

In Confidence

Office of the Minister for Children
Chair, Cabinet Legislation Committee

ORANGA TAMARIKI (NATIONAL CARE STANDARDS AND RELATED MATTERS) REGULATIONS 2018

Proposal

- 1 This paper seeks approval for the Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018 (the care standards regulations) and the Oranga Tamariki (Residential Care) Amendment Regulations 2018 to be submitted to the Executive Council for approval.

Executive Summary

- 2 Recent reviews of the care, protection and youth justice systems have found that they have not been operating in a way that ensures children and young people are able to achieve their developmental potential and experience positive outcomes.
- 3 To help address these issues, a requirement to make regulations setting out national standards of care was introduced as part of changes to the Oranga Tamariki Act 1989 (the Act). The Act now requires the responsible Minister to recommend the making of regulations setting out standards of care by 13 July 2018.
- 4 Policy proposals for inclusion in the care standards regulations have been developed and recently agreed by Cabinet. These regulations will provide a level of transparency and accountability for the quality of care provided that has not previously existed within the New Zealand care system. They will form a key part of the new operating model for Oranga Tamariki—Ministry for Children (Oranga Tamariki).
- 5 The care standards regulations set minimum standards across the spectrum of the care experience. They cover the needs assessment and planning that must occur when a child or young person comes into care, and the support they and their caregiver must receive to meet the child or young person's needs. They enable the child or young person to make informed decisions about their care, and set out the planning and support that must occur when the child or young person leaves care. They also set out how compliance with the care standards regulations will be monitored, covering both self-monitoring and monitoring by the independent monitoring body I am required to appoint under the Act.
- 6 The care standards regulations are intended to provide greater clarity for children and young people about what they can expect when they are in care. In a new approach for regulatory drafting, the regulations also contain a statement of rights, which summarises children and young people's entitlements under the regulations in child-friendly language.
- 7 I have also made minor and consequential amendments to the Oranga Tamariki (Residential Care) Regulations 1996 to ensure that relevant provisions of those regulations reference the care standards regulations where appropriate, in line with the authority granted to me by Cabinet on 5 March 2018 [SWC-18-MIN-0010; CAB-18-MIN-

0065 refer]. These changes are reflected in the Oranga Tamariki (Residential Care) Amendment Regulations 2018.

8 Those consulted on an exposure draft of the care standards regulations (including young people, caregivers and service providers) were generally positive, indicating that the proposed regulations are consistent with best practice and are clear and easy to understand.

9 **9(2)(f)(iv) Withheld under active consideration**
[Redacted text]

Policy

Recent changes to the Oranga Tamariki Act 1989 introduced a suite of legislative reforms, including a requirement to create care standards regulations

10 The Modernising Child, Youth and Family Expert Panel’s (the Expert Panel) Final Report, released in April 2016, highlighted the need for transformational change across the care and protection and youth justice systems. The Final Report described the current system as one which is not sufficiently child-centred, and in which children and young people experience repeat referrals, high levels of instability and, in some cases, further maltreatment and trauma.

11 To help address these issues and to bring New Zealand in line with comparable jurisdictions, the Expert Panel recommended the creation of national care standards.

12 In 2016, Cabinet agreed:

12.1. to a suite of legislative changes to underpin and give effect to the new operating model for Oranga Tamariki—Ministry for Children, including empowering provisions enabling regulations to be made setting out standards of care [SOC-16-MIN-0114; CAB-16-MIN-0460 refer]

12.2. that in order to ensure that national care standards become a mandatory requirement, regulations providing for national care standards be made by the Governor-General by Order in Council on the recommendation of the responsible Minister [CAB-16-MIN-0527 refers].

13 These decisions were reflected in the Children, Young Persons and Their Families (Oranga Tamariki) Legislation Act 2017, which amended the Oranga Tamariki Act 1989 (the Act).

14 On 5 March 2018, Cabinet agreed to the policy proposals for inclusion in the care standards regulations, and authorised me to issue drafting instructions to the Parliamentary Counsel Office [SWC-18-MIN-0010; CAB-18-MIN-0065 refer].

The Act now requires the making of regulations setting out standards of care

- 15 The care standards regulations must set out the key actions or steps the chief executive of Oranga Tamariki, their delegates, and section 396 care providers¹ are required to take to ensure that children and young people in care or custody under Part 2 (care and protection) or Part 4 (youth justice) of the Act receive an appropriate standard of care that is consistent with the principles of the Act.
- 16 Compliance with the care standards regulations will be the responsibility of the chief executive, their delegates and section 396 providers with custody of children and young people under the Act. Under the regulations, obligations cannot be placed on children's workers who are not delegates of the chief executive, caregivers or other agencies.
- 17 The Act places an explicit duty on the chief executive to comply with the care standards regulations.²
- 18 The Act requires the responsible Minister to appoint an agency or body independent of the department to monitor and report on compliance with the care standards regulations.³ The Minister must also regularly review the regulations.⁴
- 19 Section 447(1)(fa) of the Act requires the responsible Minister to recommend the making of regulations setting out standards of care within 12 months of the commencement of the provisions. This means I am required to recommend the regulations by 13 July 2018.

The care standards regulations form an important part of the new operating model for Oranga Tamariki

- 20 Figure 1 below sets out the five core functions of the new operating model for Oranga Tamariki. The care standards regulations will underpin the Care function, and will also have impacts on Youth Justice and Transitions functions.
- 21 The care standards regulations will provide a significant shift in the quality of care by setting minimum standards for the practice and support provided to children and young people in the care of the chief executive, and their caregivers.
- 22 The care standards regulations are not overly prescriptive and leave significant scope for operational decision-making as to how Oranga Tamariki can best meet the proposed requirements. 9(2)(f)(iv) Withheld under active consideration
These choices will provide opportunities for Ministers to shape services to support Government priorities, and shape the future of care within Oranga Tamariki.
- 23 9(2)(f)(iv) Withheld under active consideration

¹ Section 396 covers iwi, social, cultural or child and family support services (for example Barnardos, Open Home Foundation, Youth Horizons, Key Assets). While the majority of the care population are in the legal custody of the Ministry, there are also a small number of providers approved under section 396 who hold legal custody of children and young people (currently around 1 percent of children and young people in care are in the legal custody of section 396 providers). These organisations will be bound by the care standards regulations.

² Section 7(2)(bac). This provision will come into force on 1 July 2019 or at an earlier date appointed by Order in Council.

³ Section 447A. This provision will come into force on 1 July 2019 or at an earlier date appointed by Order in Council.

⁴ Section 447(2). This provision came into force on 14 July 2017.

9(2)(f)(iv) Withheld under active consideration

- 24 This will be one of the papers I intend to take to the Cabinet Social Wellbeing Committee on the future direction of Oranga Tamariki [SWC-18-MIN-0056 refers].

9(2)(f)(iv) Withheld under active consideration

These regulations will set clear expectations across the spectrum of the care experience

- 25 The care standards regulations outline the actions and steps that must be taken in order to ensure that children and young people in care receive safe, stable and loving care, have their needs met, and are supported. They provide a level of transparency and accountability for the care provided by Oranga Tamariki that has not previously existed within the New Zealand care system.
- 26 The care standards regulations cover the following aspects of care:
- 26.1. *Assessment, planning and monitoring to support children and young people in care.* High quality assessment, planning and monitoring of care arrangements is crucial to inform decision-making, and provides the focus for support and interventions for a child or young person. The care standards regulations support taking a holistic approach to understanding children and young people's full range of needs, and promote active engagement with children and young people by those working with them. They require that a needs assessment is undertaken and that a plan for the child or young person is developed,

maintained and reviewed, as well as requiring regular visits to monitor the child or young person's ongoing safety and well-being.

- 26.2. *Support to address children's and young people's needs.* The care standards regulations introduce requirements for the provision of support (including financial support or specialist services) to ensure that the full range of a child or young person's assessed needs are addressed. This includes support for establishing, maintaining and strengthening connections with whānau; culture, belonging and identity; play, recreation and community; education and training; health, and any other needs identified.
- 26.3. *Caregiver and care placement assessment and support.* Although caregiver approval, assessment and some training and support form part of current practice, this is not consistently provided. The care standards regulations set clear requirements around the assessment and support caregivers must receive, to help ensure that children and young people are cared for by people (including their whānau) who can meet their needs and provide a safe, stable and loving home, including in urgent placement situations.
- 26.4. *Supporting children and young people to express their views and contribute to their care experience.* Recent changes to the Act set out clear requirements for decision-makers to encourage and assist children and young people to participate in decisions being made about them. The care standards regulations will set out key actions to ensure that children and young people can understand and are heard in their care experience.
- 26.5. *Supporting children and young people during care transitions.* Care transitions include when a child or young person shifts placement, returns home, ages out of care or otherwise ceases to be in the care or custody of the chief executive. This can be an unsettling, stressful and confusing time for a child or young person. The care standards regulations set out requirements to ensure that transitions are carefully managed, in order to minimise disruption and support positive transitions.
- 26.6. *Monitoring and reporting on compliance.* The care standards regulations set some minimum requirements for the independent monitoring body appointed to monitor compliance with the regulations. This is to ensure a rigorous monitoring approach that provides insight into how well the care system is functioning, while allowing some flexibility to ensure that appropriate monitoring and reporting mechanisms can be developed to improve practice and support improved outcomes for children and young people. The care standards regulations also set requirements for the chief executive and other organisations with custody of children and young people to have internal systems in place for self-monitoring compliance.

27 It is critical that children and young people have greater clarity about what they can expect in care. To help achieve this, attached to the care standards regulations is a Statement of Rights which explains, in child-friendly language, what children and young people will be entitled to expect under the regulations. This is a new approach for regulatory drafting, which aims to make the regulations accessible for the people they affect. I expect further ways of ensuring children and young people have a clear understanding of their care will be developed as part of implementation of the care

standards regulations. This will take into account the different age, developmental, language and disability needs of children and young people in care.

Consideration of what interim independent monitoring arrangements may be required is underway

28 Under the Act, I am required to appoint an independent agency to monitor and report on compliance with the care standards regulations.

29 The Ministry of Social Development is undertaking a review of the independent oversight of children's issues and the Oranga Tamariki system, with final policy decisions expected to be sought from Cabinet **9(2)(f)(iv) Withheld under active consideration**

[Redacted]

30 **9(2)(f)(iv) Withheld under active consideration**

[Redacted]

Minor and consequential amendments

Transitional provisions

31 I have authority to make minor or technical policy changes required that are consistent with the policy proposals, in order to finalise the drafting of the care standards regulations [SWC-18-MIN-0010; CAB-18-MIN-0065 refer].

32 In line with this authority, I have included transitional provisions in Schedule 1 of the regulations, which set out how the care standards regulations will apply to children and young people already in care when the care standards regulations come into force on 1 July 2019. These transitional provisions clarify the process for assessments and plans for children and young people and caregivers to be brought up to compliance with the care standards regulations, ensuring they can be done on a rolling basis in line with individual review timeframes for children and young people's plans. In particular, the provisions set out:

32.1. a 12 month period to update children and young people's assessments and plans

32.2. a two year period to update caregiver approval and support plans, tied to the date when the caregiver was last approved.

Oranga Tamariki (Residential Care) Regulations 1996

33 I also have the authority to make minor and consequential amendments to the Oranga Tamariki (Residential Care) Regulations 1996 (the residential care regulations) to ensure both sets of regulations can be applied in a workable manner until a longer-term assessment of these regulations is completed [SWC-18-MIN-0010; CAB-18-MIN-0065 refer].

- 34 In line with this authority, some minor amendments have been made to the residential care regulations to ensure that relevant clauses of those regulations reference the relevant provisions of the care standards regulations. These amendments are reflected in the Oranga Tamariki (Residential Care) Amendment Regulations 2018.
- 35 Approval for any further changes required will be sought once the longer-term assessment of whether the residential care regulations are fit for purpose under the new operating model for Oranga Tamariki is completed [SWC-18-MIN-0010; CAB-18-MIN-0065 refer].

Timing and 28-day rule

- 36 Under the Act, I am required to recommend the making of care standards regulations by 13 July 2018.
- 37 Following Cabinet and Executive Council approval, I propose that both sets of regulations are notified in the *New Zealand Gazette* on 5 July 2018.
- 38 Cabinet has agreed that the regulations will come into force on 1 July 2019, to align with the commencement of other changes to the principal Act and to allow the Ministry and section 396 providers time to build their capacity and capability to meet the requirements [SWC-18-MIN-0010; CAB-18-MIN-0065 refer]. This timing aligns with the 28 day rule.

Compliance

- 39 The regulations comply with:
- 39.1. the principles of the Treaty of Waitangi
 - 39.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993
 - 39.3. the principles and guidelines set out in the Privacy Act 1993
 - 39.4. relevant international standards and obligations
 - 39.5. *the LAC Guidelines on the Process and Content of Legislation* (2014 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

- 40 There are no anticipated grounds for the Regulations Review Committee to draw the regulations to the attention of the House of Representatives under Standing Order 319.

Certification by Parliamentary Counsel

- 41 The Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018 and the Oranga Tamariki (Residential Care) Amendment Regulations 2018 have been certified by the Parliamentary Counsel Office (PCO) as being in order for submission to Cabinet.

Impact analysis

- 42 A Regulatory Impact Assessment was prepared by Oranga Tamariki in accordance with the necessary requirements. It was submitted at the time that Cabinet approval was

sought for the policy decisions relating to the care standards regulations [SWC-18-MIN-0010 refers].

Publicity

- 43 Public announcements about the regulations will be coordinated by the Office of the Minister for Children.
- 44 To align with the Government's commitment to the proactive release of Cabinet papers, I intend to release this paper after the regulations are notified in the *New Zealand Gazette*.

Consultation

- 45 This paper was prepared by Oranga Tamariki—Ministry for Children. The following agencies have been consulted: Ministry of Education, Ministry of Health, Ministry of Justice, Ministry for Pacific Peoples, Ministry of Social Development, Accident Compensation Corporation, Department of Corrections, New Zealand Police, Te Puni Kōkiri and the Treasury. The Department of the Prime Minister and Cabinet was also informed.
- 46 Cabinet agreed that as part of the drafting of the care standards regulations, consultation outside of the Crown take place on an exposure draft of the regulations with those who would be directly impacted by the regulations and those who have expertise in applying regulations [SWC-18-MIN-0010; CAB-18-MIN-0065 refer].
- 47 This consultation was undertaken with key stakeholders, including care-experienced young people, caregivers, approved care providers, iwi social services, Oranga Tamariki frontline staff and government agencies. Other relevant organisations such as the Office of the Children's Commissioner, Office of the Privacy Commissioner and the New Zealand Law Society were also consulted.
- 48 Feedback received on the care standards regulations was generally supportive, with many stakeholders indicating that the regulations as drafted reflect best practice and are clear and easy to understand. Drafting changes to reflect this feedback were made to improve clarity and to ensure the visibility of certain matters throughout the regulations, such as disability and the principles of mana tamaiti (tamariki), whakapapa and whanaungatanga.
- 49 To inform the development of the policy proposals, three rounds of consultation were undertaken with stakeholders in 2016 and 2017. This included children and young people, caregivers, social workers, approved care providers, iwi social services, relevant organisations and government agencies.

Recommendations

- 50 The Minister for Children recommends that the Cabinet Legislation Committee:
 - 1 **note** that the Oranga Tamariki Act 1989 (the Act), as amended by the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017, requires the responsible Minister to recommend the making of care standards regulations within 12 months of the commencement of the legislative amendment (this means they will need to be recommended by 13 July 2018)

- 2 **note** that the Act requires the regulations to prescribe the actions or steps that must be taken by the chief executive (and delegates) or organisations approved under section 396 of the Act to help ensure children and young people in care or custody under Part 2 or Part 4 of the Act, which deal with care and protection and youth justice respectively, receive an appropriate standard of care that is consistent with the principles of the Act
- 3 **note** that on 5 March 2018 Cabinet agreed to the policy proposals for inclusion in the care standards regulations, covering the following six areas: [SWC-18-MIN-0010; CAB-18-MIN-0065 refer]
 - 3.1. assessment, planning and monitoring to support children and young people in care
 - 3.2. support to address children’s and young people’s needs
 - 3.3. caregiver and care placement assessment and support
 - 3.4. supporting children and young people to have a greater voice in their care experience
 - 3.5. supporting children and young people during care transitions
 - 3.6. monitoring and reporting on compliance with the regulations
- 4 **note** that the Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018 will give effect to the decision referred to in recommendation 3 above
- 5 **note** that Cabinet authorised the Minister for Children to make:
 - 5.1. any minor or technical policy changes that are consistent with the policy proposals in order to finalise the drafting of the regulations
 - 5.2. any minor and consequential amendments to the Oranga Tamariki (Residential Care) Regulations 1996 to ensure both sets of regulations can be applied in a workable manner until a longer-term assessment of these regulations is completed [SWC-18-MIN-0010; CAB-M-18-MIN-0065 refer]
- 6 **note** that under the delegated authority described in recommendation 5 above, the Minister for Children has made minor and technical policy changes to finalise the drafting of the regulations, including transitional provisions which clarify how the regulations will apply to children and young people already in care when the regulations come into force, and minor amendments to the Oranga Tamariki (Residential Care) Regulations 1996
- 7 **note** that consultation on an exposure draft of the care standards regulations was undertaken with key stakeholders who will be directly impacted by the regulations and with those that have expertise in applying regulations, including young people, caregivers, approved care providers, iwi social services, Oranga Tamariki—Ministry for Children frontline staff, relevant organisations and government agencies

8 9(2)(f)(iv) Withheld under active consideration
[Redacted]

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[Redacted]

- 10 **authorise** the submission to the Executive Council of:
- 10.1. the Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018
 - 10.2. the Oranga Tamariki (Residential Care) Amendment Regulations 2018
- 11 **note** that these regulations will come into force on 1 July 2019.

Authorised for lodgement

Hon Tracey Martin
Minister for Children