

Regulatory Impact Statement

Investing in Children: Care Support

Ministry of Social Development
26 August 2016

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Social Development. It provides an analysis of options to provide the basis for a care support service that delivers improved outcomes for vulnerable children and young people. These options support the Government's proposed new operating model for vulnerable children and young people, specifically the establishment of a care support service.

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

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

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

- revising the care and protection principles so they are child-centred and focus on the need for safe and stable care and on the preservation of key relationships
- introducing an ability for care standards to be made so that children and young people receive quality care and support, and have their reasonable needs addressed
- introducing the ability for financial assistance to be responsive to the changing needs of children and young people, and to their particular care needs and circumstances
- amending care and protection statutory requirements so children and young people have the earliest opportunity for a safe, stable and loving family, are engaged in the planning process and disabled children have the same protections as other children.

The legislative proposals aim to be enabling so that the development of the new child-centred operating model is not constrained. Further work is required to develop and design the operational model in line with these enabling legislative proposals. This will include developing detailed costings of the wider changes and identifying impacts on the workforce. The key constraints around the analysis presented in this paper are:

- the analysis has been undertaken ahead of detailed design work. This increases the risk of creating unnecessary degrees of flexibility; however, the options considered are enabling provisions, which can be adapted over time
- the cost implications of options have not been analysed as they enable rather than prescribes operational changes and these will depend on future design proposals
- there are gaps in data and evidence, such as the success of care standards internationally and data on Court numbers.

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Executive summary

- 1 Evidence shows that the outcomes of children who have been placed in State care are considerably worse than all other children. Those in care are highly likely to enter young adulthood with few qualifications, and go on to experience very high rates of benefit receipt and contact with the adult corrections system.
- 2 To achieve better outcomes for these and other vulnerable children, Government has endorsed the most far-reaching reforms since the Children, Young Persons, and Their Families Act 1989 (CYPF Act) came into force. The reforms will both embed and enact a more child-centred care and protection and youth justice system. Refreshing the legislative mandate is a key component of the reform because this will provide a strong signal for change and set expectations for agencies, practitioners, providers and the wider public.
- 3 For the care support service, legislative changes are required to ensure that children who are unable to live with their birth parents develop a safe, stable and loving relationship with another family, have their healing and recovery needs met, and maintain their connection with their birth family where possible.
- 4 Officials have identified specific legislative barriers and issues in relation to the system that supports children in care. These issues are that:
 - the current care principles set out in the CYPF Act do not provide a sufficiently strong foundation for the new child-centred operating model, and they can be difficult for practitioners to apply
 - New Zealand does not currently have a national set of care standards, which limits the accountability on the system, and the expectations for positive outcomes of children and young people in care
 - financial assistance that incentivises caregivers to provide care for young people is not sufficiently flexible or tailored to children's needs. Additional financial support for children with high or complex needs and skilled caregiving is inconsistent and unclear
 - the statutory care and protection requirements can be complex, time consuming and bureaucratic. They do not sufficiently respond to the needs of children and young people, including children and young people with disabilities, and their families.
- 5 The objectives of the options considered are to:
 - ensure that children have the earliest opportunity for a safe, stable and loving family
 - support caregivers to provide a safe, stable and loving home
 - address the reasonable needs of each child or young person in care
 - be responsive to the changing needs of children and young people, and to particular care needs and circumstances.
- 6 Feasible regulatory and non-regulatory options have been identified and analysed. Non-regulatory options would be unlikely to achieve the sustained change required to implement the new operating model for the Ministry of Vulnerable Children Oranga Tamariki (the new Ministry). These options would not strongly signal to practitioners, organisations, departments and the public that the system has to fundamentally

change. The legislative options considered in this RIS seek to direct and frame behavioural and cultural change to enable the new system to develop.

7 The preferred options amend the CYPF Act and aim to:

- **provide the basis for a child-centred care support service by:**
 - revising the care and protection principles in the CYPF Act so that the intent is clearer and focused on the child and their need for safe and stable care at the earliest opportunity, and on the preservation of key relationships
- **enable standards for the care and protection system by:**
 - introducing an empowering provision to enable regulations to be made that set out National Care Standards and focus on:
 - the rights and needs of children and young people, including cultural needs
 - the quality of care that children and young people can expect in care placements and in residences
 - standards for caregiver training, monitoring and support
 - the manner in which standards are monitored and reported on
 - introducing a requirement for the Minister responsible for the CYPF Act to appoint an agency to monitor and report on the National Care Standards
- **enable responsive financial assistance for caregivers by:**
 - introducing a purpose statement for financial assistance to confirm that financial assistance for caregivers is to meet the needs of the child or young person in out of home care
 - introducing an empowering provision to enable regulations to be made setting out the levels and circumstances in which financial assistance can be paid in relation to any child or young person, including reasonable costs, extra assistance and higher rates
- **reduce the complexity of care and protection statutory requirements by:**
 - removing the requirement for the Family Court to make a declaration before making final orders, and thereby allowing a one-step process whereby the Family Court can make those orders if it is satisfied that the child is in need of care or protection
 - requiring plans for children and young people to be distributed to relevant parties in a timelier manner (at least seven days before the date that the plan is to be considered by the Family Court)
 - allowing the Family Court to make interim guardianship orders where necessary to respond to immediate concerns (eg medical needs), including interim sole guardianship orders, pending determination of the proceedings
 - repealing sections 141 and 142 of the CYPF Act to ensure that disabled children and young people have the same protections and safeguards as other children and young people in the statutory care system.

- 8 Together, the enabling legislative proposals in this paper aim to provide the basis for a child-centred care support service that delivers improved outcomes for vulnerable children, young people and their families and ensures they are afforded the earliest opportunity for safe, stable and loving care. These will inform and drive the operational changes that are needed to make any sustained impact on vulnerable children, young people and their families.
- 9 Further work is required to develop the detailed design for the operational model for the care support system. This will include developing operational initiatives to provide more services and support to children, young people and their caregivers, decide on funding allocations, and identify and address impacts on the workforce.

Policy context

Government is embarking on wide ranging reform for responding to vulnerable children and young people

- 10 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
- 11 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.
- 12 While Government has sought to redesign the service landscape for vulnerable children and their families through the White Paper for Vulnerable Children and the Children's Action Plan, there have been ongoing and significant issues identified with how Child, Youth and Family operates.
- 13 In April 2015, the Minister for Social Development established the Panel to develop a plan for the modernisation of Child, Youth and Family. In the Panel's final report,³ the Panel identified a number of issues with the performance of the current system, and proposed significant changes to how the State addresses the needs of vulnerable children and young people.

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

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

³ Expert Panel. (2015). *Final Report, Investing in New Zealand's Children and their Families*. See <https://www.msd.govt.nz/documents/about-msd-and-our-work/work-programmes/investing-in-children/investing-in-children-report.pdf>

- 14 On 30 March 2016, SOC, with power to act, considered the Panel’s final report and agreed major reform is required to the CYPF Act and related legislation to give effect to a proposed new operating model [SOC-16-MIN-0024 refers].

Embedding and enacting a child-centred approach

- 15 Government has determined that a far-reaching reform of care and protection and youth justice services is required to achieve better outcomes for vulnerable children through an unequivocally child-centred approach.
- 16 The changes proposed represent a fundamental shift, driving the most significant and comprehensive reforms since the CYPF Act was passed in 1989.
- 17 Nearly 30 years ago the CYPF Act 1989 sought to establish a new model of social work, with a much stronger focus on family participation and decision making than under the earlier solely professional determination Children and Young Persons Act 1974.
- 18 Results, however, have not been as envisaged. For example 20 per cent of children are now known to Child, Youth and Family by age 17, with many cycling through the system from notification to re-notification, statutory care and, in some cases, arrest and entry to the youth justice system.
- 19 Such issues have led to Child, Youth and Family being reviewed and restructured some 14 times. But this has occurred without major legislative amendment to support practice and accountability change and, notably, without fundamental improvements for vulnerable children.
- 20 To address this situation Government has endorsed the most far-reaching systemic reforms since the CYPF Act to embed and enact a much more child-centred and investment approach focused care and protection and youth justice system.
- 21 Significant review and amendment of the CYPF Act creates an opportunity to support meaningful practice change and strongly signal this to those on whom the success or failure of these reforms rest: practitioners, organisations, departments and the public.

Care support

- 22 On 30 March 2016, SOC, with power to act, agreed to the core service areas of the new operating model. One of these areas is care support⁴ - partnering with caregivers and communities to ensure that children who cannot live with their birth parents develop a loving and stable relationship with another family, have their healing and recovery needs met, and maintain their connection with their birth family and whānau where possible [SOC-16-MIN-0023 refers].
- 23 SOC also invited the Minister for Social Development to report back to SOC on a number of areas for possible legislative change, including introducing new and amended provisions to support stable and loving care from the earliest opportunity. The areas for possible legislative change included:
- major reform to the principles, obligations, decision-making processes and oversight mechanisms for the care system

⁴ There are five core service areas – prevention, intensive intervention, care support, youth justice and transition.

- new, enforceable obligations to meet the identified recovery, growth and developmental needs of children in care
- a strengthened focus on maintaining trusted relationships
- reform of financial support for caregivers to ensure consistency and alignment with the new operating model
- repeal and replacement of the Residential Care Regulations 1996 to support phased closure of care and protection residences over time
- creation of mandatory National Care Standards
- more intensive assessment of a broader set of caregivers and a greater level of independent scrutiny of caregiver approvals [SOC-16-MIN-0024 refers].

Status quo and problem definition

- 24 Children and young people in statutory care under the CYPF Act are some of the most vulnerable in New Zealand. Around 4,900 children and young people are in care at any one time. In 2015, 60 per cent of those in the care of the chief executive identified as Māori.
- 25 The Panel highlighted that the way the current care support system responds to children and young people in need of care means that:
- there is insufficient focus on identifying the earliest opportunity to provide safe, stable and loving care for the child or young person in a way that promotes and maintains attachment. This means children and young people may experience unnecessarily frequent placement moves⁵, compromising their need for stability, and undermining the process of attaining a sense of belonging in a family
 - care arrangements are not always suited to the needs of children and young people. Their needs are generally higher and more complex than those of children and young people in the wider population. Further, the continued use of institutional residential care is not considered to be in the long-term best interests of children and young people in need of care
 - there is insufficient attention on identifying and addressing the full range of needs of children and young people in care, including their emotional needs. Caregivers may also lack the capability, training and support, including financial support, needed to help them address the often complex needs of the children and young people they care for.⁶
- 26 Evidence and data reinforces findings from the Panel. The outcomes of children who have been placed in Child, Youth and Family care are considerably worse than all other children. Those in care are highly likely to enter young adulthood with few qualifications, and go on to experience very high rates of benefit receipt and contact with the adult corrections system. Analysis of children born in 1990/91 shows that children who were placed in State care were:

⁵ Data shows vulnerable children currently have seven to eight prior placements and are, on average, between seven and eight years old.

⁶ Many caregivers are on low incomes, with just over 42 per cent receiving a benefit.

- two times more likely to have failed to gain NCEA level Two by age 21 (77.7 per cent compared to 36.3 per cent of children overall)
 - six times more likely to have been on benefit for more than two years before age 21 than other children (44.4 per cent compared to 7.7 per cent of all children)
 - ten times more likely to have been in prison before age 21 (18.3 per cent compared to 1.8 per cent of all children)
 - estimated to be three times more likely to have been on benefit for more than 6 months when aged 35 (30.1 per cent compared to 9.3 per cent of all children)
 - estimated to be six times more likely to have been in prison before age 36 (26.0 per cent compared to 4.6 per cent of all children).⁷
- 27 There are large fiscal costs associated with people who have spent time in State care. For example, the average amount of Child, Youth and Family spending for the 1990/91 cohort was almost \$100,000 and the subsequent benefit and corrections expenditure to age 35 years was just over \$200,000.⁸
- 28 Recent research shows that children currently in care have higher rates of stand downs, suspensions, exclusions and expulsions from school, lower levels of NCEA achievement, lower levels of public health organisation enrolment and high rates of use of mental health services.⁹
- 29 These poor outcomes signal that the current care and protection system is not working for vulnerable children and young people, and provides the basis for significant change. The current care and protection system does not provide the support vulnerable children and young people need to recover and flourish. The CYPF Act provides the basis for the operation of the current system and underpins all aspects of practice.
- 30 Further analysis has identified the following specific problems in the care and protection system, and these are discussed in more detail in the following sections:
- **principles for the care and protection system** - the current care and protection principles in the CYPF Act do not provide a sufficiently strong foundation for the new child-centred care support service and they can be difficult to apply in practice
 - **standards for the care and protection system** - New Zealand does not currently have a national set of care standards, which limits the accountability on the system to meet certain standards, and limits the expectations of children, young people in care and the level of caregiver support

⁷ Crichton, S., Templeton, R., and Tumen, S. (2016). *Using Integrated Administrative Data to Understand Children at Risk of Poor Outcomes as Young Adults*. See <http://www.treasury.govt.nz/publications/research-policy/ap/2015/15-01/ap15-01.pdf>

⁸ Ibid.

⁹ Insights MSD. (2014). *Outcomes for Children in Care: Initial data-match between Child, Youth and Family, the Ministry of Education and the Ministry of Health*, Unpublished.

- **financial assistance for caregivers** - financial assistance is not sufficiently responsive or child-centred, differences exist in the levels of financial support available and additional financial support for higher needs children and skilled carers is inconsistent and unclear
 - **care and protection statutory requirements** - the statutory requirements for care and protection in the CYPF Act can be complex and do not sufficiently support children, young people, and their families and do not afford disabled children the same protections as other children.
- 31 Other areas identified by the Panel for the care support service can be addressed through service design and delivery, for example, initiatives to increase the pool of quality caregivers and provide more support and services to children, young people and their caregivers. These changes will be considered during the design and implementation process.

Principles for the care and protection system

The current care and protection principles are not sufficiently child-centred

- 32 The Panel concluded that the current system is not sufficiently child-centred, as evidenced by the experiences of children and young people and their families/whānau, and the poorer long term outcomes that vulnerable children and young people experience compared to the rest of the population.
- 33 The CYPF Act contains principles that guide decision-making under the CYPF Act. Section 5 includes general principles that apply across the CYPF Act, and section 13 covers those relating to care and protection.
- 34 The care and protection principles includes high-level guidance and specific direction for decisions about the removal of children and young people from their usual caregivers and placement of children and young people in care.
- 35 The current care and protection principles are complex, can be difficult to apply and are not consistently applied in practice. Not making good decisions about removal or placement of children and young people can mean that children get placed with carers or back with family who re-abuse them. In care, re-abuse rates are currently unknown, but there is anecdotal evidence of significant re-victimisation of children and young people while in the care of the State.¹⁰
- 36 Good placement decisions are vital to the recovery of children and young people who have suffered trauma and abuse. Data shows vulnerable children currently have seven to eight prior care placements and are, on average, between seven and eight

¹⁰ Expert Panel. (2015). *Modernising Child, Youth and Family, Interim Report*. See <https://www.msd.govt.nz/documents/about-msd-and-our-work/work-programmes/cyf-modernisation/interim-report-expert-panel.pdf>

years old.¹¹ The high average number of placement moves experienced by children at a young age is likely to contribute to their poor outcomes later in life.¹²

- 37 In addition, in their 2016 State of Care report, the Office of the Children’s Commissioner found that Child Youth and Family case management is not sufficiently child-centred. In particular, they noted that Child, Youth and Family does not sufficiently listen to the views of children and young people and support psychological needs and cultural connections. By child-centred, they meant that children’s rights, needs, interests and opinions are at the centre of decision making.¹³
- 38 During the development of the State of Care report, the Office of the Children’s Commissioner engaged with more than 60 children and young people in the care and protection and youth justice systems through interviews, focus groups and surveys, to find out about their experiences with Child Youth and Family. Children and young people strongly voiced that they wanted to be given a voice in decisions that affect them, involved in care plans and transition planning, and communicated with clearly and respectfully. The children and young people also emphasised a strong desire to belong and feel connected to others (including with their birth family/whānau, in their current care placement, at school, or within their culture).¹⁴
- 39 Practitioners are guided by the principles in the CYPF Act when they make decisions and without any principles in section 13 of the CYPF Act that require listening to the views of children and young people, this practice is not undertaken.
- 40 There is scope to make the care and protection principles centred around the child’s best interests and understanding the child’s views and focused on the need for safe and stable care, and the preservation of key relationships with their birth family/whānau, siblings and other significant adults. This is likely to result in better long-term outcomes for vulnerable children and young people.

Standards for the care and protection system

New Zealand does not currently have a national set of standards for children and young people in care

- 41 We have identified that the regulatory settings and standards for children and young people in care are limited and only applied to a narrow care population. The CYPF Act currently provides a regulation-making power for care in residences established by the chief executive and for the residential component of a programme or activity imposed as a condition of a supervision with activity order or supervision with residence order. There is no similar power enabling the making of care standards for all children and young people in care or for determining the monitoring and enforcement mechanisms of those standards.

¹¹ Expert Panel. (2015). *Modernising Child, Youth and Family, Interim Report*. See <https://www.msd.govt.nz/documents/about-msd-and-our-work/work-programmes/cyf-modernisation/interim-report-expert-panel.pdf>

¹² See http://cfrc.illinois.edu/pubs/rp_19990701_PlacementStabilityStudy.pdf

¹³ Office of the Children’s Commissioner. (2016). *State of Care*, p 106. See <http://www.occ.org.nz/assets/Uploads/OCC-State-of-Care-2016FINAL.pdf>

¹⁴ Ibid.

- 42 Most comparable jurisdictions (eg England, Scotland, New South Wales, Queensland, Canada) have care standards supported through legislation, though they vary in their focus, legislative standing and level of detail.¹⁵ Broadly, standards in other jurisdictions can be categorised into two groups: those that focus on the requirements on the state and service providers and those that focus on children and young people's rights and the quality of care they should expect to receive.
- 43 The final product of care standards can exist outside of primary legislation. This is true for Scotland, where care standards are outlined in a document developed by Scottish Ministers in response to a directive in their primary legislation. Alternatively, some standards are based on relevant legislation without supporting legislative provisions (such as Ireland). In this case, standards are seen as reinforcing or elaborating on legislation without being based on a specific legislative directive.
- 44 Without legislative directives or requirements, children and young people in care in New Zealand are reliant on Child, Youth and Family creating care standards and monitoring itself on meeting those standards. This has not been done to date. In practice, there are standards for approval for organisations providing care services and a caregiver assessment which includes a Police check, referee check and social worker interview. There is also a charter which sets out the rights of children and young people. However, these measures do not provide sufficient levels of accountability on the care system to ensure a safe, stable and loving family or quality care arrangements. Furthermore, there are no independent checks or oversight on whether Child, Youth and Family are meeting standards.
- 45 The Office of the Children's Commissioner does monitor Child, Youth and Family, but this is done without a set of standards to specifically monitor progress against and only focuses on some parts of the system. A more robust system is needed to ensure that the new Ministry knows what standards it needs to work towards meeting and for this process to have the right levels of accountability and transparency.
- 46 It is important that those working in the care sector have a shared framework to work from that can be planned towards, evidenced, monitored and evaluated to demonstrate children in care are achieving good outcomes. Care standards can improve the quality of care by focusing on best practice. In Ontario, their Child Protection Standards focus on the quality of service delivery to children, youth and their families receiving child protection services by establishing a minimum level of performance for child protection workers. They aim to promote consistently high quality service delivery to children, youth and their families receiving child protection services and provide the baseline for demonstrating performance. Where care standards operate in other jurisdictions, there is more accountability on the system and more public scrutiny.

¹⁵ Matheson, I. (2009, July). *Foster care standards: A four country study (and foster care standards analytical framework)*. Plenary paper presented to the International Foster Care Organisation (IFCO) World Conference, Dublin, Ireland. Retrieved from <http://www.slideshare.net/iainmatheson/foster-care-standards-in-australia-canada-ireland-and-the-uk-plenary-presentation-to-the-international-foster-care-organisation-worldconference-dublin-2009>

Financial assistance for caregivers

Setting the scene

- 47 The core financial assistance for those caring for children who are not their own consists of Foster Care Allowance (FCA) administered by Child Youth and Family for children in care or custody of the chief executive or an approved social service and Orphan's Benefit (OB) and Unsupported Child's Benefit (UCB) administered by Work and Income¹⁶ for children in care that is not State care.
- 48 FCA is paid for around 4,900 children and young people up to the age of 17 at a cost of approximately \$41 million per annum. Many caregivers are on low incomes, with just over 42 per cent receiving a benefit. When foster care placements become permanent, this usually involves moving from receiving FCA payments from Child, Youth and Family to receiving UCB from Work and Income, with additional financial support available where required.
- 49 OB and UCB are paid in relation to just over 14,000 children and young people up to the age of 18 who cannot be cared for by parents, but who are not in State care, at a cost of \$137 million per annum.¹⁷ For a caregiver to receive UCB, one or both of the child's natural, adoptive or step-parents must be unable to care for the child because of a breakdown in the child's family. To receive OB, the child's parents must either be deceased, cannot be found or they suffer from a serious long-term illness or incapacity, which makes them unable to care for their child. The majority of OB and UCB carers are family members, such as a grandparent who steps in when the parents cannot or should not continue caring for them, including where there are care and protection issues. Around half receive a main benefit.
- 50 FCA, OB and UCB have the same standardised core payments ranging from \$146 to \$204 per child per week depending on the age of the child. These payments are not taxable. The eligibility criteria for OB and UCB are set out in the Social Security Act 1964 and rates are set out in the schedule. The CYPF Act allows the chief executive to determine the rates of payment with minimum rates, in respect of board and lodgings of children and young people, adjusted for CPI increases by Order in Council every year.
- 51 In many cases, care funded by UCB provides an alternative to initiating formal custody arrangements and many of the UCB children and young people have had prior contact with Child, Youth and Family. Over the course of 2014, approximately 50 per cent of UCB entrants (4,438 children starting on UCB) had been in contact with Child, Youth and Family in the prior 12 months, demonstrating the overlapping nature of UCB and Child, Youth and Family children. Children receiving OB/UCB are likely to be vulnerable and experience poor outcomes, however information on their outcomes is lacking.

¹⁶ The Social Security Legislation Rewrite Bill 2015 proposes to amalgamate OB/UCB into a single Supported Child's Payment.

¹⁷ In some cases, children get included as a dependent child in their carer's benefit (eg Sole Parent Support). Whether they get or want to be included or go down the UCB path depends on the carer's circumstances.

Differences exist between the financial support package that foster carers and OB and UCB carers can receive, and payments are not transparent

- 52 Foster carers are able to receive the In-Work Tax Credit (income and work-tested), but are not able to receive any other tax credits or other financial support from Work and Income. OB and UCB carers are also eligible for other (largely income-tested) support from Work and Income and IRD, including Childcare Assistance, hardship payments, the In-Work Tax Credit (though no other tax credits), and the Disability and Child Disability Allowances.
- 53 A package of assistance, which comprises the Establishment Grant, School and Year Start Up Payment and the Extraordinary Care Fund, was made available to OB and UCB children from 2014. This was created to provide alignment with the additional allowances that foster carers receive, however slight differences in the payments and level of assistance remain.¹⁸ Initial analysis shows that foster carers are able to easily access more assistance (at least \$173 per year where children are paid the maximum School and Year Start Up Payment)¹⁹ than OB and UCB carers, despite legislative amendment that will require the same Clothing Allowance as FCA to be paid to OB and UCB carers, which will be available from 2018.
- 54 Foster carers can also be reimbursed for actual expenses related to the child which cover health and education costs, travel, nappies and any other 'reasonable costs'. There is little guidance about the use of the discretionary payments that Child, Youth and Family have for caregivers other than 'reasonable costs'. There is also considerable variability between sites about the kind of costs that are covered.

Additional financial support for higher needs children and skilled carers is inconsistent, unclear and insufficient

- 55 A number of carers receiving UCB, OB and FCA offer specialist care skills, and work with behaviourally challenging children. There is some ability to pay higher than the base rate of FCA, however this practise is variable across sites and strong guidance is lacking. There is no ability to pay a higher rate of OB or UCB.
- 56 There is a concern that some children and young people who have complex needs are being placed in households where resources and skills are limited. Greater financial assistance may be required especially for those looking after children and young people with complex needs.
- 57 Many other jurisdictions provide higher levels of support for challenging children or young people. For example several states in Australia, including New South Wales,

¹⁸ Foster carers receive a set-up payment, a clothing allowance, an allowance for Christmas and birthday presents, and an allowance to cover small weekly costs. These payments are not stipulated in legislation. OB/UCB carers need to apply for an establishment grant, a school and year start-up payment, the Extraordinary Care Fund (if the child is experiencing difficulties that are significantly impacting on their development or showing promise) and a clothing allowance (from 1 July 2018). These payments are set out in a Ministerial Welfare Programme.

¹⁹ This is \$323.42 where children are paid the minimum School and Year Start Up Payment.

Northern Territory, Queensland, provide differing levels of support based on the child's needs.²⁰

- 58 There is also the wider issue of recruiting high quality caregivers. It is difficult to attract and retain high quality caregivers. Child, Youth and Family works with about 3,500 caregivers, however data is lacking on the quality of these caregivers and what support is needed.

Care and protection statutory requirements

The statutory requirements for care and protection court processes can be long and complex

- 59 Children and young people who require anything other than temporary care under the CYPF Act will be subject to Family Court care and protection proceedings. These proceedings are not child-centred insofar as they are complex and take an unduly long time to affirm a plan for the child or young person.
- 60 The Family Court care and protection process in New Zealand is notable for the fact that it operates on a two-stage process. A social worker must first apply for, and obtain a declaration from the Family Court that the child or young person is in need of care or protection on one or more of the grounds referred to in the CYPF Act. Upon the granting of the declaration, if the Court proposes to make certain orders, a plan must be lodged with the Family Court within 28 days setting out objectives for the child or young person and other matters, including services and assistance. Important orders about the child or young person, including custody orders, require a plan before the orders can be made.
- 61 For children and young people awaiting decisions about fundamental issues about their future, including where and with whom they are going to live, this is an unnecessarily complex and elongated process.

The timeframes for distributing plans do not sufficiently support children, young people, and their families

- 62 Children and young people found to be in need of care or protection who require certain orders under the CYPF Act must have a plan supplied to the Family Court, and, if orders are made, reviewed and revised on an ongoing basis. The current statutory requirement is that a plan must be given to relevant parties the day before the Court considers the plan. Given the vital importance of the plan to the child or young person and his or her family and other adults, this is not a desirable minimum standard.
- 63 Best practice is that plans are distributed at least seven days before a hearing; however this is not reflected in the legislation.
- 64 In the State of Care report, the Office of the Children's Commissioner were concerned to note that hardly any of the children and young people they spoke to in foster care were aware of their plan or could report involvement with it.²¹

²⁰ McHugh, M., and Valentine, K. (2011). Financial and non-financial support to formal and informal out of home carers. Commonwealth of Australia. See https://www.dss.gov.au/sites/default/files/documents/05_2012/op_38.pdf

The CYPF Act does not allow interim guardianship orders to be made by the Family Court pending the determination of proceedings

- 65 The relevant provisions of the CYPF Act give insufficient options for providing for the child or young person's needs while proceedings remain to be finalised. When proceedings are commenced the Family Court is empowered to make interim custody, support and services orders. However, it is not empowered to make interim guardianship orders meaning that the right to make significant decisions (such as medical treatment and schooling) about a child or young person remain with the child's guardians (usually their birth parents) before final guardianship orders are made.
- 66 Sometimes, the child or young person's usual guardians are not the right people to be making such decisions during this period of time and they can hinder the ability to meet the immediate health and other needs of children and young people.

Disabled children and young people do not have equal rights and protections

- 67 The Panel identified disabled children within the care and protection system as a particularly vulnerable group who experience poorer life outcomes than their non-disabled peers.
- 68 Disabled children who are placed in voluntary out-of-home care through section 141 or 142 agreements do not have the same rights and protections as non-disabled children and young people. Specifically, their placements have no set end date²² and they have no access to social workers to manage the placement process or independent oversight or monitoring. These sections are also inconsistent with a child-centred approach.
- 69 As a consequence, the system currently does not provide sufficient intensive support to enable many disabled children and young people to be cared for in a family-based setting. This can result in the institutionalisation of these children and young people so that once they reach adulthood they do not have the skills to live independently and often transition into adult residential care settings.
- 70 Consultation has highlighted that many stakeholders agree with repealing section 141 and 142. A summary of this feedback is provided in the consultation section on page 37.

Objectives and criteria

- 71 The following objectives have been identified for a child-centred care support service:
- ensuring that children have the earliest opportunity for a safe, stable and loving family
 - supporting caregivers to provide a safe, stable and loving home

²¹ Office of the Children's Commissioner. (2016). *State of Care*, p 106. See <http://www.occ.org.nz/assets/Uploads/OCC-State-of-Care-2016FINAL.pdf>

²² Although the term of section 141 and 142 agreements cannot be longer than 1 year, agreements can be extended for further periods with the approval of the family group conference.

- addressing the reasonable needs for each child
- responding to the changing needs of children and to particular care needs and circumstances.

72 Criteria against which options are considered are:

- **Likely effectiveness** - the extent to which the proposals meet the objectives stated above.
- **Compatibility with an investment approach** - the extent to which the proposals are compatible with the investment approach.
- **Durability** - the extent to which proposals are likely to achieve sustained change in the direction sought and support the long-term change required to implement the new operating model.
- **Practicality** - the extent to which proposals are practical, clear, and easy to understand including clarity for practitioners.
- **Fiscal and operational impact** - the extent to which proposals achieve the objectives above while minimising the compliance costs and the operational implications of implementing the proposal.
- **Fairness and equity** - the extent to which proposals promote fairness and are treat similar cohorts in a consistent way.
- **Interaction with other legislation provisions and planned reforms** - the extent to which proposals align with, and do not hinder legislation or planned reforms.
- **Consistency with the principles of Treaty of Waitangi, UNCROC and other relevant international obligations** - the extent to which proposals meet New Zealand's international obligations and the principles of the Treaty of Waitangi. This includes UNCROC's child impact assessment to consider the impacts of the proposals on family and whānau, community, educations, housing, health and income.
- **Compatibility with other relevant government objectives** - the extent to which proposals support and do not hinder other Government objectives, such as Better Public Services targets and the Children's Action Plan.

Options and impact analysis

Signalling and driving fundamental and wide-ranging reform

- 73 The CYPF Act 1989 sought to establish a new model of social work, with a much stronger focus on family participation and decision making than under the earlier Children and Young Persons Act 1974.
- 74 It signalled and set the direction of social work action, service delivery and performance monitoring, through legislated principles, objects, duties and powers.
- 75 The principles of the CYPF Act seek to inform and underpin all aspects of practice, including judicial decision-making about matters such as the removal and placement of children. This is akin to the way the amended Social Security Act 1964 principles (section 1B) direct the "work focused" operating model for income support and employment services.

- 76 Alongside setting the practice framework, the CYPF Act informs public understanding and expectations of the role of the care and protection system in particular critical decision making regarding if, when and how to report suspected abuse and neglect, the level of harm at which such reporting is expected, and the role of the agency in areas such as prevention. Legislative change in a number of comparable jurisdictions has been used to reset these decisions and expectations.
- 77 Significant reform to the nearly 30 year old CYPF Act offers an approach to support and strongly signal to those on whom the success or failure of these reforms rest: practitioners, organisations, departments and the public. In doing so this creates an opportunity to send a clear message and change the behaviour of actors within the care and protection and youth justice system.
- 78 In addition, legislative reform offers an opportunity to clearly articulate that changes occurring support children and young people who come into contact with the system to better understand their rights, have a voice in decisions, and establish reasonable expectations of the service.
- 79 As with the 1989 CYPF Act, the current proposed legislative reforms are taking place contemporaneously with the development of the detailed operating model that sits under the Act.
- 80 With this in mind legislative options seek to direct behavioural change and enable operational development, rather than tightly proscribe practice where this is not seen as necessary to achieve policy intent. Non-legislative options have been considered and are proposed where this best achieves Government's policy intent.
- 81 Options have been considered as to whether:
- the option best supports the policy intent and contributes to the objectives
 - the option provides the strongest signal and greatest support to achieve intent
 - the option provides sufficient flexibility and durability to support the finer detail of the operational model and future developments.
- 82 The following tables outline feasible options to address the problems identified and analyses the impacts and benefits of these options for:
- principles for the care and protection system
 - standards for the care and protection system
 - financial assistance for caregivers
 - care and protection statutory requirements.
- 83 Following these tables, the options and criteria against which options have been considered are summarised and discussed.

Options: Principles for the care and protection system

The following table identifies and considers the options and impact of each of the potential non-regulatory and regulatory options to reduce the complexity of the care and protection principles and ensure they are child-centred.

Option	Features	Impacts	Benefits	Issues/Risks
<p>Option 1. Update policy settings and practice guidelines to ensure care and protection principles are applied in a child-centred way</p> <p>(non-regulatory option)</p>	<p>This option would use policy settings and practice guidelines to apply the current care and protection principles in a child-centred way.</p>	<ul style="list-style-type: none"> <i>Children and young people</i> – the view of children and young people could be taken into account. <i>Practitioners</i> would have clear guidance to follow and this may result in consistent and child-centred decision-making. 	<ul style="list-style-type: none"> <i>Fiscal and operational impact</i> - Minimal operation impact because this option would not change the principles that were developed after extensive consultation prior to 1989, and which practitioners are familiar with. This option would be quick to implement and fiscally neutral. 	<ul style="list-style-type: none"> <i>Likely effectiveness</i> - This option does not embed a child-centred system, and only updating policy settings and practice guidelines will not provide a strong enough basis for change. <i>Fiscal and operational impact</i> - This option could result in inconsistencies between legislation and policy settings and may in turn create confusion and a lack of clarity. <i>Durability</i> - Practice change only may not achieve sustained change in the direction sought.
<p>Option 2. Revise the care and protection principles in the CYPF Act so they are child-centred, their intent is clearer and focused on the need for safe and stable care and on the preservation of key relationships</p> <p>(regulatory option)</p> <p>Preferred option</p>	<p>This option attempts to ensure that decision-making for children and young people in need of care or protection is centred on the child or young person and prioritises their need for safe and stable care and the preservation of key relationships (siblings, family, whānau, hapū and iwi).</p> <p>This option would amend and include the following concepts:</p> <ul style="list-style-type: none"> placement decisions should be centred around the child's best interests and understanding what the child wants stability and continuity is important to placement decisions where practicable, a child or young person should be placed with his or her siblings. wider consideration of placement options where it is in the child or young person's best interests. 	<ul style="list-style-type: none"> <i>Children and young people</i> - The child or young person would be placed at the centre of decision making, providing a clear intent that the system is more child-centred. <i>Practitioners</i> would have clear guidance to follow and this may result in consistent and child-centred decision-making. 	<ul style="list-style-type: none"> <i>Likely effectiveness</i> - The revised principles would be child-centred and focused on ensuring that children have the earliest opportunity for a safe, stable and loving family and the preservation of key relationships. It will provide a basis for change to a child-centred care system. <i>Fiscal and operational impact and practicality</i> - The updated principles would support and guide practitioners (social workers) in making more child-centred decisions about placement. <i>Consistency with the Treaty of Waitangi and UNCROC</i> - Revising the principles so they prioritise the need for safe and stable care and the preservation of key relationships (siblings, whānau, hapū, iwi) would align with UNCROC and the Treaty of Waitangi. <i>Fairness and equity</i> - A clear and easy to use set of principles in legislation will support consistent decision-making by practitioners. <i>Durability</i> - Making changes to the legislation will result in a more enduring change in the direction sought and support the long-term change required to implement the new operating model. 	<ul style="list-style-type: none"> <i>Fiscal and operational impact</i> - This option will result in change to the legislation and will therefore require support and guidance for practitioners to implement. Without operational change alongside legislative change, the benefits of this change may not be realised. There is a risk that the change to principles would still result in them still being complex and difficult to apply. This will depend on the drafting of the legislation and the support provided by operational guidance. <i>Practicality</i> - New principles come with the risk of over-complicating decision-making. This can be mitigated by good training and practice guidelines.

Options: Standards for the care and protection system

The following table identifies and considers the options and impact of each of the potential non-regulatory and regulatory options for overcoming the issue of not having a national set of care standards.

Option	Features	Impacts	Benefits	Issues/Risks
<p>Option 1. Develop care standards outside of legislation</p> <p>(non-regulatory option)</p>	<p>This option would develop care standards outside of legislation and they would be enforced through operational practice.</p> <p>This option would prevent the need for a specific provision around care standards in the CYPF Act.</p>	<ul style="list-style-type: none"> • <i>Children and young people</i> would be more likely to be placed in care arrangements that meet standards and know what level of care to expect. • <i>Caregivers</i> - Depending on the standards developed, they may create higher compliance costs for caregivers alongside more support. 	<ul style="list-style-type: none"> • <i>Practicality</i> - Could be made easy to understand and placed on websites and provided to caregivers. • <i>Durability</i> - This option would support flexibility in terms of reviewing the standard, but would not necessarily achieve sustained change in the direction sought in terms of providing a clear set of standards for what children and young people can expect while in care. 	<ul style="list-style-type: none"> • <i>Durability</i> - This option could be less durable and not lead to the sustained change sought as there is no specific requirement to ensure that there are care standards, or regularly report on them. • <i>Likely effectiveness</i> - Less accountability on the care system to develop and uphold the standards and ensure a stable and loving family. Current policy and practice has not been successful to date. • <i>Fiscal and operational impact</i> - Depending on the standards that are developed there could be fiscal and operational impacts.
<p>Option 2. Amend the CYPF Act to include a duty on the chief executive to issue care standards</p> <p>(regulatory option)</p>	<p>This option would place a duty on the chief executive to issue care standards. Care standards would then be issued outside legislation or regulation.</p>	<ul style="list-style-type: none"> • <i>Children and young people</i> would be more likely to be placed in care arrangements that meet standards and know what level of care to expect. • <i>Practitioners and providers</i> would be clear about the standards that should be met. • <i>Caregivers</i> - Depending on the standards developed, they may create higher compliance costs for caregivers alongside more support. 	<ul style="list-style-type: none"> • <i>Practicality</i> - Could be made easy to understand and placed on websites and provided to caregivers. • <i>Durability</i> - This would support flexibility in terms of reviewing the standard. 	<ul style="list-style-type: none"> • <i>Likely effectiveness</i> - There would be limited accountability on the care system to uphold and promote the standards and regularly report on them in the long-term. There would also be no requirements to monitor the care standards. A duty alone may not provide the level of transparency needed. • <i>Fiscal and operational impact</i> - Standards would need to be developed. Depending on the standards that are developed there could be fiscal and operational impacts. Further work would be required to identify costs alongside the development and agreement of the standards. Standards would need to be supported by wider operational changes to be effective.
<p>Option 3. Introduce an empowering provision in the CYPF Act to enable regulations to be made that set out the National Care Standards and detail how the standards and monitored and reviewed</p> <p>(regulatory option)</p> <p>Preferred option</p>	<p>A set of mandatory National Care Standards would be introduced through regulation. These would focus on children's and young people's needs and rights, the quality of care they can expect to receive, standards for caregiver training, monitoring and support and how the standards are to be independently monitored and reviewed.</p> <p>The regulations, when made, would revoke the 1996 Residential Care regulations.</p>	<ul style="list-style-type: none"> • <i>Children and young people</i> would be more likely to be placed in care arrangements that meet standards and know what level of care to expect. • <i>Practitioners and providers</i> would be clear about the standards that should be met. • <i>Stakeholders and the public</i> - Allows more public scrutiny on the setting of the standards and any future amendments to them. • <i>Caregivers</i> - Depending on the standards developed, they may create higher compliance costs for caregivers alongside more support. 	<ul style="list-style-type: none"> • <i>Practicality</i> - Regulations have greater responsiveness and flexibility than primary legislation and it is more appropriate to include this level of detail in regulations than primary legislation. • <i>Likely effectiveness</i> - This option would set out standards to support caregivers to provide a safe, stable and loving home. It would also make them transparent and provide accountability to meet them and improve the levels of support for children, young people and their caregivers. • <i>Consistency with the Treaty of Waitangi and UNCROC</i> - National Care Standards would support the attainment of children's rights, including cultural needs and rights. 	<ul style="list-style-type: none"> • <i>Fiscal and operational impact</i> - Standards would need to be developed. Depending on the standards that are developed there could be fiscal and operational impacts. Further work would be required to identify costs alongside the development and agreement of the standards. Standards would need to be supported by wider operational changes to be effective. • <i>Likely effectiveness</i> - There are risks in setting care standards in regulations if they are not met and do not result in better outcomes. The success of care standards will depend on their content and the level of standards set. Setting low minimum standards could result in poorer quality of care as just the minimum could be met. This risk can be mitigated though the development and design of the care standards and the on-going independent monitoring.

Option	Features	Impacts	Benefits	Issues/Risks
<p>Option 4. Amend the CYPF Act to include a requirement for the Minister to appoint a monitoring agency for the care standards</p> <p>(regulatory option)</p> <p>Preferred option</p>	<p>This option would ensure that there was an agency appointed to monitor the meeting of the standards. The CYPF Act would include a requirement that the Minister appoint a monitoring agency.</p>	<ul style="list-style-type: none"> • <i>Children and young people and their families</i> would know that there is an agency that will be monitoring the standards. • <i>Children and young people and their families</i> would be able to complain where they felt standards had not been met. • <i>Stakeholders and the public</i> - Allows more public scrutiny on the meeting of standards. 	<ul style="list-style-type: none"> • <i>Likely effectiveness</i> - This option is likely to promote confidence in the new standards by ensuring on-going independent monitoring and reporting of those standards. • <i>Likely effectiveness</i> - This option is also likely to contribute to better outcomes by ensuring that an agency monitors adherence to the standards. 	<ul style="list-style-type: none"> • <i>Fiscal and operational impact</i> - An agency would need to be appointed and there would be costs associated with monitoring the standards. These costs will depend on the detail in the standards.
<p>Option 5. List care standards in legislation</p> <p>(regulatory option)</p>	<p>This option lists care standards in primary legislation. The CYPF Act would include the full set of National Care Standards.</p>	<ul style="list-style-type: none"> • <i>Children and young people</i> would be placed in high quality care arrangements and know what level of care to expect. • <i>Stakeholders</i> - Allows more public scrutiny on the setting of the standards and any future amendments to them. 	<ul style="list-style-type: none"> • <i>Durability</i> - This option would provide the certainty and durability that is associated with being in primary legislation. 	<ul style="list-style-type: none"> • <i>Durability and likely effectiveness</i> - As the understanding of the needs of children in care develops and new information becomes available, it would be difficult and time consuming to review, update, and amend the standards. The level of detail in the standards may not be suitable for primary legislation • <i>Practicality</i> - Care Standards in legislation may not be easy to use or understand.

Options: Financial assistance for caregivers

The following table identifies and considers the options and impact of each of the potential non-regulatory and regulatory options to address problems with financial assistance in that it is not sufficiently responsive or child-centred, differences exist in the levels of financial support available and additional financial support for higher needs children and skilled carers is inconsistent and unclear.

Option	Features	Impacts	Benefits	Issues/Risks
Option 1. Review all extra assistance with the view of making them consistent with clear practices (non-regulatory option)	This option would review the extra assistance, including the new Clothing Allowance to ensure extra assistance is consistent regardless of whether the child was in state care or not. Additional assistance (such as establishment grants, clothing and allowances for Christmas and birthdays) would be aligned and paid transparently and proactively. Changes to the Orphan's and Unsupported Child's Benefit (Additional Assistance) Ministerial Welfare Programme may be required to increase the extra assistance for OB/UCB carers.	<ul style="list-style-type: none"> <i>Children and young people</i> - Children who cannot be looked after by their own parents would receive the same level of extra support regardless of whether they are in State care or not. <i>Caregivers</i> would receive the same level of extra support regardless of whether they are looking after a child in State care or not. 	<ul style="list-style-type: none"> <i>Likely effectiveness</i> - This option would support caregivers to provide a safe, stable and loving home. <i>Fairness and equity</i> - This option would also be fairer for those children and their carers who currently transition across the two systems. 	<ul style="list-style-type: none"> <i>Fiscal and operational impact</i> - The cost of providing the new Clothing Allowance in 2018 is estimated to be [section 9(2)(f)(iv) OIA] in the first year, [section 9(2)(f)(iv) OIA] in 2019/20[section 9(2)(f)(iv) OIA] in 2020/21, with costs increasing in outyears. This funding has yet to be sought. Additional changes to further align the levels of assistance are estimated to be between [section 9(2)(f)(iv) OIA] per annum. Further work would be required to review the current package of assistance and fully cost any proposed changes.
Option 2. Introduce clear and consistent guidelines for use of discretion and higher payments of FCA (non-regulatory option)	This option would create strong operation policy and practice so that decision-making is consistent. This option would involve developing clear guidance on the levels of support available and where higher levels of support should be provided based on challenging behaviour and extra support.	<ul style="list-style-type: none"> <i>Children and young people</i> - Children in care would not be disadvantaged as there will be consistency. <i>Caregivers</i> would receive consistent levels of support depending on the needs of the child or young person. 	<ul style="list-style-type: none"> <i>Fairness and equity</i> - This option would create a consistent approach to financial assistance for foster carers and children with complex needs. <i>Practicality</i> - Staff would have clear guidelines for responding to children's needs. 	<ul style="list-style-type: none"> <i>Fiscal and operational impact</i> - Amendments to operational practice would need to be made. <i>Likely effectiveness</i> - Only updating policy settings and practice guidelines may not create consistent practices. Guidelines by themselves will not provide the transparency that is needed and they may also come with the risk of being susceptible to regional cost pressures and not be implemented consistently or equitably.
Option 3. Merge all assistance and make it the responsibility of the new Ministry with the CYPF Act setting out eligibility and regulations setting out payments and rates (regulatory option)	This option would involve merging the core rates of FCA, OB and UCB and making the administration of this payment as well as extra assistance the responsibility of the new Ministry. The new Supported Child's Benefit sections (OB/UCB) in the Social Security Act could be repealed once it was under CYPF Act.	<ul style="list-style-type: none"> <i>Children and young people</i> who cannot be looked after by their own parents would receive a similar level of support based on the circumstances of the child and not the caregiver. <i>Caregivers and families</i> of current and future OB and UCB children and caregivers may not want to come to the attention of the new Ministry. 	<ul style="list-style-type: none"> <i>Practicality</i> - One agency being responsible for financial assistance for all vulnerable children and their families. <i>Likely effectiveness</i> - Would support carers to do the best for the child and provide a stable and loving home. 	<ul style="list-style-type: none"> <i>Fiscal and operational impact</i> - This option would come with substantial administration costs and IT costs, although one mitigation for this would be to establish a service level agreement and the Ministry of Social Development could continue the payment function. <i>Likely effectiveness</i> - Current and future OB and UCB children and their caregivers may not want to come to the attention of the new Ministry and could go without financial assistance.

Option	Features	Impacts	Benefits	Issues/Risks
<p>Option 4. Introduce a purpose statement into the CYPF Act that financial assistance is to meet the reasonable needs of the child or young person</p> <p>(regulatory option)</p> <p>Preferred option</p>	<p>This option would provide clarity that financial assistance is to be used to meet the child or young person's needs.</p> <p>The CYPF Act would include a new purpose statement that financial assistance is to meet the needs of the child or young person.</p>	<ul style="list-style-type: none"> <i>Caregivers and families</i> would know that payments are for the benefit of the child and that the payment reflects the child's level of need. 	<ul style="list-style-type: none"> <i>Likely effectiveness</i> - This option would ensure that payments are child-centred and to reflect the needs of the child. It aligns with the Panel's final report that said that caregivers were clear that financial support should be aimed at supporting them to meet the needs of the child and not as a salary. <i>Interaction with other legislation provisions and planned reforms</i> - Aligns with the rewrite of the Social Security Act, which has a similar purpose statement for the newly named Supported Child's Payment (OB and UCB). 	<ul style="list-style-type: none"> <i>Fiscal and operational impact</i> - Could be an operational risk that in the future the new Ministry may want to provide financial assistance to caregivers not for the benefit of the child or young person. However we cannot think of a situation where that would occur.
<p>Option 5. Introduce an empowering provision in the CYPF Act to make regulations that set out the levels and circumstances in which financial assistance should be paid, including reasonable costs, allowances and higher rates</p> <p>(regulatory option)</p> <p>Preferred option</p>	<p>This option would introduce an empowering provision in the CYPF Act to make regulations to set out the levels and circumstances in which financial assistance should be paid, including reasonable costs, allowances and higher rates.</p> <p>The CYPF Act would include a regulation making power.</p> <p>Clear and consistent guidelines for use of discretion and higher payments would be developed in line with the regulations.</p>	<ul style="list-style-type: none"> <i>Children and young people</i> - Children in care would not be disadvantaged as there will be consistency. <i>Stakeholders and caregivers</i> - Would provide clarity for them about how and why decisions have been made and the rates of payments. <i>Caregivers</i> would receive consistent levels of support depending on the needs of the child or young person. 	<ul style="list-style-type: none"> <i>Likely effectiveness and fairness and equity</i> - Establishing a more consistent high needs policy for FCA would provide for a more equitable and transparent system. This option would create consistent provision of support. <i>Practicality</i> - Regulations have greater responsiveness and flexibility than primary legislation and is more appropriate to include this level of detail in regulations than primary legislation. This option would also provide transparency and clarity. 	<ul style="list-style-type: none"> <i>Fiscal and operational impact</i> - Further work needs to be undertaken during development of regulations. Amendments to operational practice would need to be made.

Options: Care and protection statutory requirements

The following table identifies and considers the impact of each of the potential non-regulatory and regulatory options for addressing problems with care and protection court processes, specifically that they are complex and do not sufficiently support children, young people, and their families.

Option	Features	Impacts	Benefits	Issues/Risks
Option 1. Change operational policy and practice to reduce delays (non-regulatory option)	This option would change operational policy and practice with the aim of quickening care and protection court processes.	<ul style="list-style-type: none"> <i>Children and young people</i> could have their plans affirmed earlier. 	<ul style="list-style-type: none"> <i>Practicality</i> - would enable status quo processes to be maintained and limit the cost and risk of associated with systems changes 	<ul style="list-style-type: none"> <i>Likely effectiveness</i> - Changes in operational practice might partially improve the speed of care and protection court processes but they would not overcome the procedural complexities inherent in the CYPF Act.
Option 2. Amend the CYPF Act to reduce the complexity of care and protection Court proceedings (regulatory option) Preferred option	This option creates the ability to use a one stage process for obtaining orders, by removing the requirement for the declaration aspect of the process, and substituting this process with applications for final orders that the Family Court can make if satisfied that the child is in need of care or protection. The CYPF Act would be amended to allow for a one-stage process.	<ul style="list-style-type: none"> <i>Children and young people</i> - From a child or young person's perspective and sense of time, this process should not be any longer than it has to be. 	<ul style="list-style-type: none"> <i>Likely effectiveness</i> - May offer a quicker process without limiting the rights of the parents or other people affected by the application and assist with the aim of ensuring that children have the earliest opportunity for a loving and stable family. <i>Fiscal and operational impact</i> - This option just allows a shorter process to occur rather than requiring a two-step process when there only needs to be one so is unlikely to have significant cost or staffing impacts. <i>Fiscal and operational impact</i> - In the longer term, this option may reduce costs and pressure on Court time because the process for obtaining final orders requires less Court appearances. 	<ul style="list-style-type: none"> <i>Fiscal and operational impact</i> - It is unknown what the take up of this option will be. However, it is likely to have low one-off costs and impacts to Family Court processes. It may reduce costs in the long-term.
Option 3. Amend the CYPF Act to enable plans for children and young people to be provided in a more timely manner (regulatory option) Preferred option	<p>This option would require that plans are distributed by social workers or the person who prepared the plan to all parties no later than seven days before the date the plan is to be considered by the Family Court.</p> <p>The one day requirement in the CYPF Act would be amended to seven days.</p>	<ul style="list-style-type: none"> <i>Children, young people and families</i> - This option would better engage the child or young person and the key adults in their life in the planning process. <i>Parents and caregivers</i> would be entitled to receive plans and reviews of plans earlier than now. 	<ul style="list-style-type: none"> <i>Fiscal and operational impact</i> - The opportunity for parties to consider the content of plans supporting Court orders is likely to lead to fewer adjourned disposition proceedings. This option legislates for minimum best practice and is unlikely to have any cost impacts or staff impacts. <i>Likely effectiveness</i> - Will help to ensure that children and young people are engaged in the planning process. 	<ul style="list-style-type: none"> <i>Fiscal and operational impact</i> - There could be issues of privacy, safety and risk, however these will be considered prior to distributing plans.

Option	Features	Impacts	Benefits	Issues/Risks
<p>Option 4. Amend the CYPF Act so that interim guardianship orders can be made by the Family Court (regulatory option)</p> <p>Preferred option</p>	<p>This option would allow interim guardianship orders, including where necessary interim sole guardianship orders, to be made by the Family Court in those cases where guardianship decisions are needed to respond to immediate health or other concerns when a child or young person is the subject of unresolved care or protection proceedings.</p>	<ul style="list-style-type: none"> • <i>Children and young people</i> would have their immediate and reasonable needs met where there are unresolved care or protection proceedings. 	<ul style="list-style-type: none"> • <i>Practicality</i> - Avoids the need to use Family Court wardship in those cases where guardianship decisions are needed to respond to immediate health or other concerns when a child or young person is the subject of unresolved care or protection proceedings. • <i>Likely effectiveness</i> - Would mean that children and young people can have their immediate needs met. • <i>Consistency with UNCROC</i> - Aligns with UNCROC in terms of meeting the immediate needs of children. 	<ul style="list-style-type: none"> • <i>Fiscal and operational impact</i> - The scale of the problem is unknown, however numbers are likely to be low. Further work is required on the operational implications of this option.
<p>Option 5. Use policies, practice guidelines and existing mechanisms in the CYPF Act to achieve more equitable treatment of disabled children</p> <p>(Non-regulatory option)</p>	<p>No change would be made to the legislation. Policy and practice guidance would be updated to more clearly promote the need of greater equity and protection for disabled children and existing mechanisms in the CYPF Act would be used to achieve this.</p> <p>The current mechanisms in the CYPF Act include provisions for temporary care agreements (sections 139,140) and principles in section 5 (regard be had to child's health). Also, disabled children and their families are able to access protections, such as an advocate. This flexibility could be used to employ a range of professionals as "social workers" to allow for other professionals to perform these functions.</p>	<ul style="list-style-type: none"> • <i>Disabled children and young people</i> may continue to be placed into out-of-home care voluntarily by their parents without the same safeguards and protections as apply to non-disabled children. • <i>Children, young people and their families</i> would not receive the services they need in a timely manner, as can occur now due to lack of clarity in inter-agency arrangements. 	<ul style="list-style-type: none"> • <i>Operational impact</i> - This option would result in no legislative change, and therefore no change to the legal status of current section 141 and 142 agreements, and no change in practice in terms of entering section 141 and 142 agreements. Some change in practice may be required to better utilise existing mechanisms. 	<ul style="list-style-type: none"> • <i>Likely effectiveness</i> - Policy and practice guidelines, and the existing mechanisms in the CYPF Act have not, to date, enabled greater equity and protection for disabled children and there are no specific indications that this approach would be successful. • <i>Durability</i> - Reliance on policy and practice guidance has been tried over a number of years and has not achieved equitable and child centred approach, and there is no indication that it will lead to change. • <i>Fairness and equity</i> - This option allows sections 141 and 142 to remain, and allows a group of disabled children to be placed voluntarily by their parents into out-of-home care without the same safeguards and protections as apply to non-disabled children. This is not a fair or equitable approach. • <i>Compatibility with UNCROC</i> - This option is not compatible with UNCROC as it does not ensure that children and young people receive the services they need and does not provide disabled children and young people with equal protections.

Option	Features	Impacts	Benefits	Issues/Risks
<p>Option 6. Repeal sections 141 and 142</p> <p>(Regulatory option)</p> <p>Preferred option</p>	<p>Sections 141 and 142 would be repealed.</p> <p>Parents seeking to voluntarily place disabled children in out of home care would have to utilise one of the other provisions in the CYPF Act, such as section 139 or 140, or will have to meet the care and protection threshold in section 14 (it is likely they would use section 14(f) – the parents or guardians or other persons having care of the child or young person are unwilling or unable to care for the child or young person).</p>	<ul style="list-style-type: none"> • <i>Disabled children</i> who require out-of-home care (including those currently in these placements) would have access to the same protections and safeguards as other children in the statutory care system. 	<ul style="list-style-type: none"> • <i>Likely effectiveness</i> - This option would ensure an equitable and inclusive system for disabled children. • <i>Durability</i> - This option should bring about sustained change as it will remove the mechanism through which disabled children can be treated differently. • <i>Practicality</i> - This option would address the confusion that happens between agencies (Child, Youth and Family and the Ministry of Health) about who is responsible for responding to disabled children with high support needs. • <i>Fairness and equity</i> - This option will mean that disabled children are subject to the same protections and safeguards as other children in the statutory care. • <i>Compatibility UNCROC</i> - Repealing the sections is compatible with UNCROC as sections 141 and 142 are inconsistent with a child-centred approach, discriminatory and inconsistent with UNCROC. 	<ul style="list-style-type: none"> • <i>Fiscal and operational impact</i> - The 32 children currently accessing placements under s141 may continue to have a placement need or an intensive support need which will be met through other provisions of the CYPF Act.

Summary of options and impact analysis

84 Each of the feasible options considered and compared to the criteria are summarised below. Impact analysis ratings listed below:

[--] = Much worse	[-] = Worse	[0] = Neutral	[+] = Better	[++] = Much better
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Options	Likely effectiveness	Durability	Fiscal and operational impact	Fairness and equity	Legislative provision and planned reforms	Government objectives
Principles for the care and protection system						
Status Quo	0	0	0	0	0	0
Option 1.	+	-	-	0	0	0
Option 2.	++	+	+	++	+	+
Standards for the care and protection system						
Status Quo	0	0	0	0	0	0
Option 1.	+	+	-	+	+	+
Option 2.	+	+	-	+	+	+
Option 3.	++	++	-	+	+	+
Option 4.	+	++	-	+	+	+
Option 5.	+	-	-	+	+	+
Financial assistance for caregivers						
Status quo	0	0	0	0	0	0
Option 1.	+	0	+	+	+	+
Option 2.	+	0	+	+	+	+
Option 3.	+	+	--	++	+	+
Option 4.	+	+	+	+	+	+
Option 5.	+	++	-	+	+	+
Care and protection statutory requirements						
Status quo	0	0	0	0	0	0
Option 1.	+	0	-	+	+	+
Option 2.	+	+	0	+	+	+
Option 3.	+	+	++	+	++	+
Option 4.	++	+	-	+	+	+
Option 5.	0	0	-	0	0	0
Option 6.	++	++	-	++	++	+

Discussion of preferred options

Principles for the care and protection system

- 85 The current system is not sufficiently child-centred, as evidenced by the experiences of children and young people and their families/whānau, and the poorer long term outcomes that vulnerable children and young people experience compared to the rest of the population.
- 86 Children and young people can experience unnecessarily frequent placement moves, compromising their need for stability, and undermining the process of attaining a sense of belonging in a family. Decisions about placement are important to ensure that children and young people have the best opportunity to receive safe, stable and loving care as soon as possible. Ideally the first placement should be the right one. Without a stable placement it is difficult for a child or young person to engage with treatment to address trauma or schooling.
- 87 The current care and protection principles that guide decisions around placement in section 13 of the CYPF Act are complex and can be difficult to apply. Practitioners refer and use the principles in the CYPF Act. There is scope to make the principles child-centred and focus on the need to preserve and promote a child's or young person's key relationships with their usual caregivers, siblings and other significant adults.
- 88 The analysis shows that **Option 2** (revise the care and protection principles in the CYPF Act) would make the most contribution to the desired objectives because the revised principles will:
- be durable and strongly embed a child-centred approach in the system
 - help ensure that a child's best interests are at the centre of any decision making
 - support and guide practitioners (social workers) in making more child-centred decisions about placement as they are clearer and easier to understand than the present ones.
- 89 The principles and their impact on operational practice are important enough to warrant legislative change. The principles in the CYPF Act would be updated to reflect that:
- placement decisions should be centred around the child's best interests and understanding the child's views
 - stability and continuity is important to placement decisions
 - children or young people should be placed with the safest option
 - where practicable, a child or young person should be placed with his or her siblings
 - placement preference should be given to someone in the same location or that the child has a connection with
 - preserving whānau, hapu or iwi connections should be a priority, and this is to be achieved even when the child does not live in the same location.
- 90 The main change will be to bring the voice of children and young people to the forefront. Operational practice would need to be amended to implement the changes

to these principles. Practitioners make complex and difficult decisions every day and need to make judgements based on many factors which do not always lead to clear-cut conclusions about risk to children. Legislative change alone will not change the difficulty in these decision-making. Better support and training for frontline workers will be needed to make a difference. These practice changes will be incorporated into wider operational changes being made to the operating model.

- 91 **Option 1** (practice changes) by itself would not embed a child-centred system and only updating policy settings and practice guidelines would not provide a strong enough basis for change. This option would also result in inconsistencies between legislation and policy settings and in turn create confusion and a lack of clarity.

Standards for the care and protection system

- 92 A change to the statutory framework under the CYPF Act is needed to establish a national set of care standards that strengthens the accountability and expectations of quality care placements. There is currently no one document that sets out the rights and needs of children in care, what standards of care they should expect and support for caregivers. Changes are needed to support children and young people who come into contact with the system to better understand their rights and establish reasonable expectations of the service.
- 93 The analysis shows that **Options 3 and 4** (enable regulations to be made that set out the National Care Standards and a requirement for the Minister to appoint a monitoring agency) would make the most contribution to the desired objectives because they will:
- signal the importance of children in the system by setting out children’s rights and needs
 - establish the right level of accountability in the system
 - bring New Zealand in line with comparable jurisdictions
 - establish expectations of support, monitoring and training for caregivers
 - provide transparency and make care expectations more certain.
- 94 It is important to facilitate care standards through legislation and have them in regulation as it promotes accountability within the system. Regulations have greater responsiveness and flexibility than primary legislation and it is more appropriate to include this level of detail in regulations than primary legislation. Making legislative changes so that the Minister is required to appoint a monitoring agency will further strengthen the accountability on the system.
- 95 **Options 1 and 2** (practice changes and a duty to create care standards) are not preferred because would not hold the new Ministry adequately to account or provide independent oversight. **Option 5** (care standards in primary legislation) is not flexible enough or appropriate for the level of detail that standards require and as a result standards set out in primary legislation could be difficult to use.
- 96 National Care Standards will most appropriately sit in regulations due to their level of detail and technicality. Regulations are also most appropriate for matters that require a large list, which may be the case for National Care Standards.
- 97 The aim of the National Care Standards will be to ensure children and young people in care are cared for in a way that improves their outcomes and meets their

reasonable needs, expectations and fundamental rights. The standards could be used to identify key factors that influence positive outcomes for children and young people. These standards will also strengthen the caregiver approval process and create oversight of caregiver quality. The link between standards and improved outcomes for children and young people is important and to improve outcomes these links will need to be made explicit and monitored.²³

- 98 The content of the Residential Care regulations will be replicated where necessary in the new National Care Standards. Once regulations are made setting out National Care Standards, the 1996 Residential Care regulations would be revoked.
- 99 The introduction of standards also provides an opportunity to introduce effective programmes to achieve positive outcomes, such as Treatment Foster Care with an estimated return on investment of \$2.11 where a benefit to cost analysis has been undertaken.²⁴
- 100 Developing standards, putting in place measures to meet them (such as increased caregiver approval processes and more support) and monitoring them will have fiscal and operational impacts. Further work is required to develop and design the operational changes and seek agreement to the detail in the standards. This process will include identifying impacts on staff, the level of standards, costs of meeting those standards and the monitor agency. This work will include considering:
- how standards should support the attainment of children’s rights,
 - how they can enable children and young people know what they are entitled to and for families and whānau to know the care their children will receive
 - how standards might help caregivers know what is expected of them and the support they will receive to do this
 - how standards might be measured and whether results should be publically available.
- 101 The success of care standards will depend on their content and the level of standards that are set by them. There may also be some reputational risk if standards are not met. Setting low minimum standards could result in poorer quality of care as just the minimum could be met. This risk can be mitigated though the development and design of the care standards and on-going independent monitoring.
- 102 There is also the risk of standards having resource implications that are not factored in when implemented.
- 103 It will also take time to build up the capacity and capability of caregivers, especially those looking after children with complex needs. During the development of the standards, we will need to identify any increased compliance costs on caregivers and what impact, if any, these may have on caregiver recruitment.

²³ Matheson, I. (2009). Foster care standards: A four country study. Wellington, New Zealand: New Zealand Family and Foster Care Federation.

²⁴ Expert Panel (2015). *Modernising Child, Youth and Family, Interim Report*. See <https://www.msd.govt.nz/documents/about-msd-and-our-work/work-programmes/cyf-modernisation/interim-report-expert-panel.pdf>

- 104 The content of the regulation setting out standards will be important so the standards do not become process driven. Standards in themselves will not transform the quality of care children receive. Operational changes will be needed alongside standards that are created and operational issues, such as staffing and resource constraints²⁵, would need to be resolved. Standards will, however, increase transparency and accountability on the system.
- 105 The current annual Child, Youth and Family cost of caregiver management (including overheads) is **[section 9(2)(f)(iv) OIA]** This to cater for approximately 4,300 caregivers. More support, training and monitoring would increase this cost. Agreement to any increase in the level of support to caregivers will be sought alongside the development of the standards and be included in relevant Budget processes.

Financial assistance for caregivers

- 106 The current financial assistance is not sufficiently responsive or child-centred and additional financial support for higher needs children and skilled carers is inconsistent and unclear.
- 107 The analysis shows that the following options are most likely to make the most contribution to the desired objectives because they will help create a consistent, proactive and responsive financial support system:
- **Option 4** - a purpose statement in the CYPF Act that states that the purpose of financial support is to provide a payment for the cost of caring for a child who is not the caregivers own and the caregiver must use the payment for the benefit of the child.
 - **Option 5** - a regulation making power in the CYPF Act to give directions on how decisions are to be made about meeting the reasonable needs of children and young people in care and the circumstances on which a higher minimum rate of FCA should be paid.
- 108 The Panel envisioned that the future care system would provide a proactive and responsive financial support system for caregiving families that would assist them to manage through critical times and cope with challenging behaviours. They also recommended exploring providing the flexibility to recognise those caregivers with specific skills, expertise, or providing a family for children with very high or complex needs. Consultation with families and caregiver supported this.
- 109 The Panel said that central to the future operating model is having a much bigger pool of caregivers who are motivated to provide a life-long loving stable home. A primary focus will be on efforts to engage, recruit, retain, and effectively support a wide, diverse base of caregiving families to provide safe, secure and loving relationships to meet the range of needs for children and young people.
- 110 **Option 5** would enable regulations to be made to guide decision-making to use varying levels of support depending on the particular needs of the child or young person. Regulations have greater responsiveness and flexibility than primary

²⁵ See Workload and Casework review - Qualitative Review of Social Worker Caseload, Casework and Workload Management (2014) <https://www.msd.govt.nz/documents/about-msd-and-our-work/newsroom/media-releases/2014/workload-and-casework-review.pdf>

legislation and it is more appropriate to include this level of detail in regulations than primary legislation. Further work is needed to develop and seek agreement to the regulation and to cost any proposed changes arising out of the creation of regulation.

- 111 **Option 1** (review of the extra support for foster carers and OB and UCB carers) can be undertaken without legislative change. Funding will be required for the new Clothing Allowance that will be in place in 2018. Additional changes to further align the levels of assistance are estimated to be between \$2.5 million to \$4.5 million per annum. Further work would be required to review the current package of assistance and fully cost any proposed changes.
- 112 **Option 2** (clear and consistent guidelines) will need to be in place alongside the regulations made under **Option 5**, however guidelines by themselves will not provide transparency. Guidelines alone may also come with the risk of being susceptible to regional cost pressures and not be implemented consistently or equitably. Setting out the rates, including higher rates, in regulation as proposed in **Option 5**, will also create a more child-centred approach as the rates of payments will respond to the needs of children.
- 113 **Option 3** comes with significant administration costs and the design of the new operating model need to take place before these decisions can be made.

Care and protection statutory requirements

- 114 The statutory care and protection requirements can be complex and do not sufficiently support children and young people, including children and young people with disabilities, and their families.
- 115 The analysis shows that **Option 2, 3, 4 and 6** are most likely to achieve the desired objectives, primarily because:
- **Option 2** will reduce timeframes for court processes where appropriate
 - **Option 3** will help engage children and families in the planning process and legislate for best practice around distributing plans
 - **Option 4** helps to ensure that where children and young people have immediate needs, pending determination of proceedings, they are addressed
 - **Option 6** provides disabled children who require out-of-home care (including those currently in these placements) the same protections and safeguards as other children in the statutory care system.
- 116 The CYPF Act presently enables Court-directed plans to be filed in the Family Court and given to other parties one day before the plan is to be considered. This is clearly insufficient time for other parties to consider the plan and, if necessary, respond to it before the Court. A more sensible timeframe as in **Option 3** is required so that it enables people, especially families, to consider the content of plans prior to the Family Court considering the plan.
- 117 Where decisions are needed to respond to immediate concerns and it has yet to make final orders and approve a plan for the child or young person, the Court (as in **Option 4**) should be able to appoint the chief executive, to be a guardian of the child or young person (whether in addition to the child or young person's current guardians or, in especial circumstances, as a sole guardian).

- 118 There will be additional costs from these options, however further operational design is needed before the changes can be adequately costed. It is not possible to cost **Options 2, 3, and 4**; however these are likely to have low impacts on staffing or costs. Over time the options may reduce costs.
- 119 **Option 5** (no repeal of section 141 or 142) would not be effective as policy and practice guidelines, and the existing mechanisms in the CYPF Act have not, to date, enabled greater equity and protection for disabled children and there are no specific indications that this approach would be successful on this occasion.
- 120 **Option 6** will mean that disabled children who require out-of-home care (including those currently in these placements) will have access to the same protections and safeguards as other children in the statutory care system, including:
- access to an advocate who can assist a child to participate in decision-making
 - access to a social worker or other person to monitor a child's placement and support their ongoing contact with and return to family
 - greater consideration of and improved access to family-based care before residential care is considered
 - a clearer focus on the length of time the child or young person should be placed in care, including a residential placement
 - a more rigorous review process and external oversight.
- 121 It will therefore enable a child-centred, equitable and inclusive system for disabled children. This option will also mean that parents seeking to place a disabled child in out-of-home care will be required to go through the same processes as all other children, including potentially the court process.
- 122 Repealing sections 141 and 142 will result in disabled children and young people who require out-of-home care to access it in the same way as all other children, via the existing voluntary placement processes in the CYPF Act (sections 140) or via the Family Group Conference and Court (based, for example, on section 14(f), that the parents are unwilling or unable to care for the child or young person). Although there is a risk that these processes may be more onerous for already stressed families, this risk must be balanced with the need to provide greater protections and equity to a group of often very vulnerable children. However, it is likely that more disabled children and young people will be placed in family-based environments than now, therefore further mitigating this risk.
- 123 The use of out-of-home care placements via sections 141 and 142 is decreasing significantly. Currently there are no children subject to section 142 agreements and only 32 subject to section 141 agreements. The recent expansion of the Ministry of Health's Disability Support Services (DSS) intensive wrap around programme has significantly reduced demand for section 141 agreements and to date this year there have been only two new agreements.
- 124 The recommendation to repeal sections 141 and 142 is consistent with the findings of previous public consultations, including as part of the 2011 Green Paper for Vulnerable Children and the Vulnerable Children Bill 2013, and the Disabled Children's Project in 2015.

- 125 Children or young people currently in out of home care via a section 141 or 142 agreement will have a number of options on repeal:
- return to the care of their family with their parent resuming legal custody, they will likely then be able to access support via the new intensive intervention service
 - continue in a care arrangement with their current provider or transition to an alternative family-based arrangement. This would be under different provisions of the CYPF Act (sections 140 or 101) and depend on decisions by a court or the chief executive that the child is in need of care and protection and requires an out-of-home placement.
- 126 The proposed future role for the new Ministry in providing or brokering prevention and intensive support services to children and young people will be aimed at addressing immediate and/or future risk of harm to a child or young person. It is expected that disabled children and their families who need extra support will be a key target group for this service.
- 127 This new role, combined with DSS' intensive wrap around programme will enable far more disabled children and young people to remain at home. This is likely to be in the child or young person's best interest and is likely to result in better long-term outcomes.
- 128 It will take time to build up programme capacity and capability of caregivers, particularly in rural areas.
- 129 The new role of the new Ministry and the likely increased use of home-based support services will help mitigate concerns raised during previous consultation processes by some parents and stakeholders that families who may want to place their children in out-of-home care may feel stigmatised as 'bad parents' if they had to deal with the usual processes via which children and young people enter the care and protection system.
- 130 The new Ministry's intensive support service will be able to assist these families who are often "system" fatigued and who, with the right level of early support, would be able to maintain care of their disabled children. Currently the views of the parents as to whether the disabled child or young person stays at home or enters residential care generally prevail. However the right level of early support will better enable families to determine together what the best supports for them are, taking into account both the views of the parents and the disabled child or young person, and reducing the risk of any potential conflicts.
- 131 The repeal will immediately impact the 32 children and young people currently in residential care via a 141 agreement. We are working closely with DSS to minimise the impact of repeal and facilitate the smooth transitions of legal arrangements for these children and young people.
- 132 There is widespread support for this recommendation across Government agencies, the disability sector and the child advocacy sector, and beyond.

Financial and operational implications

- 133 Children who have contact with Child, Youth and Family are considerably more likely to experience poor outcomes later in life than other children. This results in

considerable spending by government as well as a range of social costs that are borne by the children, their families and communities. There are large fiscal costs associated with individuals who have an episode of care for example, the average amount of Child, Youth and Family spending for the 1990/91 cohort was almost \$100,000, but the subsequent benefit and corrections expenditure to age 35 years was just over \$200,000.²⁶

- 134 Improving the service for children and young people in State care is likely to improve long-term outcomes, thereby reducing costs to Government. A reformed care support service, which is underpinned by the legislation, may lead to a reduction in forward liability to Government by reducing demand for services, especially from justice and health sector agencies and Work and Income.
- 135 The legislative changes alongside the new operating model may lead to other fiscal benefits due to children and young people having better mental health outcomes, higher levels of employment and earnings, and less exposure to future violence.
- 136 The future operating model will 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.
- 137 The legislative proposals are enabling so that the development of the new child-centred operating model is not constrained. Further work is required to develop and design the operational model in line with these enabling legislative proposals. This will include developing detailed costings of the operational impacts for implementation.
- 138 Detailed service design will need to be completed before we can describe definitive costs. The fiscal costs can be scaled and phased over time to respond to the design of the new operating model, legislation commencement decisions, and the investment approach. Final funding decisions will be sought through the Budget process. For example, further decisions will need to be made regarding the content of the regulations for National Care Standards and financial assistance.
- 139 There will be some training costs associated with all proposals. Staff and other professionals will need to be trained in the application of the National Care Standards and in the new court processes. There may be other operational implications of the changes eg changes to IT systems. Proposals to change court processes may result in some costs for courts associated with the establishment of new processes.
- 140 For example, further work will be required to develop a national set of care standards and any associated costs for delivering on those standards, such as increased training and support for caregivers. The current annual Child, Youth and Family cost of caregiver management (including overheads) is **[section 9(2)(f)(iv) OIA]** This to cater for approximately 4,300 caregivers. More support, training and monitoring delivered as part of the new operating model would increase this cost.

²⁶ Crichton, S., Templeton, R., and Tumen, S. (2016). *Using Integrated Administrative Data to Understand Children at Risk of Poor Outcomes as Young Adults*. See <http://www.treasury.govt.nz/publications/research-policy/ap/2015/15-01/ap15-01.pdf>

Agreement to any increase in the level of support to caregivers will be sought alongside the development of the standards and be included in relevant Budget processes.

- 141 There may also be some direct saving as a result of the proposals. It is anticipated that the repeal of sections 141 and 142 will increase the uptake of family based wrap around services and decrease the use of residential care for disabled children. This will achieve better outcomes for children and will deliver reduced costs to Government. Family-based wrap-around services are generally cheaper than the current section 141 placements, which cost between **[section 9(2)(f)(iv) OIA]** a year depending on the individual needs of the child.
- 142 There is a risk that developing legislative proposals ahead of detailed design work may constrain the outcomes of the design work and/or may raise the need for subsequent amendment of the legislation. However, the proposals considered in this RIS are enabling.
- 143 The detailed implications of the proposals recommended in this RIS will need to be worked through as part of design, development and implementation. This will include identifying the:
- increase in costs
 - increase in demand on workforce
 - changes needed to operational practice to implement proposals.

Conclusions and recommendations

- 144 Legislative change alone will not provide better outcomes for vulnerable children and young people; however it will provide the basis for change in the direction sought. As with the 1989 CYPF Act, the current proposed legislative reforms are taking place contemporaneously with the development of the detailed operating model that sits under the CYPF Act.
- 145 With this in mind legislative options seek to direct behavioural change and enable operational development, rather than tightly proscribe practice where this is not seen as necessary to achieve policy intent. Non-legislative options have been considered.
- 146 Following consideration of the options analysis, we recommend the following legislative changes:
- **provide the basis for a child-centred care support service by:**
 - revising the care and protection principles so that the intent is clearer and focused on the child and their need for safe and stable care at the earliest opportunity, and on the preservation of key relationships
 - **enable standards for children and young people in care by:**
 - introducing an empowering provision to enable regulations to be made that set out National Care Standards and focus on:
 - the rights and needs of children and young people, including cultural needs
 - the quality of care that children and young people can expect in care placements and in residences

- standards for caregiver training, monitoring and support
 - the manner in which standards are monitored and reported on
- introducing a requirement for the Minister responsible for the CYPF Act to appoint an agency to monitor and report on the National Care Standards
- **enable responsive financial assistance for caregivers by:**
 - introducing a purpose statement for financial assistance to confirm that financial assistance for caregivers is to meet the needs of the child or young person in out of home care
 - introducing an empowering provision to enable regulations to be made setting out the levels and circumstances in which financial assistance can be paid in relation to any child or young person, including reasonable costs, extra assistance and higher rates
- **reduce the complexity of care and protection statutory requirements by:**
 - removing the requirement for the Family Court to make a declaration before making final orders, and thereby allowing a one-step process whereby the Family Court can make those orders if it is satisfied that the child is in need of care or protection
 - requiring plans for children and young people to be distributed to relevant parties in a timelier manner (at least seven days before the date that the plan is to be considered by the Family Court)
 - allowing the Family Court to make interim guardianship orders where necessary to respond to immediate concerns (eg medical needs), including interim sole guardianship orders, pending determination of the proceedings
 - repealing sections 141 and 142 of the CYPF Act to ensure that disabled children and young people have the same protections and safeguards as other children and young people in the statutory care system.

Implementation Plan

- 147 The proposals form part of broader reform to the operating model for responding to vulnerable children and families. The future operating model is being developed by the Investing in Children Programme and will be further developed and implemented by the new Ministry post 1 April 2016. The process to develop the future operating model is using 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.
- 148 Funding to meet the costs associated with the implementation of the future operating model will be sought from the contingency fund, and where necessary in future budgets via the normal budget process.

Monitoring, evaluation and review

- 149 The legislative changes proposed form part of a large set of reforms to develop a new operating model for responding to vulnerable children and young people.
- 150 The extent to which the new operating model is achieving the full range of objectives sought will be measured through improvements in childhood and adulthood wellbeing indicators.
- 151 It is intended that the system take an investment approach, as part of which information will be gathered on children, young people and families, their risks of poor outcomes over their lifetimes, and the costs of the services provided to them and their effectiveness in improving short-term and long-term wellbeing.
- 152 The quality of their experience of the system as assessed by vulnerable children and young people, their families, caregivers and victims of youth offending, and perception of the system among the wider New Zealand public, would also be taken into account.

Consultation

- 153 The Panel through an inclusive and evidence based process completed a far reaching review of the systems of support for vulnerable children and young people. Proposals were informed by a collaborative process with children, young people, families, caregivers, victims of offending, experts and practitioners from across the system, and an extensive review of local and international research and legislation. As part of this process, interviews and workshops were held with a range of young people who had personal experience with Child, Youth and Family, including a number who had spent time in care.
- 154 Within the timeframe available, officials have sought to involve a range of internal and external stakeholders in the development or refinement of the proposals contained within this RIS.
- 155 The Ministry of Social Development has worked closely with the Ministry of Health, Te Puni Kōkiri, the Treasury, New Zealand Police, the Ministry of Justice, Inland Revenue and the Ministry of Education, two members of the Panel's Maori Reference Group, the Panel's Youth Advisory Panel and the Office of the Children's Commissioner on the proposals in this paper.
- 156 The Youth Advisory Panel, in particular, was active in contributing to the proposed care and protection principles. We asked Youth Advisory Panel about how decisions on a care placement should be made when a child lives and has trusted relationships in one location but has extended family or whānau in another location. Overall, the Panel felt that:
- placement decisions should be centred around the child, understanding what the child wants and making decisions in the child's best interests
 - placement preference should be given to someone in the same location that the child has a connection with
 - children or young people should be placed with the safest option, and stability and continuity is paramount
 - preserving iwi, hapū or whānau connections should be a priority, but this can be achieved even when the child does not live in the same location.

- 157 These views were taken into account when revising the principles and are reflected in the proposed principles.
- 158 The Office of the Children’s Commissioner questioned whether there is a need to require regular reporting in the CYPF Act on the National Care Standards. While this can occur without specific legislative provision, we recommend that there is requirement in the CYPF Act for the Minister responsible for the CYPF Act to appoint an agency to monitor and report on the Standards. The regulation will set out the manner in which the standards are monitored.
- 159 The Children’s Commissioner asked about the steps that children, young people and their families can take when they feel standards have not been met. The independent advocacy service proposed in Bill 1 aims to ensure that children and young people have an opportunity to express their views on the operation and effectiveness of processes and services. The National Care Standards can reiterate the steps to be taken when people feel standards are not met. The Office asked more generally how the cultural needs of children and young people are to be met. We propose that the Standards set out the rights and needs of children in care, including cultural needs.
- 160 The recommendation to repeal sections 141 and 142 is consistent with the findings of previous public consultations, including as part of the 2011 Green Paper for Vulnerable Children and the Vulnerable Children Bill 2013, and the Disabled Children’s Project in 2015. These consultations showed widespread support for the repeal.
- 161 The Disabled Children project was jointly undertaken by the Ministries of Health and Social Development to consider reforms to achieve a more equitable approach for disabled children voluntarily placed in out-of-home care. The consultation revealed that stakeholders are generally in favour of repealing sections 141 and 142.
- 162 Consultation responses highlighted:
- the importance of establishing equitable treatment for all children under the legislation
 - providing in legislation for disabled children in care the same rights and protections, including advocacy, legal representation, review, and external oversight of a care placement as non-disabled children
 - reframing the situations where disabled children have both care and protection needs, so that these are responded to as they would be for non-disabled children.
- 163 Concerns expressed about repealing sections 141 and 142 focussed on:
- whether Child, Youth and Family is sufficiently equipped and resourced to effectively provide care for disabled children
 - the effects on parents of disabled children having to work with Child, Youth, and Family to have their child cared for outside of their home (this was linked with the perceived stigma in having dealings with Child, Youth, and Family).
- 164 These concerns will be mitigated by the other changes to the current system that will be brought about by the new operating model.