public service with the appropriate Minister's prior written approval; and after satisfying themselves that any potential conflicts of interest will be avoided or managed.

There are specific risks inherent in the functions being exercised under the CYPF Act as they involve the intervention of the State into family life and the wellbeing and safety of vulnerable children and young people. It is therefore important to be satisfied that there are sufficient controls in place to ensure the functions are exercised in a competent, controlled and transparent manner. In addition to the State Sector Act 1988 requirements for delegating outside the public service, the preferred option includes the following further controls:

- that the Chief Executive would only be able to delegate functions to people who have the interpersonal skills, training, and experience to be suitably qualified to perform those functions
- that if delegating outside the State sector, the Chief Executive be required by the legislation to have contractual requirements in place to support the appropriate exercise of the delegation and to enable the person with delegated authority to be held to account. Where delegating outside the public service but within the State sector it is anticipated that this would have to be by arrangement with that person's State service employer and

that the Chief Executive would enter into a memorandum of understanding (rather than a contract) with the employer⁶

- that the legislation require those exercising delegated authority to have regard to any guidance issued by the Chief Executive
- that the Chief Executive be required to maintain a publicly accessible register of delegations to ensure transparency and clarity for the sector and the public.

These mechanisms provide a reasonable level of control without unduly limiting the flexibility available to the Chief Executive to operate a system that can be developed, refined and adapted over time to meet the needs of children and young people.

In addition, it is necessary to provide for the following:

- there are a large number of references in the CYPF Act to social workers as individuals (for example Police may place a child or young person in the custody of the Chief Executive by delivering the child or young person to a social worker). These references would need to be changed to a person authorised by the Chief Executive to perform that function rather than to the Chief Executive
- that the specific function of a social worker in providing a report to the court to support the making of certain court orders (such as custody and guardianship orders) be left unchanged at this stage. These provisions have a parallel in the Care of Children Act 2004 and further policy work is needed to consider the whether any change to these provisions is desirable.

To ensure that the legislation continues to reflect the special nature of the contribution of social workers in the child protection system it is proposed that the amendments provide that the Chief Executive be deemed to have delegated the relevant functions to social workers unless he or she has specified otherwise. This also puts in place appropriate defaults if for some reason delegations were not made.

The preferred option is intended to be enabling and does not presuppose any particular arrangements. Further work on the detailed design of the new operating model will consider decisions on future roles, responsibilities, services and investment, in partnership with those to whom the functions may be delegated. Any delegations will take account of issues such as the availability of a particular class of professionals and the cost implications. The particular operational decisions taken will also influence the protective measures the Chief Executive will need to put in place around matters such as dispute resolution and complaints (ie for children and families) and training and competency assessment.

Consultation

The Expert Panel's final report sets out a recommended high-level design of a new operating model, which has been 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.

- Reference groups were established including a Practice Reference Group and a Māori Reference Group. These included the Chief Social Worker, and a number of other highly

⁶ For details on the distinctions between the public service and the state sector refer to <http://www.cabinetmanual.cabinetoffice.govt.nz/3.2> or <http://www.ssc.govt.nz/sites/all/files/guide-to-central-government-agencies-1-apr16.pdf>

qualified social workers, some of whom have served on or worked with the Social Worker's Registration Board.

- The Expert Panel and secretariat engaged with a number of people with expertise, including receiving a presentation by the Social Worker's Registration Board, and consulting with key staff from the New Zealand Public Service Association and National Union of Public Employees.
- More detail on the consultation processes undertaken is provided at Appendix A.

There was no consultation undertaken specifically on this proposal. To mitigate this, the analysis has drawn on the expertise of highly experienced social work practitioners within the secretariat.

Implementation plan

It is proposed that the future operating model be established through a Transformation Programme to implement the proposed changes, 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 recommendations for implementing the proposed transformation are included in the Expert Panel's final report, particularly Chapter 9.

A series of mitigation strategies have been identified to manage risks to service continuity arising from the implementation of a new operating model. Those most relevant to the workforce settings include:

- iterative roll-out, to pilot key changes with small groups of stakeholders, ensuring the impact of the changes can be properly assessed before they are rolled out to a broader base. Intensive support will be built around these pilot groups to ensure any issues are identified early and remedied
- collaborative design with all sector stakeholders, especially vulnerable children and their families, will be used to help ensure the final designs reflect their needs and aspirations
- establishment of strengthened sector-wide monitoring so that the overall impact of the changes can be monitored
- active use of workforce capacity monitoring and management to ensure staff and other service providers are able to support both the change and their core operational activities. Additional capacity will be put in place where required.

Detailed design of the new operating model will need to undertake an assessment of which functions, if any, should be delegated only to social workers. This is key for ensuring that the public has confidence in the competency of those performing statutory functions and that the public, social workers and other professionals have clarity about who has this authority.

There is a risk that this proposal could be perceived as undermining the role of Child, Youth and Family social workers, leading to an adverse reaction to the wider transformation programme. Social workers are key stakeholders in the new operating model and this risk would need to be carefully managed. Communications about the proposal should note that it is not intended to displace social workers from their vital roles in the system.

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 Expert Panel's report proposes that the Transformation Programme be governed and monitored at multiple levels. Monitoring at all levels comprises:

- project/programme progress reviews using an outcomes model
- financial performance
- assessment of risk and issues management
- benefits tracking against Business Case.

Formal assurance oversight (Internal Audit and Independent Quality Assurance) would be separately undertaken and reported.

Final advice on the forms of monitoring, evaluation and review will, however, be developed by the Transformation Programme.

The success of the new system and operating model will be measured in a variety of ways. Further work will be required by the core agency, Treasury and the State Services Commission to build a detailed performance framework, but it is expected to include the following dimensions:

- improved long-term outcomes for those vulnerable children and young people who are at significant risk of harm now or in the future as a consequence of their family environment, and/or their own complex needs; and for children and young people who have offended or may offend in the future
- 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
- 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.

The adoption of an investment approach also means that the overall impact of the new operating model 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.

Appendix A: Consultation processes undertaken as part of the Expert Panel's work

Significant consultation was conducted as part of the Expert Panel's work. This consultation centred on the proposed new operating model but did not directly seek feedback on the workforce settings proposals.

Reference Groups

The collaborative design approach involved engaging a diverse set of participants to ensure all voices were heard and considered, recognising that institutional knowledge is only one source of insight into the changes required. To ensure this occurred, Practice and Māori Reference Groups and a Youth Advisory Panel were established to test, challenge and refine the design work from the perspectives of key client and stakeholder groups.

These groups included young people and highly experienced practitioners including care and protection, Police and Youth Justice experts, and parole board members.

Research with System Participants

Interviews were undertaken with many users of the care, protection and youth justice systems to understand the strengths and opportunities of the current system and its operating model. A comprehensive research protocol was developed for the interview approach.

Collaborative design workshops

Engagement was undertaken with many users of the care, protection and youth justice systems to explore what a future system that places children and young people at its centre would look like.

Collaborative design workshops were used as a forum for generating new ideas and aspirations. During these workshops, unconstrained "what if" ideas emerged, that were then further developed, tested and refined.

Stakeholder Engagement

The Expert Panel and secretariat engaged with a number of people with expertise in care, protection and youth justice or analogous sectors both in New Zealand and internationally. For further details on the collaborative design process see the Expert Panel's final report, particularly appendices E, F, G and H.