

IN CONFIDENCE

Office of the Minister for Children

Chair, Cabinet Social Wellbeing Committee

## **ANCILLARY CHANGES TO REGULATIONS TO SUPPORT THE ORANGA TAMARIKI OPERATING MODEL**

### **Proposal**

- 1 This paper seeks:
  - 1.1 policy decisions on regulations relating to youth advocates and student allowances
  - 1.2 approval to issue instructions to the Parliamentary Counsel Office to draft these regulations as well as other minor and technical regulatory changes needed to support the operating model of Oranga Tamariki–Ministry for Children (Oranga Tamariki).

### **Regulatory changes are needed to support the new Oranga Tamariki operating model**

- 2 As outlined by the Child and Youth Wellbeing Strategy, the Government’s goal is to make New Zealand Aotearoa the best place in the world to be a child or young person.
- 3 To support this vision, Oranga Tamariki is continuing to implement its new operating model. This operating model provides support to children and young people in five core areas: early intervention, intensive intervention, care, youth justice, and transitions.
- 4 On 1 July 2019, significant legislative changes to the Oranga Tamariki Act 1989 (the Act) came into effect as a result of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 and the Oranga Tamariki Legislation Act 2019. Key changes include:
  - 4.1 new duties on the chief executive of Oranga Tamariki (the chief executive), intending to improve outcomes for Māori children and young people (including obligations in relation to te Tiriti o Waitangi under section 7AA)
  - 4.2 the youth justice system now includes most 17-year-olds
  - 4.3 most young people will now be supported by Oranga Tamariki to transition from care and youth justice to independence
  - 4.4 the Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018 (the National Care Standards) now set out key steps that

Oranga Tamariki and approved providers must follow to provide acceptable standards of care.

- 5 In October 2018, Cabinet noted Oranga Tamariki required significant investment to meet its legislative requirements taking effect by 1 July 2019 and to transform its core services [CAB-18-MIN-0544 refers]. In Budget 2019, we invested significantly in those core parts of the Oranga Tamariki operating model to make the necessary transformation of the care system and deliver on our high aspirations for our children and young people.
- 6 In parallel with our substantive work, Oranga Tamariki has identified some minor regulatory changes needed to support our new operating model. These changes will ensure recent legislative and regulatory changes, such as new youth justice and transition support provisions and the National Care Standards, are implemented in line with the legislative intent and wider Government objectives.
- 7 The required regulatory changes cover:
  - 7.1 making new regulations for the appointment and payment of youth advocates
  - 7.2 minor and technical amendments to the Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018
  - 7.3 exempting transition support payments from being considered income for the Student Allowances Regulations 1998
  - 7.4 exempting previous or current caregivers from the definition of parent in the Student Allowance Regulations 1998 to prevent care-experienced young people's Student Allowances entitlements from being affected by a caregiver's income
  - 7.5 consequential amendments to the Family Court Rules 2002 and the Oranga Tamariki Rules 1989, to reflect changes to the Act.
- 8 Most of these regulations were intended to be in place since 1 July 2019 and should therefore be made as soon as possible. Any risk created by the delay in these regulatory changes is being mitigated by operational guidance or existing practice.
- 9 This paper will sit alongside advice I am providing to Cabinet on enhancing the wellbeing of tamariki and rangatahi Māori who come to the attention of Oranga Tamariki, and the Oranga Tamariki oversight and reporting framework.

### **New regulations for the appointment and payment of youth advocates**

- 10 Youth advocates are lawyers that represent young people in relation to youth justice matters. Their appointment ensures legal representation for children and young people in youth justice proceedings.

- 11 The Youth Court only appoints youth advocates once the young person appears in court, and not in the early stages of youth justice matters, such as for family group conferences. The Youth Court does not appoint a youth advocate to represent a child or young person if they already have legal representation.
- 12 As of 1 July 2019, section 248A of the Act requires the chief executive of Oranga Tamariki to appoint youth advocates for some children and young people. This appointment is required if New Zealand Police indicate they intend to file charges against a child or young person for offending punishable by imprisonment of 10 years or longer.
- 13 This requirement on the chief executive is intended to ensure the child or young person has legal representation before they are charged and required to appear in the Youth Court in relation to serious offences.
- 14 Section 248A requires regulations to be made for the following:
- 14.1 the process for appointing youth advocates by the chief executive
  - 14.2 the amounts payable to youth advocates for their work.
- 15 Guidance for the appointment of youth advocates by the Youth Court is set out in legislation. The Act requires youth advocates appointed by the Youth Court to be:
- 15.1 suitably qualified to represent the child or young person by way of personality, cultural background, training, and experience<sup>1</sup>
  - 15.2 where possible, re-appointed to the same child or young person they have previously represented.<sup>2</sup>
- 16 The amounts payable to youth advocates appointed by the Youth Court should also be set out in regulations, as is required for youth advocates appointed by the chief executive.<sup>3</sup> However, no such regulations have been made to date. Instead, the amounts payable to youth advocates appointed by the Youth Court have been operationally set by the Ministry of Justice. These payments cover an hourly rate and reimbursements for travel expenses incurred in their work.

*I propose aligning the regulations for the appointment and payment of youth advocates with existing legislation and practice*

- 17 To ensure young people are provided with one cohesive system of legal representation, I propose to align these new regulations with the existing system for youth advocates appointed by the Youth Court. This alignment will:

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<sup>1</sup> Under section 323(2) of the Act.

<sup>2</sup> Under section 323(3) of the Act.

<sup>3</sup> Under s325(1) and s248A(3) of the Act, payments to youth advocates appointed by the Youth Court and the chief executive, respectively, must be made in accordance with regulations made under the Act.

- 17.1 maintain the quality of legal representation ensured by the appointment process currently in place for court-appointed youth advocates
  - 17.2 require minimal additional administration
  - 17.3 ensure transparency in the payment of youth advocates.
- 18 Policy decisions are required to align these new regulations with the existing system for youth advocates appointed by the Youth Court. I propose to:
- 18.1 align the process for appointing youth advocates by the chief executive with the process for appointing youth advocates by the Youth Court
  - 18.2 prescribe an hourly rate of pay for all youth advocates, based on the current rate of pay used operationally by the Ministry of Justice<sup>4</sup>
  - 18.3 prescribe disbursements payable for youth advocates' travel costs incurred in their work, based on the disbursements payable for lawyers doing Legal Aid work.<sup>5</sup>
- 19 Setting the amounts payable to youth advocates in regulations means they will require regulatory change to adjust them in future. Changes to these amounts will therefore be less flexible than currently, as they are operationally set. However, prescribing these regulations will ensure practice around payments to youth advocates is consistent and transparent.

### **Minor and technical amendments to the Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018**

- 20 The National Care Standards came into force on 1 July 2019. These regulations set out the key actions or steps that the chief executive, their delegates, and section 396 providers<sup>6</sup> 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 base standard of care, consistent with the principles of the Act.
- 21 During the implementation of the National Care Standards, some minor and technical drafting matters have been identified. These need to be corrected to ensure the National Care Standards can be implemented in line with the original policy intent as previously agreed to by Cabinet on 5 March 2018 [SWC-18-MIN-0010; CAB-18-MIN-0065 refer].
- 22 I therefore propose the following minor and technical amendments to the National Care Standards, the details of which are set out in Appendix 1:

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<sup>4</sup> \$158.45 per hour incl GST.

<sup>5</sup> \$72.45 per hour incl. GST; 79c per km

<sup>6</sup> Section 396 covers iwi, social, cultural, or child and family support services (for example Barnardos, Open Home Foundation, Youth Horizons, Key Assets). Although the majority of the care population are in the legal custody of Oranga Tamariki, there are also a small number of providers who hold legal custody of children and young people.

- 22.1 ensuring that marae is referred to consistently across regulations relating to identifying, planning and supporting connections with culture and identity and family, whānau, hapū, iwi, and family group
- 22.2 ensuring that the National Care Standards are consistent with the Education Act 1989 by inserting references to all relevant enrolment exemptions under that Act
- 22.3 clarifying the scope of a search of Oranga Tamariki records required as part of suitability checks of prospective caregivers
- 22.4 clarifying the information that must be taken into account in a risk assessment as part of the overall assessment of prospective caregivers
- 22.5 ensuring that the term 'care transition' for the purposes of Part 5 of the regulations includes residence to residence transfers.

23 Because these are minor and technical changes consistent with the previously approved policy decisions, new policy decisions from Cabinet are not required for these amendments [SWC-18-MIN-0010; CAB-18-MIN-0065 refer].

### **Exempting transition support payments from being considered income for the Student Allowances Regulations 1998**

24 The recent changes to the Act now provide for various financial payments to help young people transition from care or youth justice to independent adulthood. These payments are made under the new Oranga Tamariki operating model's transitions function to ensure children and young people make successful transitions out of care or youth justice.

25 These payments are exempted from being considered income for calculating welfare assistance. However, there is no similar income exemption for the purpose of eligibility and entitlement to student allowances.

26 To ensure young people can access their entitlement to financial support for study and avoid any perverse disincentives, I propose exempting transition support payments from being considered income for eligibility and entitlement to student allowances.

### **Amending the definition of parent in the Student Allowances Regulations 1998 so young people's entitlements are not affected by a caregiver's income**

27 I propose to amend the Student Allowances Regulations 1998 so a care-experienced young person does not have their Student Allowance affected because a previous or current caregiver is considered to be acting in the place of a 'parent'.<sup>7</sup>

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<sup>7</sup> Previous or current caregivers are people who:

- have been supported to care for a child who is not their own through either the Foster Care Allowance (for state care) or the Orphan's Benefit or Unsupported Child's Benefit (for care arrangements supported through the welfare system)

- 28 Students under the age of 24 (without children) are subject to a parental income test as part of their Student Allowance application (Regulation 4, Student Allowances Regulations 1998). The definition of who is considered to be a 'parent' is broad, and discretionary, encompassing "any person acting in place of a parent" (Regulation 2, Student Allowances Regulations 1998). Current operational policy guidance is also broad and considers a person is acting as a parent if they are responsible for the student's wellbeing and financial support.
- 29 At present, young people who were in state-funded care can face a parental income test based on the income of a previous or current caregiver, if the caregiver is considered to be acting as a 'parent' by providing emotional and financial support to a young person. Consequently, some of these young people have their Student Allowance entitlements income-tested against a caregiver's income. The net effect is that some young people receive a lower or nil rate of Student Allowance and self-fund their education through a Student Loan. The situation increases financial stress for care-experienced young people who want to continue to study.
- 30 Recent decisions of the Student Allowance Appeal Authority have highlighted the problem. In one case, the Authority found the provision of financial, not emotional, support is the key factor in determining if a caregiver is acting in the place of a parent. The Authority found that the student was entitled to Student Allowance because their prior caregivers had never been legal guardians or responsible for supporting them financially and recommended that operational policy guidance be amended (so financial support is the key factor considered).<sup>8</sup>
- 31 I understand changes to operational policy guidance are being developed to address the Authority's recent decisions. This will increase entitlements for some of the affected group, but some will still miss out.
- 32 The issue results from a misalignment in the underlying policy settings. In the care and welfare systems, caregivers are not financially responsible for a child or young person in their care. In the education system, caregivers can be considered financially responsible.
- 33 To align the policy settings, and reduce financial stress for all care-experienced young people who want to continue to study, I propose to amend the Student Allowances Regulations 1998 to exempt state-funded or transition caregivers from being considered to be acting in the place of a 'parent'.
- 34 To ensure care-experienced young people can benefit from these changes in time for the 2020 study year, these changes will need to be in effect before the end of 2019. To ensure this deadline is met, I will seek Cabinet agreement to exempt these changes to the Student Allowances Regulations from the 28-day rule at the same time I am seeking

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- are providing, or have provided, a living arrangement for a care-experienced young person facilitated through the transition support services under section 386AAD of the Act.

<sup>8</sup> Refer decision No. [2019] NZSAAA 1.

approval of the changes.<sup>9</sup> I consider this exemption is appropriate under the Cabinet manual as the changes only confer benefits to the public. There are several risks if the changes are not in effect before the end of this year:

- 34.1 Students could be left in financial hardship. February is StudyLink's busiest time of year and if regulatory changes come into effect in early 2019, they will need to reassess all applications where a former caregivers' income was included. This could have a flow-on impact across the unit and lead to delays in the processing of applications and changes in circumstances.
- 34.2 Up to 250 young people would be positively affected by these regulatory changes as it will make their tertiary education more affordable. Without the changes, the young people may only be eligible for Student Loans. This may pose a barrier for some young people to undertaking further education.

### **Amendments to the Family Court Rules 2002 and the Oranga Tamariki Rules 1989 to reflect changes to the Act**

35 The Family Court Rules 2002 and the Oranga Tamariki Rules 1980 are regulatory instruments, which regulate the practice and procedure of the Youth Court and the Family Court. Some technical changes are needed to ensure both sets of Rules are consistent with changes to the Act. These changes will:

- 35.1 amend the Family Court Rules 2002 to bring them into line with amendments to the Act that took effect on 1 July 2019.
- 35.2 amend the Oranga Tamariki Rules 1989 to bring them into line with amendments to the Act. For example, replacing references to Child, Youth and Family Services with its new name, Oranga Tamariki–Ministry for Children.
- 35.3 revise the names of the forms listed in the schedules to both sets of the Rules to reflect the Ministry's new name, Oranga Tamariki–Ministry for Children.

36 As the agency responsible for the administration of the Family Court Rules 2002, the Ministry of Justice has been consulted and supports the required changes. Oranga Tamariki will continue to engage with them as the regulatory changes are drafted.

### **Consultation**

37 The following agencies were consulted in the preparation of this paper: the Ministries of Justice, Education, Social Development and Health; New Zealand Police, the Department of Corrections, Te Arawhiti, Te Puni Kōkiri, the Office for Disability Issues, the Treasury, and the Department of Prime Minister and Cabinet.

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<sup>9</sup> Under the 28-day rule, changes to regulations only come into effect 28 days after they are notified in the Gazette.

38 Youth advocates and the New Zealand Law Society were also consulted on the approach to developing the regulations for youth advocates.

### **Treaty of Waitangi principles**

39 I consider these regulatory proposals do not appear to be inconsistent with the principles of te Tiriti o Waitangi.

40 Ensuring that Māori communities have ongoing input into Oranga Tamariki work is important. I have provided a separate paper to Cabinet outlining in more detail a two-stage process for setting specific and measurable outcomes for tamariki and rangatahi Māori, and developing strategic partnerships with iwi and Māori organisations. This will require significant engagement with whānau, hapū and iwi over the next 8-10 months and I expect this to feed into the implementation of the Oranga Tamariki operating model as well as wider social sector work.

### **Financial Implications**

41 There are minimal financial implications for the proposals in this paper. The proposal to exempt caregivers from being considered to be acting in the place of a 'parent' for the purposes of eligibility for Student Allowances is estimated to cost \$1.1 million over four years, which the Treasury have confirmed can be met through baseline funding.

42 Regulations for youth advocates will prescribe the rates of amounts payable to youth advocates but these rates are already used operationally.

### **Legislative Implications**

43 New regulations and regulatory changes are required to implement the proposals in this paper. Drafting instructions will be issued to the Parliamentary Counsel Office based on Cabinet decisions. I seek delegated authority, in consultation with relevant Ministers, to make decisions on minor or technical policy changes that are not inconsistent with the policies agreed in this paper to finalise the drafting of the regulations.

### **Impact Analysis**

44 The Treasury Regulatory Quality Team has determined that the decisions sought in this paper are exempt from the Regulatory Impact Analysis requirements on the basis of no or minor impacts on businesses, individuals or not-for-profit entities.

### **Human Rights**

45 The proposals in this paper appear to be consistent with the rights and freedoms contained in the New Zealand Bill of Rights Act 1990, and our international human rights obligations.

### **Gender Implications**

46 The proposals in this paper are intended to support the Oranga Tamariki operating model and contribute to improved outcomes for children and young people that are in



the care or custody of the chief executive, young people who have left care and are transitioning to independence, and young people who have been cared for through the Orphan's Benefit or Unsupported Child's Benefit.

47 Boys and young men are disproportionately represented in the youth justice system and slightly overrepresented in care, and may therefore benefit from the proposals. The proposals for youth advocates' regulations aim to ensure children and young people in the youth justice system receive robust legal advice through one cohesive system.

48 Women are more likely than men to be the primary caregivers for children and young people. Therefore, the proposals aiming to ensure National Care Standards meet their original policy intent may benefit women and their whānau.

### **Disability Perspective**

49 The proposals in this paper will support the Oranga Tamariki operating model and will therefore apply to all children and young people Oranga Tamariki works with, including those with disabilities. There is an over-representation of disabled children and young people in the care and youth justice systems. Children and young people who are abused are at a higher risk of acquiring a disability, and disabled children and young people are at a higher risk of being abused and neglected.

50 It is difficult to determine exactly how many of the children and young people Oranga Tamariki works with are disabled because this information is not captured consistently. However, the Ministry of Health estimates approximately 50 percent of tamariki and rangatahi in care will have a neuro-developmental or mental health need, which, in many cases, adversely affects their wellbeing and behaviour.

51 The proposals in this paper contribute to giving effect to the United Nations Convention on the Rights of Persons with Disabilities, in particular Article 13 (Access to justice) and Article 16 (Freedom from exploitation, violence and abuse).

### **Publicity**

52 No public announcement for this paper's proposals is proposed. Once the drafted regulatory changes have been approved by the Legislation Cabinet Committee, they will be published in the Gazette.

### **Proactive Release**

53 I propose to delay this paper's release until the subsequent Cabinet paper seeking approval of the drafted regulatory changes has been considered by the Legislation Cabinet Committee. I propose to then release both papers within 30 business days. The decisions of the papers will be publicly known regardless as the regulatory changes will need to be published in the Gazette.

## Recommendations

54 The Minister for Children recommends that the Committee:

- 1 **note** on 1 July 2019, significant legislative changes to the Oranga Tamariki Act 1989 came into effect
- 2 **note** Oranga Tamariki–Ministry for Children (Oranga Tamariki) is continuing to implement its new operating model which aims to improve the outcomes of children and young people
- 3 **note** during this implementation, Oranga Tamariki has identified some ancillary changes to regulations needed to support its operating model in five areas:
  - 3.1 making new regulations for the appointment and payment of youth advocates
  - 3.2 making minor and technical amendments to the Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018
  - 3.3 exempting transition support payments from being considered income for the Student Allowances Regulations 1998
  - 3.4 adjusting the definition of ‘parent’ in the Student Allowances Regulations 1998 to exempt previous or current caregivers from being considered to be ‘acting in the place of a parent’ to prevent young people’s Student Allowance entitlements from being affected by their caregiver’s income
  - 3.5 consequential amendments to the Family Court Rules 2002 and the Oranga Tamariki Rules 1989, to reflect changes to the Oranga Tamariki Act 1989

### ***Youth advocates***

- 4 **note** recent changes to the Oranga Tamariki Act 1989 require the chief executive of Oranga Tamariki to appoint youth advocates to represent some children and young people, where New Zealand Police have indicated an intention to file charges in relation to offending punishable by imprisonment of 10 years or longer
- 5 **note** regulations are required to prescribe the process for the appointment of youth advocates by the chief executive of Oranga Tamariki
- 6 **agree** to align the process for the appointment of youth advocates by the chief executive of Oranga Tamariki with the process for the appointment of youth advocates by the Youth Court, specifically:
  - 6.1 that youth advocates appointed by the chief executive of Oranga Tamariki to represent a child or young person will be required to be suitably qualified to represent the child or young person by way of personality, cultural background, training, and experience

- 6.2 that, where possible, youth advocates be re-appointed to the same young person they have represented in previous youth justice matters
- 7 **note** regulations are required to prescribe the amounts payable to youth advocates appointed by both the chief executive of Oranga Tamariki and the Youth Court
- 8 **note** prescribing amounts payable to youth advocates in regulations will not have any financial impact as they are already used operationally
- 9 **note** prescribing amounts payable to youth advocates in regulations will mean these amounts are less flexible to change but the payment of youth advocates will be more consistent and transparent
- 10 **agree** to set an hourly rate of pay for youth advocates, at the same rate as the current rate of pay for youth advocates used operationally
- 11 **agree** to prescribe travel costs as the only disbursement payable to youth advocates, at the same rate as for lawyers doing Legal Aid work

### ***National Care Standards***

- 12 **note** minor and technical amendments are required to the Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018 to ensure the regulations are able to be implemented in line with the original policy intent
- 13 **note** new policy decisions are not required for these amendments as they are consistent with the previous policy decisions agreed to by Cabinet on 5 March 2018 [SWC-18-MIN-0010; CAB-18-MIN-0065 refer]
- 14 **agree** amendments to the Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018 will be made to:
- 14.1 ensure that marae is referred to consistently across regulations relating to identifying, planning and supporting connections with culture and identity and family, whānau, hapū, iwi and family group
- 14.2 ensure that requirements set out the chief executive's responsibilities for ensuring children and young people are enrolled in school are consistent with the Education Act 1989 by inserting references to relevant enrolment exemptions under that Act into the regulations
- 14.3 clarify the scope of a search of Oranga Tamariki records required as part of suitability checks of prospective caregivers
- 14.4 clarify the information that must be taken into account in a risk assessment as part of the overall assessment of prospective caregivers
- 14.5 specify that the term 'care transition' for the purposes of Part 5 of the regulations includes transfers from one residence to another

### ***Treatment of Transition Support Payments for Student Allowances***

- 15 **note** transition support payments made by Oranga Tamariki are exempt from being considered as income for calculating benefit assistance but there is no similar income exemption for the purpose of eligibility and entitlement to student allowances
- 16 **agree** to amend the Student Allowances Regulations 1998 to exempt payments from the transition support system from being considered income for eligibility and entitlement to student allowances

### ***Treatment of caregiver income for Student Allowances***

- 17 **note** that young people who were in state-funded care can receive a lower or no Student Allowance based on income-testing of their previous state-funded caregiver or current transition support caregiver
- 18 **note** that young people's previous or current caregivers are those who:
- 18.1 have been supported to care for a child who is not their own through either the Foster Care Allowance (for state care) or the Orphan's Benefit or Unsupported Child's Benefit (for care arrangements supported through the welfare system)
  - 18.2 are providing, or have provided, a living arrangement for a care-experienced young person facilitated through the transition support services under section 386AAD of the Oranga Tamariki Act 1989
- 19 **agree** to amend the Student Allowances Regulations 1998 so that these caregivers are exempt from the definition of 'parent' so that their income does not affect a young person's entitlement to Student Allowance
- 20 **note** that an exemption from the 28-day rule will be sought for the changes to the Student Allowances Regulations 1998 to ensure care-experienced young people can fully benefit from them in time for the 2020 study year

### ***Family Court Rules 2002 and Oranga Tamariki Rules 1989***

- 21 **agree** to amend the Family Court Rules 2002 and Oranga Tamariki Rules 1989 to ensure consistency with recent legislative changes made to the Oranga Tamariki Act 1989

### **Next steps**

- 22 **invite** the Minister for Children to issue drafting instructions to the Parliamentary Counsel Office to draft regulations, to give effect to Cabinet decisions on the recommendations in this paper
- 23 **authorise** the Minister for Children, in consultation with Ministers responsible for relevant regulations, to make any minor or technical policy changes that are not

inconsistent with the policies agreed in this paper to finalise the drafting of the regulations.

Authorised for lodgement

Hon Tracey Martin  
Minister for Children

## Appendix 1: Table of amendments to the National Care Standards

This table sets out the proposed minor and technical amendments to the Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018. These are intended to ensure that the regulations can be implemented in line with the original policy intent as agreed by Cabinet on 5 March 2018 [SWC-18-MIN-0010; CAB-18-MIN-0065 refer].

Regulation	Drafting change	Rationale
<b>Parts 1 and 2 Support to establish, maintain and improve whānau connections</b>	Inserting the word 'marae' into relevant regulations	This change is to ensure that connections to marae are appropriately referenced in the relevant regulations that involve identification, planning and support for connections to culture and identity and family, whānau, hapū, iwi and family group.
<b>37 – 42 Education provisions for children aged 5 years, aged 6 to 15 years, and aged over 16 years</b>	Inserting references to exemptions from enrolment under the relevant sections of the Education Act 1989 into the regulations that govern the chief executive's obligations to ensure children and young people are enrolled in school (regulations 37-39)	<p>Currently, regulation 38 requires the chief executive to ensure children and young people aged 6 to 15 are enrolled in a registered school. This is consistent with section 20 of the Education Act 1989 which requires children of in this age group to be enrolled at a registered school.</p> <p>The Education Act 1989 also provides for several situations where an exemption from enrolment may be obtained, set out in sections 21-22A of that Act. These exemptions are currently not referenced in the regulations which govern enrolment.</p> <p>The original policy intent was to ensure that children and young people are enrolled in an "appropriate educational institution" [SWC-18-MIN-0010; CAB-18-MIN-0065 refer]. The definition of 'education provider' for the purposes of regulation 42 includes people providing home-schooling under an exemption from enrolment under section 21 of the Education Act 1989. This demonstrates that the regulations were not intended to take a more restrictive approach than the Education Act 1989 by requiring mandatory enrolment in a registered school with no exemptions.</p> <p>Amendments are therefore proposed to bring the regulations in line with the Education Act 1989 to ensure that children and young people in care or custody can be exempt from enrolment in a registered school if this is done in accordance with an exemption under the Education Act 1989.</p>
<b>54 Other information</b>	Amendment to clarify that the search of Oranga Tamariki records for information on a prospective caregiver is confined to relevant records	Regulation 54 sets out some of the information that the chief executive and section 396 providers must collect when assessing the suitability of a prospective caregiver. One of the requirements is to ensure that "a search is undertaken of the records held by Oranga Tamariki for information about the person".

		<p>The current wording could be interpreted to apply to <b>all</b> records held by Oranga Tamariki, rather than the specific records that are likely to contain relevant information if the caregiver is in the Oranga Tamariki system. Requiring a search of all records would create an unduly onerous process.</p> <p>This amendment is intended to clarify that this search is intended to apply to relevant records only.</p>
<p><b>55 Risk assessment</b></p>	<p>Amendment to clarify that <b>all</b> information gathered in the caregiver suitability check process outlined in regulation 48 should be taken into account in undertaking a risk assessment</p>	<p>Regulation 48(1) sets out the steps that must be taken in carrying out a suitability check as part of the broader caregiver assessment and approval process.</p> <p>One of these steps is a risk assessment. Currently, regulation 55 states that the chief executive must ensure that a Police vetting undertaken under regulation 53 is taken into account in this risk assessment. It does not require the risk assessment to consider identity confirmation under regulation 52 or other information under regulation 54, both of which are steps listed as part of the suitability check under regulation 48. Operational practice would be to consider all of these matters in the risk assessment, not just the Police vetting.</p> <p>This amendment will therefore clarify that the identity confirmation in regulation 52 and the other information gathered under regulation 54 must also be taken into account in any risk assessment undertaken under regulation 55.</p>
<p><b>71 Supporting children and young persons during care transitions (application)</b></p>	<p>Amending 71(1)(a) to insert residence to residence transfers into the list of processes that are considered care transitions for the purposes of Part 5</p>	<p>Regulation 71 sets out the situations in which the obligations in Part 5, which relate to care transitions, apply.</p> <p>The Cabinet paper setting out the policy proposals for the National Care Standards described care transitions as situations “when a child or young person comes into care, shifts placement, or returns home” [SWC-18-MIN-0010; CAB-18-MIN-0065 refer]. Regulation 71 describes several different types of placement changes, but does not include situations where a child or young person is moved from one residence to another.</p> <p>This amendment is therefore intended to ensure that these types of placement change are included in the definition of ‘care transition’ for the purposes of Part 5.</p>