

Regulatory Impact Statement

Vulnerable Children's Bill: Joint accountability and shared responsibility

This Regulatory Impact Statement contains legal advice and may be legally privileged. It should not be disclosed in an information request without further legal advice.

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Social Development (MSD). It accompanies the Cabinet paper *Vulnerable Children's Bill: Joint accountability and shared responsibility*.

The Cabinet paper recommends legislative and non-legislative measures that will help to drive the institutional and behavioural changes needed to achieve the Government's priorities for vulnerable children.

The RIS provides an analysis of the proposals where legislative options were considered. These proposals aim to ensure that the people and agencies responsible for protecting New Zealand's vulnerable children, and those that work with children and their families, know what is expected of them and are accountable for their actions.

Policy proposals were developed within the parameters set out by Cabinet. The options were developed taking into account feedback from agencies on discussion papers.

Some proposals considered were rejected as they were not consistent with the Government Statement on Regulation.

Service design work of key elements of the Children's Action Plan (Action Plan) proposals, for example Children's Teams, is still underway and therefore cannot inform our analysis.

The Action Plan proposals will create some additional costs for government. It is difficult to quantify these without further design work.

Iona Holsted

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June 2013

Introduction and background

1. This RIS accompanies the Cabinet paper - *Vulnerable Children's Bill: Joint accountability and shared responsibility*. Separate RIS documents have been prepared for other papers containing proposals for inclusion in the Vulnerable Children's Bill.
2. The Cabinet paper proposes a suite of legislative and non-legislative measures aimed at responding to children at risk of maltreatment and providing high-performing child protection services, by implementing key elements of the Children's Action Plan (the Action Plan), including:
 - reinforcing joint responsibility and action across the government to improve outcomes for vulnerable children and support the **governance and accountability arrangements** for the Action Plan
 - agencies and staff adopting the principle of **safeguarding** children's welfare and interests
 - new requirements for **child protection policies**.
3. The proposals in the Cabinet paper will support and safeguard vulnerable children by:
 - ensuring government agencies central to improving outcomes for vulnerable children work together over the long-term and take responsibility for implementing the Action Plan
 - setting clear expectations for agencies and professionals working for, and with, children and their families
 - reinforcing and complementing other Action Plan reforms, such as regional Children's Directors, local Children's Teams, core competencies for the children's workforce, and vetting and screening of people working directly with children.

Status quo and problem definition

Problem definition

4. A significant number of children in New Zealand are being abused or neglected, many of them by their parents or caregivers, or by adults associated with their parents or caregivers. For instance:
 - an average of between seven and 10 children per year die at the hands of their families
 - in 2011/2012, Child Youth and Family recorded 21,525 substantiated abuse and neglect findings¹
 - as at 30 June 2012, there were 3,884 children and young people in care.

¹ This does not represent the number of children with abuse and neglect findings as some children have multiple substantiations.

5. In addition, there are a significant number of children who, while they may not be victims of substantiated abuse or neglect, are in circumstances that put them at risk of maltreatment.
6. As well as the immediate harm, child abuse and neglect has long-term consequences. For example, the rate of death by suicide has been found to be 15 times higher among youth in contact with Child, Youth and Family than in youth in the wider community.
7. Maltreatment in childhood has significant enduring effects on subsequent development, and health and wellbeing in later life. There are links to lower educational achievement, involvement in the justice system, and poverty.
8. The estimated additional cost to the State of meeting the lifetime needs of children who have been maltreated to the extent that they are brought into the care of Child, Youth and Family is estimated at over \$750,000 per child.²
9. The proposals covered by this RIS are part of a suite of reforms aimed at addressing child abuse and neglect in New Zealand. Key issues being addressed by the proposals in this RIS are outlined briefly below, and further detail about the specific issues is included later, accompanying the discussion of the options considered.

Governance and accountability proposals

10. Governance and accountability arrangements for services that impact on vulnerable children are particularly complex and diverse. Silo-based approaches are inadequate in addressing the multi-faceted nature of child vulnerability. Previous attempts have been hampered by a lack of sustained cross-agency governance arrangements. The White Paper for Vulnerable Children (the White Paper) is clear that Government needs to make joint working for vulnerable children an absolute requirement for those government agencies with the primary responsibility for delivering the Action Plan.

Safeguarding proposals

11. Concerns have been raised about the extent to which workers are able to focus on and respond appropriately to the needs of the children with whom they work, including to situations of abuse and neglect. Agencies and staff do not always dedicate the appropriate level of consideration to the interests of children.

Child protection policies proposals

12. A specific issue is that professionals may be unclear about how and where to refer vulnerable children and families and about their responsibilities for acting on concerns, including what is expected of them with regard to responding to the needs of children, preventing maltreatment, identifying suspected maltreatment and making referrals to appropriate services.
13. Volume II of the White Paper (available online at www.childrensactionplan.govt.nz) further identifies the evidence base and key issues to which the White Paper proposals are responding.

² Rankin, D (2012). Meeting the needs of New Zealand children and young people who have been abused and neglected. *Best Practice Journal*, 37, 4–9. <http://www.bpac.org.nz/magazine/2011/august/upfront.asp>.

The policy context

14. Cabinet agreed to a programme of reforms introduced by the White Paper that will reinforce joint responsibility and action across the government to improve outcomes for vulnerable children. The White Paper outlines a set of reforms that:
- help to ensure that parents, caregivers, family, whānau and communities understand and fulfil their responsibilities towards children, as the single most critical factor in the care and protection of vulnerable children
 - give professionals new tools so that they can identify children earlier who are at risk of, or currently experiencing, maltreatment
 - build a new community-based approach to meeting the needs of children at risk of maltreatment as early as possible
 - reinforce joint responsibility and action across government to improve outcomes for children within target populations
 - develop a new direction for the way that Child, Youth and Family, justice, health, education and welfare agencies, professionals and other organisations work together, and an information platform through which they can record and share information
 - develop a new cross-agency Strategy for Children and Young People in Care
 - build a children's workforce that is responsive to the needs of vulnerable children
 - introduce a range of new measures to manage adults at high risk of abusing children.

Cabinet decisions

15. On 24 September 2012, Cabinet considered the White Paper for Vulnerable Children, and agreed to a series of actions and measures to fundamentally change how the government responds to, and protects, vulnerable children. Specific decisions are outlined in detail below in the analysis sections.

Objectives

16. The specific objectives against which each of the approaches have been assessed are included below.
17. In addition, we have considered how the proposals align with:
- the United Nations Convention on the Rights of the Child (UNCROC)
 - Government Statement on Regulation
 - other Government policy, eg Better Public Services, welfare reform.

Regulatory impact analysis

18. The following sections provide a summary of the options identified for each policy proposal, including the potential impacts, benefits and risks of each.

19. Tables for the proposals indicate the extent to which each option is considered to meet each objective, and the extent to which each option is likely to introduce legal risk, using the key below.

Objectives		Legal risk	
-	Does not meet objective	-	No new legal risk
✓	Partially meets objective	x	Low legal risk
✓✓	Meets objective but some issues/risks	xx	Some legal risk
✓✓✓	Meets objective fully		

Governance and accountability

20. These proposals address concerns that silo-based approaches are inadequate in addressing the multi-faceted nature of child vulnerability, and that previous attempts to address child vulnerability have been hampered by a lack of sustained cross-agency governance arrangements.

Status quo

21. Governance and accountability arrangements for services that impact on vulnerable children are particularly complex and diverse. Services for children, young people and families are administered by multiple agencies, and services include those available universally as well as those targeted to specific groups. There is a range of different accountability structures and varying levels of centralisation/devolution of accountability, decision-making, planning and funding:

- The Ministry of Health funds some national services, including some Primary Maternity Services and Well Child/Tamariki Ora services. Most of the day-to-day business of the health system is devolved to the 20 District Health Boards (DHBs), which directly deliver hospital services, and some community services, public health services, assessment, treatment and rehabilitation services. Primary health care is delivered by private providers, Primary Health Organisations (PHOs), and non-government organisations, under service agreements with DHBs.
- The Ministry of Education's operational role includes directly providing special education services to children and young people with disabilities and special education needs, and setting national guidelines and curriculum statements. Most operational decision-making is devolved to early childhood education providers and school Boards of Trustees.
- MSD delivers services to children and families, both directly and through contracting with the non-government sector.
 - Child, Youth and Family has the statutory responsibility for delivering care and protection and youth justice services, which are delivered directly by Ministry staff. They also approve non-government providers to deliver services to children and young people, and purchase services.

- Family and Community Services contracts with non-governmental providers to deliver a range of early intervention and prevention services and programmes for families.
- Work and Income directly administers the benefit system.
- Te Puni Kōkiri also contracts with non-government organisations for the delivery of services for vulnerable families.
- The work of agencies in the justice sector, including the Police and the Department of Corrections, involves contact with vulnerable populations, including families with vulnerable children. The Courts, and in particular the Family Court, Youth Court and Domestic Violence Courts, are further points of contact with vulnerable children and their families.

22. The Vulnerable Children's Board (VCB) was recently established by Cabinet. The VCB is responsible for overseeing implementation of the Action Plan. Cabinet has directed the VCB to report to a Ministerial Oversight Group (MOG), and to carry out particular tasks, but has not determined terms of reference for the VCB.

Problem to be addressed

23. As noted in Volume II of the White Paper, reviews of interagency collaboration initiatives in the social sector (Strengthening Families and the Family Violence Interagency Response System (FVIARS)) have demonstrated how these initiatives need to be supported by shared governance and accountability at local, regional and national levels to ensure the desired way of working continues to receive 'business as usual' support from agencies.
24. The Better Public Services Advisory Group Report (November 2011) made the case that change is needed to manage the State agencies that provide or fund services less as a collection of individual agencies, in pursuit of their own singular objectives, and more as a system that is focused on the results that will have the biggest positive impact on New Zealanders' lives.
25. The State Sector and Public Finance Reform Bill (the Reform Bill), currently before Parliament, is intended to create greater cross-state sector collaboration on Government priorities. In particular, it proposes that Chief Executives be responsible to the appropriate Minister for the department's responsiveness on matters relating to the collective interests of government. Other proposals, such as greater financial flexibility to support agencies working together, will also support work to implement the Children's Action Plan.

Cabinet decisions

26. The White Paper established new governance and accountability arrangements to manage the resources of the social sector agencies and to deliver on the proposals set out in the White Paper. Cabinet agreed:
- to the establishment of a VCB reporting to a MOG
 - that the VCB is responsible for appointing a National Director for Vulnerable Children, who will be directly accountable to the VCB for the establishment and

delivery of regional arrangements, including Children's Directors, to support the Children's Teams

- that the White Paper signal the government's intention to amend provisions to give effect to processes for the establishment of Children's Directors and Local Children's Teams, and governance and accountability arrangements for vulnerable children [CAB Min (12) 34/9 refers].

27. The White Paper is clear that Government needs to make joint working for vulnerable children an absolute requirement for those government agencies with the primary responsibility for delivering the Action Plan.

Objectives

28. The objectives against which the options for governance and accountability were assessed include:

- A sustained focus on joint responsibility: an enduring commitment by government agencies to work together to improve the wellbeing of vulnerable children.
- Accountability: that there is clarity about, and there are mechanisms for, individual and joint accountabilities for achieving results for vulnerable children, assessing performance, and identifying lessons and responsibility when things go wrong.
- Flexibility: flexible arrangements that enable innovation and adaption to changing circumstances is also key a factor to consider. Governance arrangements will need to provide Chief Executives and agencies with the flexibility to implement best practice and adapt over time.

Options

29. Options have been identified based on a continuum of increasing prescription:

- Governance Option 1: Status quo
- Governance Option 2: Additional non-legislative means to achieve joint working
- Governance Option 3: Statutory requirement for certain Chief Executives to work together for a particular purpose.

30. Other options and approaches were considered during the policy development process. These included:

- requiring the establishment of the VCB and/or Children's Teams in legislation, with statutory duties and functions. This approach was considered unnecessarily prescriptive given the service design for the Children's Teams is still underway and due to the risk that over-specificity at this stage may stifle innovation.
- authorising the Chief Executive of MSD to request services for vulnerable children (or a specified sub-group) from agencies, AND requiring agencies to respond (if practicable). This option was not pursued at this stage because of

potential legal risks and uncertainty about whether it would lead to better service provision for vulnerable children.

31. The table below provides an overview of the governance options, benefits and identified issues.
32. Issues common to governance and accountability options, and which will need to be managed, include:
 - the different accountability structures and varying levels of centralisation/devolution of accountability, decision-making, planning and funding across the social services, education, health and justice sectors
 - the time, compliance and potential opportunity costs of joint working and reporting to meet accountability requirements
 - Chief Executives' individual responsibilities to their departments and Ministers
 - existing duties and functions, eg the independence of the Police Commissioner, obligation on DHB Chief Executives to meet the objectives of the DHB Board, statutory obligations within the justice sector.

Accountability

33. Accountability for all of the options will be based on:
 - the VCB being responsible to the MOG and Cabinet
 - departmental Chief Executives being responsible to Ministers for achieving the Government's priorities for vulnerable children and for their agency's responsiveness on matters relating to the collective interests of government and the stewardship of their agency
 - Chief Executives' performance expectations including their role to collectively implement the Action Plan, and their individual accountability for their agency taking the necessary step to implement the Plan
 - the National Children's Director being employed by a VCB agency and being accountable to the VCB. Regional Directors are employed by a VCB agency and accountable to the National Director.
34. Additional accountability measures are identified with the options.

Governance										
Options	Features and implications	Benefits	Issues/risks							
<p>Governance Option 1: Status quo</p> <table border="1"> <tr> <td>Sustained joint responsibility</td> <td>Accountability</td> <td>Flexibility</td> <td rowspan="2">Section 9(2)(h) OIA</td> </tr> <tr> <td>-</td> <td>✓</td> <td>✓✓✓</td> </tr> </table>	Sustained joint responsibility	Accountability	Flexibility	Section 9(2)(h) OIA	-	✓	✓✓✓	<p>The VCB continues to work to the MOG and reports as and when required.</p> <p>The operating model of the VCB will evolve in line with the operation of the Social Sector Forum and ongoing implementation of the Better Public Services reforms.</p> <p>The proposed changes in the State Sector and Public Finance Reform Bill will extend Chief Executives' (CEs') responsibilities to make their stewardship role more explicit and to include an obligation to consider the collective interests of government.</p> <p>CEs already have the incentives and levers to implement the Action Plan and to bring about the changes in organisational and individual behaviours required.</p>	<p><u>Sustained joint responsibility:</u></p> <ul style="list-style-type: none"> VCB CEs maintain collective ownership and provide a governance framework for agency actions to implement the White Paper reforms. White Paper and Better Public Services reforms provide impetus and framework for strengthening collaboration between agencies to achieve results for vulnerable children. <p><u>Flexibility:</u> Minimal prescription on the role of the VCB would enable it to adapt and evolve over time as new priorities are identified and circumstances change.</p>	<p><u>Sustained joint responsibility:</u></p> <ul style="list-style-type: none"> No formal or ongoing mandate from Cabinet for the direction of the VCB's work. Previous examples of joint working have demonstrated it is difficult to maintain arrangements over time as competing priorities arise, and changes result from new Cabinet directives. <p><u>Accountability:</u></p> <ul style="list-style-type: none"> The VCB would be accountable to the MOG. In practice, this would be dependent on frequency of meetings, and reports from the VCB to MOG as required. No additional formal mechanism to hold CEs jointly accountable (eg joint reporting requirement).
Sustained joint responsibility	Accountability	Flexibility	Section 9(2)(h) OIA							
-	✓	✓✓✓								
<p>Governance Option 2: Additional non-legislative means to achieve joint working (in addition to Option 1)</p> <table border="1"> <tr> <td>Sustained joint responsibility</td> <td>Accountability</td> <td>Flexibility</td> <td rowspan="2">Section 9(2)(h) OIA</td> </tr> <tr> <td>✓✓</td> <td>✓✓</td> <td>✓✓</td> </tr> </table>	Sustained joint responsibility	Accountability	Flexibility	Section 9(2)(h) OIA	✓✓	✓✓	✓✓	<p>In addition to Option 1, further non-legislative measures could be put in place to achieve joint working and responsibility, including:</p> <ul style="list-style-type: none"> Cabinet requiring the VCB to produce a cross-agency business strategy, against which the VCB would have to report progress on and be accountable to the MOG for implementing, AND/OR establishing the VCB as a Specific Purpose Board (SPB) – the duties and functions of SPBs would be determined by Cabinet and set out in their terms of reference. 	<p><u>Sustained joint responsibility:</u></p> <ul style="list-style-type: none"> A Cabinet mandated SPB would outline Cabinet's expectations to departments, encouraging stronger collaboration and establishing collective responsibility. A Cabinet mandate would help to ensure a sustained focus. A joint approach to planning services at the population level is an effective systems approach to addressing the needs of vulnerable children in the longer term. <p><u>Accountability:</u></p> <ul style="list-style-type: none"> Cabinet agreed duties and functions would help formalise CEs being collectively responsible for implementing the White Paper and improving outcomes for vulnerable children. The plan would provide Ministers with a document against which CEs could be held jointly accountable. <p><u>Flexibility:</u> Provides CEs with flexibility for making cross-agency arrangements necessary to achieve the Government's priorities for vulnerable children.</p>	<p><u>Sustained joint responsibility:</u> This option has similar issues to Option 1 with regard to maintaining a long term focus on agencies working together. However, a Cabinet direction would help to ensure a sustained focus on implementing the Action Plan.</p> <p><u>Accountability:</u> Accountability based only on Cabinet mandated arrangements may provide less certainty for agencies that joint working needs to continue over the long-term.</p> <p><u>Flexibility:</u> Cabinet determined duties and functions and a requirement for a plan would place parameters on what form governance arrangements could take.</p>
Sustained joint responsibility	Accountability	Flexibility	Section 9(2)(h) OIA							
✓✓	✓✓	✓✓								
<p>Governance Option 3: Statutory requirement for certain Chief Executives (CEs) to work together for a particular purpose</p> <table border="1"> <tr> <td>Sustained joint responsibility</td> <td>Accountability</td> <td>Flexibility</td> <td rowspan="2">Section 9(2)(h) OIA</td> </tr> <tr> <td>✓✓✓</td> <td>✓✓✓</td> <td>✓✓</td> </tr> </table>	Sustained joint responsibility	Accountability	Flexibility	Section 9(2)(h) OIA	✓✓✓	✓✓✓	✓✓	<p>The purpose of this provision would be to encourage long-term focus on government agencies working together/collectively with the aim of improving the wellbeing of vulnerable children, in accordance with government policies.</p> <p>A non-exhaustive definition of what types of matters need to be considered to improve the wellbeing of vulnerable children could be included in legislation.</p> <p>Agencies would be required, via statute, to develop (for Ministerial approval) and report progress against a plan, within specified timeframes, that sets out how agencies will work together towards</p>	<p><u>Sustained joint responsibility:</u></p> <ul style="list-style-type: none"> create a durable and highly visible commitment to government agencies working collectively provide a high level (aspirational) purpose for CEs to work together towards this type of legislative approach would help to ensure a sustained focus on agencies taking a child centred approach – all aspects of a child's wellbeing (eg not just safety) would need to be considered in the arrangements agencies put in place to address child vulnerability. <p><u>Accountability:</u> A legislative requirement for a plan would provide Ministers (and successive Governments) with a document against which CEs could be held jointly accountable.</p> <p><u>Flexibility:</u> Provides CEs with flexibility for making</p>	<p><u>Sustained joint responsibility:</u> Legislation alone will not ensure agencies work together effectively. The measures to bring about the necessary institutional and behavioural changes will need to be put in place by CEs.</p> <p><u>Flexibility:</u> A statutory requirement for a plan, and associated reporting and review processes, would place parameters on what form governance arrangements could take.</p> <p>Section 9(2)(h) OIA</p>
Sustained joint responsibility	Accountability	Flexibility	Section 9(2)(h) OIA							
✓✓✓	✓✓✓	✓✓								

Governance			
Options	Features and implications	Benefits	Issues/risks
	collectively achieving the Government's priorities for vulnerable children.	cross-agency arrangements necessary to achieve the Government's priorities for vulnerable children.	Section 9(2)(h) OIA

Discussion on the preferred option

35. The preferred option is Option 3, a statutory requirement for certain Chief Executives to work together for a particular purpose.
36. Option 3 will create a durable and visible commitment by the Government to agencies working collectively to improve the wellbeing of vulnerable children. A focus on improving wellbeing will reinforce with agencies and frontline professionals the need to take a child-centred, cross-sector approach. It will help to bring about and sustain the fundamental changes needed to the way agencies work together. Without legislation, there is a risk that as other priorities arise and circumstances change, the focus on agencies working together around vulnerable children will reduce over time.
37. Chief Executives will be held accountable for meeting the specific legislative requirements through the existing public sector performance management arrangements. This will include Chief Executives' performance expectations, public finance arrangements, and agencies' annual planning and reporting. Option 3 will also provide the Government with a clear commitment from Chief Executives against which their performance can be judged.

Child protection policies and safeguarding

38. Safeguarding proposals aim to ensure that agencies and staff adopt the principle of safeguarding the welfare and interests of children. Requirements for child protection policies refer to measures for ensuring that agencies and staff know how to respond appropriately to situations of possible child abuse and neglect. This is intended to encourage accurate reporting and provide clarity about identifying and responding to children who are being maltreated.

Status quo

Safeguarding:

39. Safeguarding requirements are currently reflected in some legislation:
 - section 6 of the Children, Young Persons, and Their Families Act 1989 (CYPF Act), and Section 4 of the Care of Children Act 2004 require the welfare and interests of the child to be the first and paramount consideration in particular contexts
 - the broader notion of safeguarding children's welfare and interests is reflected in the object of the CYPF Act, which is to promote the wellbeing of children, young persons, and their families and family groups.

Child protection policies:

40. Child protection policies are currently reflected in some legislation:
 - Sections 15 and 16 of the CYPF Act provide for the reporting of child abuse and neglect to a social worker or constable.
 - Section 7 of the CYPF Act specifies that the Chief Executive of MSD has duties around developing and implementing protocols in relation to the reporting of child abuse.

- Under a 2011 amendment to the Crimes Act 1961, a new offence was introduced for someone who has frequent contact with a child and who knows that the child is at risk of death, grievous bodily harm, or sexual assault as the result of an unlawful act or significant omission by another person, and fails to take steps to protect the child.
- Some agencies already have child protection policies, or have requirements for child protection policies for agencies they fund or contract with. Information on current requirements for child protection policies is provided in Appendix One.

41. These existing requirements and policies help support the most vulnerable children in society, and allow agencies the flexibility to determine how they interact with those children. However, there is no consistent approach across all agencies that work with children.

Problem to be addressed

42. Concerns have been raised about the extent to which workers are able to focus on and respond appropriately to the needs of the children with whom they work, including to situations of abuse and neglect. A wide range of people come into contact with children in their professional capacity. Health and education professionals, social workers and others who work with children have different roles in responding to the needs of vulnerable children, and also vary in their capacity to do so.
43. The Mel Smith report on the case of the abuse of a nine-year-old girl in 2011,³ for instance, highlighted the need for all professionals who work with children and families to have a child-centred perspective, to be able to recognise child abuse and neglect, and to make appropriate referrals to Child, Youth and Family.
44. A specific issue is that professionals may be unclear about how and where to refer vulnerable children and families and about their responsibilities for acting on concerns. Mel Smith's report recommended that a legislative provision for mandatory reporting be investigated as a matter of urgency.
45. More recently, the findings of Coroner Garry Evans in the inquest into the deaths of the Kahui twins considered the adequacy of systems for care and protection. He recommended that the Government consider the desirability of introducing legislation creating an obligation on the part of health professionals to report instances of physical abuse and situations where there are reasonable grounds to suspect abuse.
46. In summary, the two key issues are that agencies and professionals:
- may not always dedicate the appropriate level of consideration to the needs of children
 - may be unclear about their responsibilities in relation to identifying and responding to children in situations of potential abuse or neglect.

Cabinet decisions

47. On 24 September 2012, Cabinet considered the White Paper and agreed to:

³ Smith, M (2011). Report to Hon Paula Bennett, Minister for Social Development, *Following an Inquiry into the Serious Abuse of a Nine-Year-Old Girl and Other Matters Relating to the Welfare, Safety and Protection of Children in New Zealand*. Retrieved from <http://www.beehive.govt.nz>.

- require agencies and staff working with children to adopt the principle of safeguarding children’s welfare and interests in their policies and practice
 - introduce legislation requiring agencies working with children to be required to have child protection policies in place covering the identification and reporting of child abuse and neglect [CAB Min (12) 34/9 refers].
48. Cabinet also noted that changes introduced through the White Paper will help to improve the accuracy of reporting of child abuse and neglect, and agreed that mandatory reporting will not be introduced at this time.

Objectives

49. The options for safeguarding and child protection policies were assessed against the following objectives:
- A child-centred approach and promoting early identification: setting a consistent standard of child-centred practice for people and organisations working with vulnerable children, which includes supporting the early identification of vulnerable children, and responding appropriately to situations of possible maltreatment according to their role, function and capability.
 - Responsibility for child welfare: signalling Government’s expectation that a broader range of agencies and professionals need to take responsibility for the welfare of children, and requiring different parts of the workforce to consider and make explicit their responsibilities for child welfare and safety according to their role, function and capability.

Options

50. For safeguarding, the key options considered are:
- Option 1: Use existing mechanisms (non-legislative and secondary/tertiary legislation)
 - Option 2: Legislative option – primary legislation contains safeguarding requirement (in addition to Option 1)
51. Other options that were considered included extending the application of the paramountcy principle contained in section 6 of the CYPF Act (“the welfare and interests of the child shall be the first and paramount consideration”) to a broader range of agencies working with children. While this would help ensure a wider range of professionals and organisations take a child-centred approach and place the interests of the child first, there were a number of issues identified, such as the potential for conflict with other statutory, professional and ethical obligations.
52. For child protection policies, the key options considered are:
- Option 1: Non-legislative option – use existing mechanisms to require agencies to have child protection policies in place.
 - Option 2: Legislative option – legislation requires agencies to put in place child protection policies.

- Option 3: Legislative option with requirement for guidance – legislation requires agencies to put in place child protection policies, while having regard to guidance issued by the Minister for Social Development, or to regulations.

Issues common across all options:

53. Issues that have been identified as common to all options for safeguarding and child protection policies include:

- the possibility that the new requirements lead to inappropriate escalation of concerns
- additional funding or a longer timeframe may be needed to change contracts
- placing new requirements on the workforce would involve significant time and work with all relevant groups of the workforce, including agencies, organisations and unions
- safeguarding measures and child protection policies do not make it any easier for agencies to weigh the interests of one child against another – issues may arise in situations where the actions needed to safeguard two or more children are in opposition with each other (eg this may occur in schools).

54. Issues that are common to all options for child protection policies include:

- some compliance costs are likely for agencies subject to the requirement for child protection policies
- professionals who practice individually or in small groups will need to each have child protection policies in place.

Scope of requirement for child protection policies

55. The scope of this requirement needs to promote the best interests of children, without placing unnecessary compliance costs on individuals and organisations not routinely in a position that would allow them to identify and respond to potential child maltreatment. It is therefore proposed that the focus of the requirement is as follows:

In scope	Out of scope
<ul style="list-style-type: none"> • State services (as defined by the State Sector Act 1988) that provide services to children and their families. • State services that provide services to adults in families with children, where this work could have a significant impact on the child's welfare (excluding the judiciary). • Individuals and organisations contracted or funded by those State services (covered by the first and second bullet points above) to provide services to children, and adults in families with children. • The New Zealand Police. 	<ul style="list-style-type: none"> • State services, and private and non-government individuals and organisations that do not provide services to children and their families, or to adults in families with children. • Private and non-government individuals or organisations that provide services to children and their families, or adults in families with children, but are not funded or contracted by the State services that are in scope.

56. It is proposed that:

- the following State services are subject to this requirement: the Ministries of Social Development, Health, Education, and Justice, the New Zealand Police, the Ministry of Business, Innovation, and Employment, Te Puni Kōkiri, DHBs, and the Boards of Trustees of state schools
- any further additions to the State services identified above will be determined on the basis of the above description and provided to Cabinet for approval prior to introduction of the Vulnerable Children's Bill
- to ensure only appropriate individuals and organisations are subject to this requirement, Chief Executives of the prescribed State services must include the requirement within contracts and funding agreements where the Chief Executive reasonably determines that the individual or organisation is contracted or funded to:
 - provide services to children and their families (eg Well Child services, early childhood education centres), OR
 - provide services to adults in families with children, and that the service could have a significant impact on the welfare of those children (eg Justice service providers such as counsellors, victim support services).

Safeguarding: agencies and staff required to adopt the principle of safeguarding children's welfare and interests								
Options	Features and implications	Benefits	Issues/risks					
<p>Safeguarding Option 1: Use existing mechanisms (non-legislative and secondary/tertiary legislation): The VCB leads and drives adoption of the principle through:</p> <ul style="list-style-type: none"> organisational mechanisms Action Plan reforms working with professional bodies. <table border="1"> <tr> <td>Responsibility for child welfare</td> <td>Child-centred approach</td> <td rowspan="2">Section 9(2)(h) OIA</td> </tr> <tr> <td>✓✓</td> <td>✓✓</td> </tr> </table>	Responsibility for child welfare	Child-centred approach	Section 9(2)(h) OIA	✓✓	✓✓	<p>Agencies would give effect to changes through mechanisms such as the following:</p> <p><i>Organisational mechanisms:</i></p> <ul style="list-style-type: none"> corporate priorities, business planning and performance monitoring (eg quality of reporting to Children's Teams, Child, Youth and Family) professional development, employment agreements and performance management funding and contracting arrangements in the education sector, amendments can be made to National Administration Guidelines for schools, and early childhood education (ECE) Regulations. <p><i>Action Plan reforms:</i></p> <ul style="list-style-type: none"> Workforce: minimum standards and competencies. Code of Practice for professionals working with children. Child protection policies, including training for frontline staff. Common Assessment Framework. <p>These actions will need to take place even if a legislative option is taken.</p>	<p><u>Responsibility for child welfare:</u></p> <ul style="list-style-type: none"> Compared to the status quo, this option involves change being driven by the VCB and National and Regional Children's Directors, along with new policies and processes. Compared to legislative options, more aligned with the bottom-up, progressive/staged approach to implementing other White Paper reforms. <p><u>Child-centred approach and early identification:</u></p> <ul style="list-style-type: none"> Agencies have the mechanisms needed to incentivise changes in practice. Uses existing mechanisms that are familiar to professionals, and therefore may have an immediate impact on practice. 	<p><u>Child-centred approach and early identification:</u></p> <ul style="list-style-type: none"> It may be difficult to gain consistency in approach across sectors of the workforce. Agencies have a high degree of flexibility in implementation. However, CEs can decide on a consistent approach, or choose to provide flexibility. May not be sufficiently prescriptive to change practice around early identification. However, the VCB could use existing arrangements to ensure that changes in practice are made as needed.
Responsibility for child welfare	Child-centred approach	Section 9(2)(h) OIA						
✓✓	✓✓							
<p>Safeguarding Option 2: Legislative mechanisms</p> <p>Primary legislation contains requirement for safeguarding.</p> <table border="1"> <tr> <td>Responsibility for child welfare</td> <td>Child-centred approach</td> <td rowspan="2">Section 9(2)(h) OIA</td> </tr> <tr> <td>✓✓✓</td> <td>✓✓</td> </tr> </table>	Responsibility for child welfare	Child-centred approach	Section 9(2)(h) OIA	✓✓✓	✓✓	<p>Legislative approaches include:</p> <ul style="list-style-type: none"> A principle that agencies should discharge their functions having regard to the need to safeguard (similar to section 4, Child Wellbeing and Safety Act 2005, Victoria, Australia). A binding requirement (statutory duty): ie that CEs <u>must make arrangements</u> for ensuring that functions are discharged with regard to the need to safeguard (similar to section 11(2), Children Act 2004, England). Not intended to give rise to civil or criminal liability. 	<p><u>Responsibility for child welfare:</u></p> <ul style="list-style-type: none"> Legal requirement provides a clear signal that agencies and staff should take responsibility for identifying and responding to vulnerable children. <p><u>Child-centred approach:</u></p> <ul style="list-style-type: none"> Legislative status of requirement could mean greater likelihood of being able to effect change/achieve consistency. Legislative requirement with supporting guidance could provide detailed direction regarding the specific changes in practice that are needed, including early identification of vulnerable children. 	<p><u>Child-centred approach and early identification:</u></p> <ul style="list-style-type: none"> A legislative approach does not necessarily mean values and behaviours will change; buy-in is still needed by frontline practitioners. Complexities of legislating for standard obligations regarding child welfare across a wide range of agencies. <p>Section 9(2)(h) OIA</p>
Responsibility for child welfare	Child-centred approach	Section 9(2)(h) OIA						
✓✓✓	✓✓							

Child protection policies								
Option	Features and implications	Benefits	Issues/risks					
<p>Child Protection Policies Option 1 (Non-legislative option):</p> <p>Use existing mechanisms to require agencies to put in place child protection policies.</p> <table border="1"> <tr> <td>Responsibility for child welfare</td> <td>Child-centred approach</td> <td rowspan="2">Section 9(2)(h) OIA</td> </tr> <tr> <td>✓</td> <td>✓✓</td> </tr> </table>	Responsibility for child welfare	Child-centred approach	Section 9(2)(h) OIA	✓	✓✓	<ul style="list-style-type: none"> Existing arrangements and mechanisms can be used to require agencies to have child protection policies. These include organisational measures such as contracting and funding arrangements, and working with professional bodies. 	<p><u>Responsibility for child welfare:</u></p> <ul style="list-style-type: none"> Could enable a wide group of agencies to adopt and implement child protection policies, suitable for their agency capacity levels and the contract in question. <p><u>Child-centred approach and early identification:</u></p> <ul style="list-style-type: none"> Supports the adoption of a child-centred approach among relevant agencies. Agencies would have flexibility in how this was implemented – requirements and obligations could be tailored. 	<p><u>Responsibility for child welfare:</u></p> <ul style="list-style-type: none"> May not place a strong enough expectation on agencies. May not provide clarity about responsibilities. <p><u>Child-centred approach and early identification:</u></p> <ul style="list-style-type: none"> On its own, may not achieve national consistency. However, guidance could be issued to support the implementation of the requirement.
Responsibility for child welfare	Child-centred approach	Section 9(2)(h) OIA						
✓	✓✓							
<p>Child Protection Policies Option 2 (Legislative option):</p> <p>Legislative requirement that relevant agencies have in place policies which include the identification and reporting of child abuse and neglect.</p> <table border="1"> <tr> <td>Responsibility for child welfare</td> <td>Child-centred approach</td> <td rowspan="2">Section 9(2)(h) OIA</td> </tr> <tr> <td>✓✓✓</td> <td>✓✓</td> </tr> </table>	Responsibility for child welfare	Child-centred approach	Section 9(2)(h) OIA	✓✓✓	✓✓	<ul style="list-style-type: none"> Statutory requirement that State services (as defined by the State Sector Act 1988): <ul style="list-style-type: none"> have in place policies which include the identification and reporting of child abuse and neglect (with the exception of those State services that do not <u>directly</u> provide services to children and their families, or adults) include the requirement for child protection policies in their contracts and funding agreements with relevant individuals and organisations where the CE reasonably determines that the individual or organisation is contracted or funded to provide services to children and their families OR provide services to adults in families with children, and that the service could have a significant impact on the welfare of those children report on these policies as part of their Annual Reports (except for Boards of Trustees of state schools). Legislation makes no reference to guidance, and does not provide any additional information on what child protection policies should cover. Existing mechanisms and arrangements within agencies, and other Action Plan measures (eg workforce development initiatives) allows for information or guidance to be provided as required. Cabinet may from time to time direct that information be issued to support State services in giving effect to the requirement. No civil or criminal liability. 	<p><u>Responsibility for child welfare:</u></p> <ul style="list-style-type: none"> Provide a clear signal regarding responsibility for child welfare among agencies working with children. Would <i>require</i> agencies to promote wider responsibility for child protection – ie through contracts, funding agreements etc. <p><u>Child-centred approach and early identification:</u></p> <ul style="list-style-type: none"> Promotes a child-centred approach at a high level within agencies. 	<p><u>Child-centred approach and early identification:</u></p> <ul style="list-style-type: none"> On its own, may not achieve national consistency. However, Cabinet could direct that information be issued to support the implementation of the requirement. <p>Section 9(2)(h) OIA</p>
Responsibility for child welfare	Child-centred approach	Section 9(2)(h) OIA						
✓✓✓	✓✓							
<p>Child Protection Policies Option 3 (Legislative option with requirement for guidance)</p> <table border="1"> <tr> <td>Responsibility for child welfare</td> <td>Child-centred approach</td> <td rowspan="2">Section 9(2)(h) OIA</td> </tr> <tr> <td>✓✓✓</td> <td>✓✓✓</td> </tr> </table>	Responsibility for child welfare	Child-centred approach	Section 9(2)(h) OIA	✓✓✓	✓✓✓	<ul style="list-style-type: none"> As per Option 2, plus requirement that prescribed State services “must have regard to guidance to be issued by the Minister for Social Development, in consultation with the Ministers of Health, Education, Justice and Police, in fulfilling this requirement.” Another variation is to stipulate that regulations may be issued setting out the required content of the policies. 	<p><u>Responsibility for child welfare:</u></p> <ul style="list-style-type: none"> As per Option 2. Legislative status of guidance also provides a high expectation of compliance. <p><u>Child-centred approach and early identification:</u></p> <p>Compared to issuing guidance through non-legislative means, a legislative requirement to have regard to guidance may:</p> <ul style="list-style-type: none"> ensure Government is able to have a greater degree of influence over the content of policies help establish a consistent standard of child-centred practice ensure the workforce has clear direction about what constitutes a child-centred approach for different parts of the workforce. 	<p>Section 9(2)(h) OIA</p>
Responsibility for child welfare	Child-centred approach	Section 9(2)(h) OIA						
✓✓✓	✓✓✓							

Discussion/Preferred Option

Safeguarding:

57. The preferred safeguarding option is that existing mechanisms are used to require the adoption of the safeguarding principle (Option 1). Other Action Plan measures, along with the cross-sector agency plan and the introduction of child protection policies, will help to ensure professionals across the education, health, justice and social services sectors play an active role in safeguarding children's welfare and interests. Given the "hearts and minds" change required for true adoption of the principle, legislation may not be the best means of bringing about this change. The uncertain benefits of a statutory safeguarding requirement are not considered to outweigh the potential legal risks.

Child protection policies:

58. The preferred option for child protection policies is Option 2, the legislative requirement, which provides the most effective way to meet the objectives of responsibility for child welfare, early identification, and a child-centred approach. It provides a strong signal of expectations on agencies and professionals around identifying and responding to maltreatment, and allows guidance to be provided if required without incurring the potential legal risks of a legislative requirement to have regard to guidance.

Financial implications (all proposals)

59. There will be some compliance costs associated with the proposals in this paper. It is important to note that:
- it is difficult to fully assess what these costs could be, as future service design work is required first on how these systems will operate
 - it is intended that the majority of costs of services for Children's Teams will be met from reprioritisation. As the design work for the Action Plan develops, agencies may come back with advice on what further funding is needed
 - the White Paper proposals aim to change how agencies work to support vulnerable children, and it is expected that these new processes and ways of working will become "business as usual". Accordingly, to the extent that these proposals relate to new ways of working, it is expected that agencies will reorganise their work and funding, at both central and regional levels, to deliver on the Action Plan commitments
 - government agencies will need to undertake capacity building with providers to support them to fulfil their obligations, for example making model child protection policies available.
60. We have identified the following financial implications for specific options:
- Governance and accountability: Options 2 and 3: there may be small costs for government in making arrangements for inter-agency co-operation and the development of a cross-sector plan.
 - Child protection policies: There may be minor costs to some non-government and private organisations and professionals working with children to implement

child protection policies; however, complying with this requirement would be in line with good practice. Other organisations will already have policies and processes in place that meet the requirements. The VCB has identified the need for government agencies to undertake capacity building with providers to support them to fulfil their obligations, for example making model child protection policies available. There will also be some minor compliance costs associated with the monitoring and reporting requirements of proposals. Specific considerations include the effort, time and costs associated with:

- individuals and small providers to have child protection policies
 - implementing additional reporting and monitoring mechanisms, where they do not currently exist, for individuals and small providers to introduce new policies.
- Further consideration will be given, as part of the development of the cross-sector agency plan, to the costs associated with these proposals.

Consultation

61. The policy process began with the Green Paper for Vulnerable Children (the Green Paper), which was released in July 2011 for public consultation. The Government sought feedback from the public on the ideas put forward in the Green Paper through a submission process. An active approach was taken to encouraging the public to have its say on the issues around vulnerable children. To promote the Green Paper and encourage public engagement, a number of different mechanisms and strategies were used, including:
 - appointing three facilitators to stimulate public debate
 - holding meetings with community organisations
 - establishing mechanisms specifically designed to ensure the engagement of children and youth
 - providing information to community organisations and newspapers, schools and early childhood education providers, large national and umbrella social service agencies, public libraries, churches, service clubs, mayors and businesses
 - establishing Facebook and Twitter pages and making the submission process easier by providing simple submission mechanisms
 - holding meetings around the country attended by the Minister for Social Development supported by a 'Green Paper Campervan Drive'.
62. Close to 10,000 submissions were received from a diverse range of people and organisations. Submissions on the Green Paper informed development of the White Paper and are informing development of policy proposals. A summary of key issues raised in submissions is attached as Appendix Two.
63. Cross-agency steering and working groups comprised of relevant agencies were established for the development of the White Paper. Non-government practice and operational professionals from the education, health, social services and justice sectors were consulted as part of the development of the White Paper. An external

reference group was consulted throughout the White Paper policy development process and service design workshops were held to test and develop the early response system.

64. Relevant government agencies have been consulted on the legislative proposals, including the agencies that make up the VCB.
65. Further public consultation will occur during the Select Committee Stage.

Conclusions and recommendations

66. MSD and VCB agencies have analysed each option and weighed up the benefits and risks, and recommend progressing proposals to provide for:
 - a statutory requirement that certain Chief Executives work together to develop (for Ministerial approval) and report progress against a plan, within specified timeframes, that sets out how agencies will work together towards collectively achieving the government's priorities for vulnerable children
 - the adoption of a safeguarding principle through existing mechanisms
 - child protection policies to be put in place as a statutory requirement that State services have in place policies which include the identification and reporting of child abuse and neglect.

Implementation

67. Implementation of the proposed legislative amendments will be achieved through the Vulnerable Children's Bill. This Bill will amend the CYPF Act, but may also amend other legislation, for example, the New Zealand Public Health and Disability Act 2000. The drafting of the Vulnerable Children's Bill will take into account existing duties and functions.
68. Where possible, existing monitoring, compliance and reporting systems will be used to implement the White Paper proposals.
69. The governance and accountability proposals outlined above set requirements on Chief Executives for identifiable outputs. They will retain flexibility in how they fulfil new requirements, and manage risks associated with them.

Monitoring, evaluation and review

Review of legislation and operations at an appropriate time

70. The Families Commission's Social Policy Evaluation and Research Unit (SuPERU) is scoping a strategic evaluation for the Children's Action Plan. SuPERU will work with government agencies in developing this.

Child protection policies

Preferred option

71. State services (except for Boards of Trustees of state schools) will be required to report on their policies as part of their Annual Reports. It is proposed that compliance monitoring of state schools will be within the remit of the Education Review Office.

Alternative options

72. Alternative measures considered for the requirement for child protection policies include the following:
- the Chief Executives of the Ministries of Education, Health, Justice and Social Development, and the Commissioner of Police provide advice and report on the implementation of the requirement for child protection policies, as part of the proposed statutory duty on these Chief Executives to work together to produce a cross-sector agency plan
 - a single State service monitors and reports on the requirement (used in South Australia).
73. However, these options are not preferred, because they would create additional costs and compliance requirements, without necessarily conferring any significant benefits.

Examples of current requirements for child protection policies

- All DHBs are required to have Partner Abuse and Child Abuse and Neglect policies that are aligned with the Family Violence Intervention Guidelines. This is a specified services objective in the national service specification for the Violence Intervention Programme.
- Child, Youth and Family has approvals standards which must be met by most organisations it contracts with. These include standards relating to the prevention of abuse of children and young people, including demonstrating that:
 - the organisation promotes awareness of child abuse, ways in which child abuse may be prevented, and the need to report cases of child abuse
 - the organisation has a process for dealing with allegations of abuse or situations that raise concern about the safety of a child or young person, including how the organisation makes referrals under section 15 of the CYPF Act
- Youth Payment and Young Parent Payment providers contracted by Work and Income are required to have Child, Youth and Family approval.
- The Family Violence Intervention Programme (FVIP) provides procedures for Work and Income case managers and other MSD staff to report suspected child abuse and neglect to Child, Youth and Family.
- National Administration Guidelines currently require schools to provide a safe physical and emotional environment for students.
- Education (Early Childhood Services) Regulations 2008, section 46(1)(a) states that licensed early childhood education services must take all reasonable steps to promote the good health and safety of children enrolled in the service. Licensing criteria (Centre-based HS31, Home-based HS28, hospital-based HS13) set out that a process for the prevention of child abuse is implemented, and that a procedure for responding to suspected child abuse is followed when required.

Green Paper Submissions

Governance and accountability

1. Almost all submissions on the option of an action plan for vulnerable children expressed support for the proposal; with a small minority either saying there should not be one as it was seen to be an “ambulance at the bottom of the cliff” approach, or simply that they were not sure. An action plan was believed to have the potential to improve outcomes for vulnerable children by allowing government to set goals and targets, but it was noted that in order for such a plan to be effective, it would need to be workable and action-focused, practical and feasible, as well as funded properly. A minority of submissions said such an action plan will need to be cross-sector as that would bring different specialties and knowledge to the table; as well as cross-party to ensure the plan was not subject to the electoral cycle.
2. Many submissions that commented on an action believed that legislation underpinning any sort of Vulnerable Children’s Action Plan would ensure compliance by any affected parties. Additionally, it was thought that legislation would demonstrate government’s commitment to children. Only a minority of submitters felt that legislation underpinning an action plan would have no value.
3. About half of submissions that commented on an action plan said Government social sector agencies should be required to report on progress against an action plan; while some stated the responsibility could lie with an independent body, such as the Children’s Commissioner. Other suggestions included community groups or non-government organisations reporting on progress.
4. Where changes to legislation were suggested in order to improve services and outcomes for vulnerable children, submissions believed there should be more “child-centred” policy and legislation. This included ideas such as implementing a child impact assessment for any relevant legislation before reaching Cabinet, establishing a Children’s Act and a Minister for Children.
5. Support for UNCROC was also mentioned by a minority of submissions; for example, incorporating the principles of the Convention into New Zealand law more fully.

Safeguarding requirement and child protection policies

6. Submissions on the safeguarding requirement and child protection policies discussed the need for government to show leadership by putting the interests of children first in policy making. It was believed that while everyone has the responsibility to put the interests of the child first, government has a particular responsibility to ensure that all systems operate to that effect.
7. Additionally, it was believed that all organisations receiving government funding should be required to have a clear, workable child protection policy. Such policy would include things such as authorisation and guidance on collaboration, the reporting of child abuse, child protection training and best practice in working with children and families.
8. It was thought that those delivering frontline services would need to develop an understanding that wherever they came into contact with children, they would have a

responsibility to look out for the child's wellbeing, but also have an understanding of the signs to look out for in respect of a child being at risk or vulnerable.