

# Regulatory Impact Statement

## Vulnerable Children’s Bill: Specific care and protection legislation changes

### Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Social Development (MSD). It accompanies the Cabinet paper *Vulnerable Children’s Bill: Specific Care and Protection Legislation Changes*.

The Cabinet paper proposes legislative changes to the Children, Young Persons, and Their Families Act 1989 (CYPF Act).

This RIS provides an analysis of options to amend the CYPF Act, to help improve child protection services and ensure that our most vulnerable children gain the dedicated and specialist support needed to recover and get the best from life.

The analysis undertaken is within the parameters set out by Cabinet’s agreed programme of work from the White Paper for Vulnerable Children and based on best available evidence, noting that empirical evidence is limited. The proposals sit alongside a suite of interdependent policy and legislative reforms and do not require any further work before policy decisions can be implemented.

The preferred policy options outlined in this statement are not likely to: impose significant additional costs on businesses; impair private property rights, market competition, or the incentives on businesses to innovate and invest; or override fundamental common law principles.

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[Date]

## Introduction

- 1 Volume II of the White Paper for Vulnerable Children (the White Paper) reiterates the importance Government places on having a high-performing child protection service in Child, Youth and Family. The White Paper identifies children in care and children requiring other statutory care and protection interventions as priority groups, and notes the need for legislative work to better support this vulnerable group of children.<sup>1</sup>
- 2 On 24 September 2012, Cabinet considered the White Paper and directed the Vulnerable Children’s Board to report back to the Ministerial Oversight Group by March 2013 on final policy proposals for inclusion in the Vulnerable Children’s Bill, including:
  - strengthening parental obligations in relation to the family group conference and court process
  - new guardianship orders for Home for Life caregivers to increase the stability and security of a child’s placement enabling the Family Court to direct which guardianship powers reside exclusively with the caregivers, and which are shared with the child’s natural parents or other guardians
  - removing the need for a review of orders to support Home for Life placements [CAB Min (12) 34/9 refers].
- 3 Cabinet also agreed to the development and implementation of a multi-agency strategy to ensure that children and young people in State care get the services and support that they need across government sectors [CAB Min (12) 34/9 refers].
- 4 Behind the White Paper sits the Children’s Action Plan (the Action plan). The Action Plan lets New Zealanders know what action is being taken to protect children and when each milestone will be achieved. Cabinet has agreed that initiatives in the Action Plan are supported by information-sharing provisions across agencies to enable the:
  - identification of children at risk of abuse or neglect
  - care and protection of children who have been abused or neglected
  - referral and assessment of vulnerable children
  - on-going tracking and monitoring of outcomes for vulnerable children
  - tracking of high-risk adults [CAB Min (12) 34/9 refers].
- 5 Cabinet noted that provisions relating to information-sharing may need to be included in the Vulnerable Children’s Bill [CAB Min (12) 34/9 refers].
- 6 This Regulatory Impact Statement (RIS) accompanies the Cabinet paper Vulnerable Children’s Bill: Specific care and protection legislation changes. The Cabinet paper seeks approval for amendment to the CYPF Act which will help improve child protection services and ensure that our most vulnerable children gain the dedicated and specialist support needed to recover and get the best from life.

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<sup>1</sup> For the purposes of this paper the use of the term “children” or the “child” also includes young people if not otherwise stated.

## Status quo and problem definition

- 7 Children and young people requiring Child, Youth and Family's care and protection are New Zealand's most vulnerable children. Nearly all have experienced trauma, separation and loss. Most have histories of abuse and neglect. They need dedicated and specialist support to recover and improve their chances of achieving positive life outcomes.
- 8 Some information on the notifications and cases that Child, Youth and Family deal with illustrates the issues.
  - The number of notifications to Child, Youth and Family for concerns for children and young people reached 152,800 in 2011/12, up 112 per cent from 71,927 in 2006/07, and are projected to increase by up to 10,000 in 2012/13 financial year.
  - In 2011/12 of the 21,525 substantiated findings of abuse and neglect, there were 12,114 cases of emotional abuse, 4,766 cases of neglect, 3,249 cases of physical abuse and 1,396 cases of sexual abuse.
  - 7,870 Care and Protection Family Group Conferences were held in 2011/12, up from 6,267 in 2006/07.
  - 88 per cent of children entering care have unmet health conditions, with 65 per cent having an emotional or behavioural problem and 41 per cent having mental health disorders.
- 9 These issues lead to the particular care and protection challenges identified below, which the proposed specific care and protection legislation changes are designed to address.

### *Some parents of children in care are not fulfilling their responsibilities*

- 10 Parents' or guardians' responsibilities for children in need of care or protection are identified in plans that are either agreed at a Family Group Conference (FGC) or decided on by the Courts. However, there is no legal requirement for FGC plans to contain specific objectives, responsibilities or timeframes. Similarly, there is no requirement for Court plans to specify in what timeframe parents' obligations should be met, or how long a goal of returning home should be pursued for the children before alternative permanent arrangements should be made.

### *FGC Plans*

- 11 FGC plans bring information together with the family's input. When Child, Youth and Family becomes involved with children for whom there are care or protection concerns, social workers work with the parents or guardians to:
  - identify changes that are needed in the child's home if the child is to have their needs met (or to be safely returned home if they are in State care)
  - discuss the timeframes for changes to be made before alternative care arrangements are sought for their children.<sup>2</sup>

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<sup>2</sup> This includes where permanent alternative care will be sought for a child in State care if they are unable to return home.

- 12 The FGC agrees strategies to address concerns, providing the foundation for all planning, including court plans, for children in need of care or protection. For example, if a parent needs to address drug or alcohol issues of their own, these matters should be recorded in the child's plan and the requirements made clear to the parents.
- 13 Issues with respect to FGC plans, include that:
  - current practice can be variable in relation to recording parental objectives and responsibilities in plans, and the lack of clarity may not be in the child's best interests
  - there is the potential that parents are disadvantaged due to a lack of clarity about the changes they must make in order to meet a child's care and protection needs.

### *Court plans*

- 14 Before the Court can make final care orders for a child or young person in need of care or protection, a court plan must be obtained. The CYPF Act specifies the information court plans must contain, when plans must be reviewed and the scope of the review. Plans must include the objectives and when they should be achieved, services and assistance to be provided and by whom, the responsibilities of the child or young person, and of any parent or guardian or other person having the care of the child or young person.
- 15 Section 130 of the CYPF Act requires that court plans specify timeframes within which objectives for the child or young person should be achieved but does not explicitly require the plan to state the timeframes within which parents and guardians should meet their responsibilities. Current Child, Youth and Family policy requires a decision on returning home to be in place within a certain time after a child has come into care, although these timeframes are not supported by legislation.<sup>3</sup>
- 16 A crucial question for children in State care is often how long a goal of returning a child home should be pursued before a permanent alternative care arrangement is sought. For example, how long parents have to make the identified changes and how long children may remain in temporary care placements. Over the last few years, New Zealand practice changes have focused on permanency planning to achieve a stable and permanent home for children in State care. Unlike a number of other countries, New Zealand has not changed legislation to support such permanency focused practice changes.<sup>4</sup>

### *Existing guardianship orders may not support placements for children*

- 17 Currently, when caregivers commit to provide long term care for a child under Child, Youth and Family's Home for Life programme, they are strongly encouraged to seek orders under the Care of Children Act 2004 (COCA). These orders transfer responsibility for the child's care from Child, Youth and Family to the Home for Life parents. Usually the caregivers share guardianship with the child's parents or other guardians which does not always promote secure and stable placements for children.

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<sup>3</sup> The timeframes are six months for children under five years, and 12 months for children five years and over. Similar timeframes have been recommended and/or implemented in Australian jurisdictions, the United Kingdom and the United States.

<sup>4</sup> For example, legislation in New South Wales recognises that the long term security of a child in State care will be assisted by a permanent placement. It describes permanency planning as making a plan that aims to provide a child with a stable placement that offers long term security, makes timely, child-focused decisions, meets the child's needs, and avoids the uncertainty and instability arising from a succession of different or temporary placements.

- 18 When the child's parents may refuse to engage or be disruptive, caregivers are likely to be cautious about sharing guardianship. In these situations, caregivers may take guardianship orders under the CYPF Act so that guardianship can be shared with the Chief Executive who provides a buffer in difficult situations. Alternatively, caregivers may refuse to assume guardianship and provide care with the Chief Executive continuing to hold custody and guardianship orders under the CYPF Act.
- 19 At any one time, there are up to 100 Home for Life placements, or potential placements, that are being challenged or disrupted by the actions of the birth parents. Issues include:
- consulting and agreeing on important matters affecting the child can expose caregivers to obstructive, threatening or abusive behaviour. Birth parents can be difficult to locate, destabilise placements, upset children and discourage willing and caring people, including wider family members, from committing to provide long term care
  - birth parents can usually apply without the leave of the court for parenting orders under COCA which effectively relitigates the court's decision to place the child away from the parents in the first place
  - the Court plan required where services or support orders are made under the CYPF Act needs to be reviewed every 6 or 12 months, depending on the age of the child. This requirement can be disruptive to the child's placement by providing an opportunity for parents to relitigate matters regarding the care of the child. It is also time consuming and costly
  - Child, Youth and Family sites advise that potential Home for Life parents and their lawyers often prefer to rely on a services order to ensure support as they can be reluctant to trust that Child, Youth and Family (and other core agencies) will support them and the child in the future once CYPF Act orders are discharged.
- 20 There are also likely to be some children living with permanent caregivers who have previously taken parenting and guardianship orders under COCA, whose placement is threatened because of the behaviour of the parents or other guardians.
- 21 An alternative and more secure mechanism is needed for children whose caregivers have yet to take over guardianship responsibility as well as those whose caregivers have already taken this step but where the behaviour of parents is disrupting the placement.

*Legislation may not be supporting decision-making centred on children's needs*

- 22 The CYPF Act currently makes the welfare and interests of the child the first and paramount consideration in all cases involving concern for the wellbeing of a child. However, the Act also has a series of other principles to be taken into account, some of which give a strong focus to the importance of a child's place in the family, whānau, hapū, iwi and family group.
- 23 Concerns have been raised by some, for example in a report by Mel Smith,<sup>5</sup> that the principles of the CYPF Act are ambiguous and allow an interpretation which places

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<sup>5</sup> Smith, M. "Following An Inquiry into the Serious Abuse of a 9 Year Old Girl And Other Matters Relating To The Welfare, Safety And Protection of Children in New Zealand". 31 March 2011.

undue weight on the interests of the family and the need to keep the child within the family – which could come at the expense of the safety and wellbeing of the child.

- 24 Mel Smith in his report went on to raise the issue of whether the objects and principles contained a conflict leading to a loss of focus on the interests of the child as paramount, and the appearance that the wishes of a parent or parents, and/or whānau prevailed over the immediate and long term best interests of the child. He said:

*“As a general rule, it was postulated to me that the provisions in sections 5 and 13 have become dominant in the minds and in the practice of social workers, and others involved in the process, to the possible detriment of the safety, welfare and interests of the child.”*

- 25 New Zealand data is not readily available on how many children return home only to come back into care. However, recent research in the United Kingdom has indicated that around half of children who enter care as a result of abuse and neglect suffer further abuse if returned home, and between a third to a half of children who return home re-enter care or are accommodated again.<sup>6</sup>

- 26 The courts have not indicated any particular difficulty with the interpretation of the principles. While the particular supporting principles that have exercised the Family Court the most are those which place emphasis on family reunification and relationships, it has clearly articulated the need for the welfare and interests of the child to be the overriding consideration. In *Re B (children)* – [1992] NZFLR 726 His Honour Judge Ingles disagreed with the position of the social worker in terms of the priorities of the principles. His Honour said at p 757:

*“In the course of his evidence the social worker currently in charge of the case said that his understanding of the 1989 Act was that restoration of the children to their family was paramount. If by that he meant that the need to restore the children to their family had a priority above the children’s welfare and best interests, then this Court must respectfully disagree.”*

- 27 The Court has acknowledged the practical difficulty in weighing up the various considerations to ascertain the welfare and interests of the individual child in a particular case, and appear to have generally accepted that while all the principles in sections 5 and 13 need to be taken into account, the relevance of each principle in each case will depend on the facts.

## Objectives

- 28 The overall objective for these legislative changes are to improve the performance of child protection services. This requires ensuring that:
- parents and guardians with children in care know what is expected of them and the timeframes available to make necessary changes
  - quality, stable, and timely permanency outcomes are achieved for vulnerable children subject to care and protection
  - the principles of the CYPF Act ensure the welfare of a child in need of care and protection is always the overriding consideration in decision-making.

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<sup>6</sup> Farmer, E., Wendy Sturgess & Teresa O’Neill (2008) *The Reunification of Looked After Children with their Parents: Patterns, interventions and outcomes*, Report to the Department for Children, Schools and Families, School for Policy Studies, University of Bristol.

## Regulatory impact analysis

- 29 The range of feasible options to achieve the objectives listed above, are outlined in the tables below, along with the impacts of these options. Some options were discarded for not being likely to achieve the objectives before potential costs and all possible impacts were identified.

**Ensuring that parents and guardians with children in care know what is expected of them and the timeframes available to make necessary changes**

30 Three options were considered to ensure parents with children in care know their responsibilities. These are included in *table one* below. VCB's preferred option, option one, is to strengthen parental obligations<sup>7</sup> and timeframes in Family Group Conference (FGC) and court processes.

**Table one:** Options to ensure that parents and guardians with children in care know their responsibilities

Option	Impacts/implications	Benefits	Issues/risks
<p><b>Option 1:</b> Strengthen parental obligations<sup>8</sup> and timeframes in FGC and court processes</p> <p><b>(preferred option)</b></p>	<p>This option strengthens the provisions requiring specificity and action from FGC and court plans.</p> <p><i>FGC Plans</i> When a FGC agrees a child or young person is in need of care or protection and formulates a plan, the plan should include:</p> <ul style="list-style-type: none"> <li>the same information as court plans (including the additions proposed to court plans below)</li> <li>a date to reconvene to review its decisions.</li> </ul> <p>Where there is no court plan, timeframes would be consistent with legislative requirements on review of court plans.</p> <p><i>Court plans</i> This option would see court plans for out-of-home care specify:</p> <ul style="list-style-type: none"> <li>minimum changes to be made by any parent or guardian or other person having the care of the child before a return home may be considered</li> </ul>	<p>Likely to drive improved Child, Youth and Family practice by ensuring plans include clear parental obligations and consequences, and definite timeframes on decision-making around a child's future.</p> <p>Strengthens the involvement of family/whānau by ensuring that they and agencies are engaged in reviewing plans for children and young people. This supports the Strategy for Children in Care.</p> <p>Ensures that FGC plans are child-centred, sufficiently detailed to clarify expectations, responsibilities and decision-making, provide effective oversight, and are consistent with other plans for the child.</p>	<p><a href="#">Section (9)(2)(f)(iv) OIA</a></p> <p>Increased FGC time could lead to more FGCs being reconvened to achieve agreement on the information required, for example, for information on the changes the parent/ guardians need to make and the timeframes for these changes before consideration can be given to the child returning home. MSD will monitor any impact on FGC time</p>

<sup>7</sup> "Parental" means a parent, guardian or any person charged with the care of the child.

<sup>8</sup> Ibid



	<ul style="list-style-type: none"> <li>a determination of the period for which returning home will be pursued before a permanent out-of-home place is sought.</li> </ul> <p>Where there is a court plan, a FGC would be convened to review the court plan and the review dates aligned. These reviews would ensure that there is a clear process involving family/whānau in regularly monitoring the child’s situation and assessing whether the goals for the child are being achieved.</p> <p>The proposed changes to the court plan would ensure that before a court plan is filed for a child in out-of-home care, an analysis would be completed that considers the possibility of the child returning home within a timeframe consistent with the child’s need for a stable permanent living arrangement. The information would be included in the social worker’s report.</p>		<p>and weigh this impact up with the improved outcomes for children expected from this legislative change.</p> <p>Potentially drive undesirable practice from social workers by rushing decisions about a child’s future in order to meet a specified timeframe, when more time may have been needed. MSD believes that this potential would be minimised as legislation will not include specific maximum timeframes for making a decision on the child’s permanent care.</p>
<p><b>Option 2:</b> Parental responsibility contracts</p>	<p>This option includes the introduction of a parental responsibility contract for parents who are failing to meet their parenting obligations.</p> <p>A number of other jurisdictions (New South Wales, Western Australia, United Kingdom) have introduced parental responsibility contracts under which parents agree to undertake certain commitments to address parenting issue. Feedback on effectiveness of these contracts is limited.</p>	<p>Parental responsibility contracts might send a clear message about parental responsibilities.</p>	<p>Option 1 above is sufficient to ensure parents whose children are in need of care and protection are made aware of their obligations and the consequences of not meeting those within required timeframes.</p> <p>Renaming the obligations formulated and agreed with parents as “contracts” would not add anything substantive to these processes.</p> <p>There could be enforcement difficulties if the contract is breached, as anecdotally reported in the New South Wales case.</p> <p>There would be increased administrative costs associated with this option, but to what extent is not known.</p>

<p><b>Option 3:</b> Introducing Court orders requiring parents to undertake mandatory programmes</p>	<p>Introduction of mandatory orders for parents or caregivers whose children are subject to Child, Youth and Family intervention to undertake particular programmes (for example, an alcohol and drug treatment programme).</p> <p>Orders are currently available for counselling but not for other programmes or treatment.</p>		<p>While it would be possible to introduce further orders, this is unlikely to add to the preferred Option 1. Option 1 proposes that the court plan clearly articulates the obligations of the parents and the consequences of failing to meet those obligations.</p> <p>Mandatory orders are more likely to focus attention on issues with availability of services. Sanctions create the risk that parents will attend simply to avoid penalty without making the behavioural changes needed.</p> <p>There would be increased administrative costs associated with this option, but to what extent is not known.</p>
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**Quality, stable, and timely permanency outcomes are achieved for vulnerable children subject to care and protection**

31 A large amount of policy and practice changes have already occurred in the area of permanency for children in care. These proposed legislation changes are designed to underpin previous work. Options considered to further improve permanency outcomes for children are included in *table two* below. VCB's preferred option is to introduce new special guardianship provisions, option one below.

**Table two: Options to quality, stable, and timely permanency outcomes are achieved for vulnerable children subject to care and protection**

Option	Impacts/implications	Benefits	Issues/risks
<p><b>Option 1: Establish new special guardianship provisions in the CYPF Act that will provide increased security for children who leave out-of-home care to live permanently with caregivers or family/whānau carers</b></p> <p><i>(preferred option)</i></p>	<p>The intention of this new guardianship order is that the guardian will be able to make decisions about day-to-day and guardianship issues relating to the child and his or her upbringing. The order would retain the basic legal link with the parents, but enable their guardianship rights to be limited if they threatened the security of the child's placement.</p> <p>This new type of guardianship order would be available for the caregivers of children who:</p> <ul style="list-style-type: none"> <li>have been the subject of a declaration that they are in need of care and protection, are in the custody and/or guardianship of the chief executive, a Child and Family Support Service or an Iwi Social Service, and are to live permanently with a new family (Home for Life), or</li> <li>are the subject of a FGC plan that agrees they cannot return home and will live permanently with a new family, and of a declaration by the court that they are in need of care and protection.</li> </ul> <p>This option would also be available in limited circumstances to permanent or Home for Life caregivers of children under guardianship and parenting orders made under the Care of Children Act 2004 where the children were previously in the custody and/or guardianship of the CE, a Child and Family Support Service, or an Iwi Social Service following a declaration that the child was in need of care or protection.</p>	<p>This option provides an additional mechanism that will better enhance stability and security of care for a child leaving out-of-home care, to live permanently with carers.</p> <p>It allows for a nuanced response to an individual child's situation:</p> <ul style="list-style-type: none"> <li>it allows the ongoing role played by the parent(s) to be based on what is best for the child and not on the rights and responsibilities that parent(s) may want to retain</li> <li>it enables the court to specify which guardianship rights will be shared with existing guardians of a child, and which will be held only by the new guardians.</li> </ul> <p>There may be caregivers permanently caring for children under CoCA orders where the natural parents are presenting as a risk to the child and the stability of their placement, or the caregivers are unable to seek support for guardianship decisions from absent parents, therefore potentially placing</p>	<p>This option could increase litigation by birth parents if their guardianship rights are being curtailed and discourage them from maintaining a relationship with the child.</p> <p>The risk is mitigated by guardianship rights only being diminished to the extent necessary to ensure a safe and stable placement.</p> <p>Extending special guardianship to CoCA caregivers has the potential that a number of caregivers will apply who want to reduce the involvement of parents even though there are no significant difficulties. This would increase demand on Child, Youth and Family and risks destabilising the child's placement</p> <p>The risks of extending availability of these orders are mitigated by placing limits on those who can apply to:</p> <ul style="list-style-type: none"> <li>permanent or Home for Life caregivers who are unable to exercise their guardianship or care responsibilities because of a pattern of behaviour by the parents or other guardians that threatens or seriously</li> </ul>

	<p>This option would require the court to consider the report of a social worker before making one of the new guardianship orders. The report would provide consideration of the child's needs, including the child's views, if and why the orders are recommended, which guardianship decisions should remain joint decisions with the parent and which should be limited to the caregivers only.</p> <p>In instances where it is appropriate for parent(s) guardianship responsibilities to be limited, this option would not prohibit appropriate access orders being made, or the ability of the child to maintain relationships with other family members. Parents would retain their right to be informed of important decisions relating to their child.</p> <p>When a new guardianship order is in place, there will be an obligation for the Chief Executive of the Ministry of Social Development to consider the need for, and where necessary to ensure, the provision of ongoing or one-off support, including financial support, that:</p> <ul style="list-style-type: none"> <li>• cannot be met by existing sources of government support, and</li> <li>• is over and above what it is reasonable to expect the caregiver to fund, and</li> <li>• arise as a result of the child's care and protection needs, or as a result of extraordinary health or developmental needs.</li> </ul> <p>The Family Court public consultation paper questioned the desirability of regularly reviewing Services or Support Orders (CYPF Act) once Home for Life has been achieved and care orders have moved to the COCA. Regular review of orders has been retained, but the obligation for the Chief Executive to support these placements is expected to reduce the need for the Court to make Services Orders.</p>	<p>the child at risk or in an adverse situation.</p> <p>By removing the need for review of orders to support Home for Life placements, there would be time and costs saving for Child, Youth and Family, lawyers and the Court and reduce disruption of the child's placement.</p>	<p>disturbs the child's welfare</p> <ul style="list-style-type: none"> <li>• leave of the Court is required to lodge an application and can only be granted where all available dispute mechanisms under COCA have been exercised.</li> </ul>
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	<p>The United Kingdom has introduced Special Guardianship Orders to provide an alternative legal status for children. The orders offer greater security than long term fostering, but without the absolute legal severance from the birth family that results from an adoption order. Many of the states in the United States and some Australian and Canadian states have introduced similar provisions.</p>		
<p><b>Option 2:</b> Change legislation to require the Court to consider permanently extinguishing guardianship rights</p>	<p>Under this option guardianship of the parents could be removed upon the Family Court making specific orders.</p> <p>This could be when the Court makes a declaration that a child is in need of care and protection with a custody order in favour of the chief executive, or when orders are made giving Home for Life parents custody and guardianship of a child.</p> <p>The legislation could be amended to require the Court to consider permanently extinguishing guardianship. An assessment would be required to indicate whether it was in the child's best interests for the parent to remain as a guardian. Alternatively, the Court could be required to consider extinguishing guardianship only for those convicted of the most serious child abuse.</p> <p>Child, Youth and Family does not have concerns about the current legal options which are available under the CYPF Act when a child remains in care. The existing option of sole guardianship under the CYPF Act is available to suspend parents' guardianship rights when a child enters care and a parent is unable or unsuitable to share or retain guardianship of the child.</p>		<p>A concern with a decision to permanently remove a parent's guardianship when a child comes into care (rather than on Home for Life) is that it potentially leaves the child in a state of limbo where birth guardians have been extinguished, but no new long term guardians have been identified. It also increases the potential to disrupt social work interventions and increase legal conflict.</p> <p>When the child comes into care is a time when the focus is on reducing the level of conflict, working with birth parents to resolve problems, and finding long term solutions for the benefit of the child. It is usually too early to make long term guardianship decisions.</p> <p>The current problems occur when Home for Life parents seek to take over the parenting and guardianship responsibilities from Child, Youth and Family. A parent's guardianship rights could be removed at this point although it will not be necessary or desirable in most cases. Option 1 above can achieve the same level of protection but with greater flexibility to meet the child's needs.</p>

## Rebalance the principles of the CYPF Act to ensure the welfare of the child is paramount

- 32 Options considered to rebalance the principles of the CYPF Act to ensure the welfare of the child is paramount are included in *table three* below. The preferred option, option one, is to amend the CYPF Act to clarify that the principles in section 13 are not secondary in weighting to the principles contained in section 5.
- 33 The care and protection principles apply to any person or court exercising powers under the care and protection parts of the CYPF Act. The options consider the following relevant sections of the CYPF Act:
- **Section 5** contains the principle that wherever possible, the relationship between a child and young person and their family, whānau, hapū, iwi, and family group should be maintained and strengthened. It also contains several other principles focussing in particular on the need for children, young people and their families to participate in decisions, but does not specifically address the need to protect children and young people from harm.
  - **Section 6** provides that the welfare and interests of the child are the first and paramount consideration in the exercise of care and protection powers, having regard to the principles in sections 5 and 13.
  - **Section 13** contains additional principles applicable to care and protection matters and states that it is subject to both section 5 and section 6. The first principle, 13(a) is that:

*“children and young persons must be protected from harm, their rights upheld, and their welfare promoted”*

**Table three:** Options to rebalance the principles of the CYPF Act to ensure the welfare of the child is paramount

Option	Impacts/implications	Benefits	Issues/risks
<p><b>Option 1:</b> amend the CYPF Act to clarify that the principles in section 13 are not secondary in weighting to the principles contained in section 5</p> <p><b>(preferred option)</b></p>	<p>This option includes a re-drafting of sections 5, 6 and 13 to the extent necessary to clarify the intended prominence of the principle in section 13(a) that children and young people must be protected from harm, their rights upheld, and their welfare promoted.</p> <p>This option would ensure that the need to protect children from harm is of at least equal weighting to considerations that wherever possible the relationship between a child or young person and</p>	<p>This option would ensure that the principles are as child-centred and as clear as possible for practitioners who are required to balance competing considerations, whilst ensuring that all decisions are in the best interests of the particular child concerned.</p> <p>It would provide the clarity of legislation called for in the White Paper by amending how these principles are expressed.</p>	<p>This option has some potential for overly risk averse approaches by social workers, for example, removing children where there is a risk of harm despite other considerations weighing in favour of keeping the child in the family. The appropriateness of this in the context of Māori concepts of child and family wellbeing would need to be considered.</p> <p>However, this can be overcome by well-</p>

	<p>his or her family, whānau, hapū, iwi, and family group should be maintained and strengthened.</p> <p>This option would re-balance the existing principles relevant to determining what is in the child's best interests by specifically referencing wellbeing considerations such as the child's age, identity, cultural connections, education and health needs. This would ensure that the child's full range of wellbeing needs is considered when determining their best interests.</p>	<p>Under this option it is not necessary to amend the objects of the CYPF Act.</p>	<p>considered redrafting of the legislation that gives careful attention to the need to balance the principles.</p>
<p><b>Option 2:</b> Incorporate sections 5 and 13 into section 6 so there is one provision dealing with the care and protection principles (and incorporating section 5 into section 208 for youth justice)</p>	<p>The correct legal interpretation is to begin with section 6 as the paramount consideration, and then to have regard to sections 5 and 13 in forming a view as to what decision or action is in the child's best interests.</p> <p>However, this option would include bringing sections 5 and 13 within section 6 as mandatory considerations to be taken into account when determining the child's best interests. This approach is taken in Victoria and the United Kingdom.</p>	<p>This option would promote the importance of the child's welfare and interests being paramount and is therefore more likely to influence Child, Youth and Family social work practice.</p> <p>This option does not change the substance of the principles, but could serve to emphasise the need for the child's welfare and interests to be paramount, with the principles in section 5 and 13 being required considerations in that assessment.</p>	<p>This option would require the principles applying to youth justice to be redrafted as currently the principles in section 5 are generic to both care and protection and youth justice.</p>
<p><b>Option 3:</b> Completely reframe the principles</p>	<p>This option would involve reconsidering and redrafting the principles, to simplify them and reduce the number of required considerations.</p> <p>Sections 5 and 13 currently provide for 15 separate considerations to be taken into account when determining whether a decision or action is in the child's best interests. This is fewer than the Victorian legislation, but considerable more than the United Kingdom example where there are only seven considerations listed which are relatively succinct.</p>	<p>This option would reduce complexity and assist ease of interpretation.</p>	<p>This option presents a significant change in approach, and would likely require significant policy work and consultation.</p> <p>The principles have generally been considered sound, and appear to capture the key considerations relevant to decision-making under the Act.</p> <p>Changes to section 5 would also impact on youth justice.</p>

## Non-regulatory options

- 34 Further to the status quo and the options noted above, other non-regulatory options to change care and protection practice and achieve the objectives provided for in the White Paper were considered as part of the policy development process. Many of the non-regulatory options were ruled out early in the process as they did not provide a sufficient degree of assurance that the required changes, particularly to FGC and permanency processes, would occur in a consistent manner in all Child, Youth and Family sites across New Zealand.

## Additional changes through the Vulnerable Children’s Bill

- 35 The accompanying Cabinet paper also proposes several additional legislative changes that will support the Strategy for Children in Care and ensure the Child, Youth and Family response to vulnerable children in care is appropriate.

### *Co-ordination and facilitation of FGCs*

- 36 The additional changes include:

<p>Allowing the appointment of external FGC co-ordinators</p>	<p>The Strategy for Children in Care includes changes to strengthen the FGC process, including standards of practice for co-ordinators, enhanced management oversight, and improved learning and development for co-ordinators.</p> <p>This proposed change will allow the chief executive of MSD to appoint FGC co-ordinators not subject to the State Sector Act 1988 to perform these functions of care and protection and youth justice co-ordinators.</p> <p>The CYPF Act currently provides for the Chief Executive of MSD to appoint coordinators under the State Sector Act where the person is, by reason of his or her personality, training, and experience, suitably qualified to perform the role. The current requirements make the coordinator an employee of the Chief Executive of MSD, therefore subject to the lawful directions and control of the Chief Executive as their employer. They do not allow an external party to undertake the role of co-ordinator.</p> <p>External appointment of FGC co-ordinators offers the option of more flexible ways of working with families and whānau and may give particular communities a greater degree of participation and accountability for the process. This is aligned with the White Paper’s objectives of promoting greater community responsibility for vulnerable children.</p> <p>External co-ordinators, for example, iwi representatives, may also offer the potential for FGCs to be more culturally responsive. Child, Youth and Family is working with iwi to develop a model for this to occur.</p> <p>Giving the Chief Executive this power would ensure that co-ordinators remain accountable to the Chief Executive for the performance of their duties. However, there are risks involved, particularly how to maintain an appropriate degree of oversight of external co-ordinators. Child, Youth and Family propose to manage this through contractual terms and monitoring, as well as by offering appropriate training and support to external appointments. Any services agreed to at a FGC are subject</p>
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	to site manager approval.
Extending the situations in which a Care and Protection FGC must be reconvened	<p>Currently the Act provides that a co-ordinator <i>may</i> reconvene a FGC at his or her own initiation or at the request of at least two members of the conference. This leaves the decision whether to reconvene at the discretion of the co-ordinator, so a co-ordinator may decide not to reconvene the FGC even if two members of the FGC request it or if the FGC plan breaks down and a new plan is required.</p> <p>This amendment will require the FGC co-ordinator to reconvene a FGC at the request of a social worker or agency where there has been a change in the circumstances requiring reconsideration of the plan for a child or young person. Discretion to reconvene a conference in other circumstances would remain in place.</p> <p>This proposed legislative change will support other legislative and practice changes relying on the reconvening of FGCs.</p>

- 37 Other options around co-ordination and facilitation of FGCs involved enabling external parties to facilitate FGC meetings rather than allowing for the appointment of external FGC co-ordinators. This option was ruled out because it did not offer the degree of control to communities that would be offered by allowing external parties to act as FGC co-ordinators. MSD also considered allowing co-ordinators to delegate their functions to an external party. However, it was decided that it should be the chief executive who appoints the external co-ordinators given the level of accountability needed for the actions of a third party.

*Changes previously included in the CYPF Amendment Bill (No 6)*

- 38 The following changes proposed by the accompanying Cabinet paper were previously included in the now discharged Children, Young Persons, and Their Families Amendment Bill (No 6) (No 6 Bill):

- providing support for young people transitioning from care to independent living
- ensuring that reasonable steps are taken by a care and protection co-ordinator to make health and education information about a child available to care and protection FGCs
- clarifying who is entitled to attend a reconvened FGC
- changing provisions relating to disabled children and their families to ensure proper consideration has been given to supporting the child in the home environment before considering out-of-home care arrangements.

- 39 These proposed changes are technical and practice enhancements that will enhance the ability of Child, Youth and Family and the sector to respond to children and young people who have suffered abuse and neglect, the target group of the White Paper. Other care and protection amendments in the No 6 Bill are either no longer required or are not sufficiently pressing to consider them for inclusion.

- 40 These proposals are not analysed further in this Regulatory Impact Statement as they have previously been analysed and consulted on extensively.

## Options to achieve information-sharing objectives

- 41 Information-sharing will help professionals to identify and support vulnerable children by drawing together information from government agencies and front-line professionals. This will help form a comprehensive picture of vulnerable children and serve as an early alert. Information-sharing also helps professionals to make the right decisions about how best to support vulnerable children and to ensure services are targeted to those who will most benefit.

### *Status quo*

- 42 Currently, information about a child and their family and whānau is able to be legally shared between professionals only in specific circumstances. Professionals are not always sure if the criteria have been met to share information. Sometimes it only becomes clear that a child may be at risk of harm or has been harmed when information from these different sources is brought together.

### *Problem to be addressed*

- 43 Inquests into child deaths often note that many people were involved with the child and knew something was not right. A range of people, including doctors, social workers, police, family members, and neighbours, may have held pieces of information which, if put together, would have shown how unsafe the child was.
- 44 Children who are at risk of being abused are sometimes not identified because agencies do not know where they are, or who they are living with. In some cases, children at risk of abuse or neglect may have been able to be identified before they were born, but information about these children may not have been shared.

### *Cabinet decisions*

- 45 Cabinet has agreed that initiatives in the Children's Action Plan be supported by information-sharing provisions across agencies to enable the:
- identification of children at risk of abuse or neglect
  - care and protection of children who have been abused or neglected
  - referral and assessment of vulnerable children
  - on-going tracking and monitoring of outcomes for vulnerable children
  - tracking of high-risk adults [CAB Min (12) 34/9 refers].

### *Objectives*

- 46 The options under the information-sharing policies were assessed against the following outcomes:
- identifies vulnerable children: supports the earlier and more systematic identification of children at high risk of abuse or re-abuse by:
    - enabling information about vulnerable children to be collected, recorded and accessed
    - enabling monitoring and reporting of outcomes for vulnerable children

- efficient and clear: provides a more efficient approach to interagency planning and case management, with greater clarity around who is taking responsibility for a child's safety and wellbeing, and supporting more efficient and comprehensive assessment of children's needs.

47 Effective information-sharing will, accompanied by privacy safeguards, find, assess and connect the most vulnerable children to services earlier. Better information-sharing will also help government and non-government agencies to target resources to those in greatest need and in doing so will create opportunities to do more with available resources.

#### *Options*

- 48 The following table identifies three options for information-sharing:
- Option 1: Use existing legal frameworks, with no changes to current legislative frameworks
  - Option 2: Use existing legal frameworks and make some changes to current legislative frameworks (this option builds on Option 1).
  - Option 3: New and specific information-sharing provisions included within the CYPF Act for both Children's Teams and statutory services

Options	Impact/Implications	Benefits	Issues/Risks
<p><b>Information-Sharing Option 1:</b> Use existing legal frameworks, with no changes to current legislative frameworks</p> <p>Children’s Team demonstration sites would use current information-sharing provisions, including Approved Information Sharing Agreements (AISAs) where necessary.</p>	<ul style="list-style-type: none"> <li>• Most of the information-sharing requirements of the Children’s Action Plan could be progressed under existing legislative frameworks.</li> <li>• AISAs, which require an Order in Council, and guidelines would be developed to support the information-sharing in the Children’s Teams demonstration sites, if required.</li> <li>• If the Children’s Teams demonstration sites encounter barriers that appear to restrict the information-sharing required for effective implementation of the Children’s Action Plan, these would be referred to the Advisory Expert Group on Information Security (AEGIS) and to legal services for advice.</li> <li>• In circumstances where there are legal impediments, future legislative change could be considered. Where there are no legislative impediments, guidelines and practices will be clarified.</li> </ul>	<p><u>Identifies vulnerable children</u></p> <ul style="list-style-type: none"> <li>• Allows demonstration sites to begin using existing information-sharing processes immediately.</li> <li>• Information-sharing processes can be tested in the demonstration sites.</li> </ul> <p><u>Efficient and clear</u></p> <ul style="list-style-type: none"> <li>• Staged approach allows for initial progress within current frameworks, with opportunities to review the need for legislation later.</li> <li>• Does not require additional legislation, so progress can be made immediately.</li> <li>• AISAs provide clarity for parties and ensure an appropriate balance between information-sharing and individual privacy.</li> </ul>	<p><u>Efficient and clear</u></p> <ul style="list-style-type: none"> <li>• Unclear whether existing information-sharing processes and framework is sufficient for the success of the Children’s Teams sites.</li> </ul> <p><u>Identifies vulnerable children</u></p> <ul style="list-style-type: none"> <li>• AISAs may not be able to be developed and implemented in time, or the process of developing them may be too cumbersome for the diverse range of organisations and individuals that they will need to cover.</li> </ul>

Options	Impact/Implications	Benefits	Issues/Risks
<p><b>Information-Sharing Option 2:</b> Use existing legal frameworks and make some changes to current legislative frameworks. This option builds on Option 1.</p> <p>Some amendments to the CYP&amp;F Act could be made to change some care and protection provisions to enhance the ability of CYF to respond to reports of maltreatment.</p>	<ul style="list-style-type: none"> <li>• Legislative amendments would be required. These changes could include, for example: <ul style="list-style-type: none"> <li>- extending the agencies required to disclose information for the purposes of determining whether a child or young person is in need of care and protection to include NGOs and other private practitioners (s66).</li> <li>- clarifying agencies can provide information relevant to an assessment or plan, not just an investigation.</li> <li>- allowing personal information about adults relevant to a child’s safety to be disclosed for the purposes of determining whether a child or young person is in need of care. This would provide certainty around existing CYF practice.</li> </ul> </li> <li>• The proposed amendments could support agencies to provide more information about children that could improve their safety.</li> <li>• Enables small changes to clarify what information can be sought and used.</li> </ul>	<p><u>Identifies vulnerable children</u></p> <ul style="list-style-type: none"> <li>• Changes to practice, while small, could significantly benefit care and protection outcomes for children.</li> </ul> <p><u>Efficient and clear</u></p> <ul style="list-style-type: none"> <li>• Would provide certainty to CYF.</li> <li>• Would enable legislative changes that could, in future, support policy proposals still at the initial design stages.</li> </ul>	<p><u>Efficient and clear</u></p> <ul style="list-style-type: none"> <li>• Extending the agencies that are required to disclose information may be contentious, particularly if this provision is extended to NGOs and/or to private practitioners. Could delay other legislative changes.</li> </ul>

Options	Impact/Implications	Benefits	Issues/Risks
<p><b>Information-Sharing Option 3:</b> New and specific information-sharing provisions included within the CYP&amp;F Act for both Children's Teams and statutory services.</p>	<ul style="list-style-type: none"> <li>• This could include approaches such as:               <ul style="list-style-type: none"> <li>- enabling new regulations to be issued under the Act</li> <li>- new provisions to allow information-sharing in certain situations, to support the roles and functions of Children's Teams</li> <li>- principle-based provisions which enable particular classes of professionals to share information to assist decisions relating to a child's safety.</li> </ul> </li> <li>• The power to issue new regulations would ensure that legislation could be updated and improved regularly, as required.</li> </ul>	<p><u>Identifies vulnerable children</u></p> <ul style="list-style-type: none"> <li>• Would enable the creation of specific, tailored information-sharing practices and policies to support Children's Teams.</li> <li>• Regulation-making power would ensure that settings can be regularly reviewed to ensure they always reflect best practice.</li> </ul> <p><u>Efficient and clear</u></p> <ul style="list-style-type: none"> <li>• Provides clarity and certainty in a specific legislative context.</li> </ul>	<p><u>Efficient and clear</u></p> <ul style="list-style-type: none"> <li>• May be perceived as overriding the current Privacy Act and not paying sufficient attention to the individual privacy issues addressed in that legislation.</li> </ul> <p><u>Other</u></p> <ul style="list-style-type: none"> <li>• Difficult to do within the current timeframes for the Vulnerable Children's Bill.</li> <li>• Creating new regulations may be perceived as inconsistent with the Government Statement on Regulation.</li> </ul>

Table three: Options to achieve information sharing objectives

### *Discussion on the preferred information-sharing option*

- 49 Option 1 is preferred because it uses current legislative settings, including the recent amendments made to the Privacy Act 1993, thus avoiding the need for additional legislation.
- 50 Existing legislative provisions will be trialled in the Children's Team demonstration sites and if barriers are identified that restrict the information-sharing required for effective implementation of the Children's Action Plan, further legislative provisions may be required.
- 51 It is not expected that legislation will be required for the New Zealand Police-led work for identification, tracking and monitoring of high-risk adults across agencies. If legislative changes are required, these will be effected through other legislative processes.

## **Consultation**

- 52 The Green Paper for Vulnerable Children was released in July 2011 for public consultation and close to 10,000 submissions were received from a diverse range of people and organisations. Submissions on the Green Paper informed the development of the White Paper and have informed the development of these options.
- 53 In addition to this, cross-agency steering and working groups, comprised of relevant agencies, were established for the development of the White Paper. Non-government practice and operational professionals from the education, health, social services and justice sectors were consulted as part of the development of the White Paper. An external reference group was consulted throughout the policy development process and service design workshops were held to test and develop the early response system.
- 54 Relevant government agencies are being consulted on the legislative proposals, including the agencies that make up the VCB. MSD will determine if further targeted consultation is needed in the development of the legislative proposals.
- 55 The public will have further opportunity to comment on these proposals at the Select Committee stage of the Vulnerable Children's Bill.

## **Conclusions and recommendations**

- 56 MSD has analysed each option and weighed up the advantages and disadvantages for discussion with the VCB. The VCB recommends progressing the preferred options presented above for each proposal.

## **Implementation**

- 57 Implementation of the overall package to amend the CYPF Act will be phased following the passage of legislation. The Vulnerable Children's Bill is due to be approved for introduction to the House in July 2013.
- 58 Some of the proposals are likely to take effect as soon as the legislation comes into force, for example, the amendments to the principles of the CYPF Act. Other provisions, such as those relating to support for young people transitioning to independence may have a delayed introduction to allow planning for the financial provision needed to implement the amendments. This will be worked through during the drafting of the legislation and final advice provided when approval to introduce the Bill is sought from Cabinet.

59 Operational guidelines and training will also be prepared within MSD to support the practice changes resulting from the amendment legislation.

## **Monitoring, evaluation and review**

60 The purpose of monitoring and review activities for these proposals will be to support the ongoing improvement of care and protection services.

61 MSD will assess the implementation and outcomes of the proposals, including monitoring trends in FGC planning and permanency outcomes.

62 Assessing the impact of the overall package of care and protection legislative changes will be challenging. This is because they will be rolled out as part of a wider reform package to support vulnerable children. Taking this into account MSD will assess the implementation and outcomes of these White Paper initiatives as part of the Children's Action Plan monitoring and review programme for White Paper reforms.