

Residential Care Settings

Background

For some tamariki and whānau, there are periods of time when the support needs of the tamaiti escalate to a point where an in-home whānau or caregiver environment is not suitable to manage their complex support needs, and so a stay in residential care may be required, due to a variety of reasons including:

- challenging behaviour
- complex care needs
- aspects relating to offending

Oranga Tamariki is continuing to evolve how residential care is delivered, including changes to the physical environment, with an associated practice shift founded in Te Ao Māori principles of oranga and relational, therapeutic and trauma-informed care.

To deliver this strategy, Oranga Tamariki is:

- working with our partners to develop a cohesive and integrated care continuum
- building new homes to broaden the range of residential care options
- transitioning out of the current care and protection residences and moving toward smaller, more therapeutic, less institutional settings
- developing a new model that enables tailored care for tamariki with high and complex needs.

Amendments to the Act need to align with and support these strategic changes.

Draft problem

Certain powers under the Act (such as to search, use of secure care, discipline, use of force) and the entirety of the Oranga Tamariki (Residential Care) Regulations 1996 apply only to the residences 'established' under s 364 of the Act.

A further approx. 80+ out-of-home care options (remand homes, specialist group homes, supervised group homes, High & Complex individual care response, specialist disability residential homes, and group family homes) currently exist to which those specific residential care provisions and powers in the Act and the Residential Care Regulations do not apply.

(Note that these the Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018 do apply to children and young persons who is in the care, custody or sole guardianship of the chief executive of Oranga Tamariki, an iwi social service, a cultural social service or the director of a child and family support service, who reside in one of these out-of-home care options.)

Draft objectives

To ensure we have the legislative and regulatory settings right to support best practice residential care in the future. To support:

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- practice and strategic shifts and promote child-centred, te āo Māori, trauma- and disability-informed, mana enhancing care as close to and inclusive of whānau as possible
 - the transition out of current care and protection residences to smaller, more therapeutic, less institutional settings
 - working with our partners to develop a cohesive and integrated care continuum involving new and existing services, including building new community homes

To provide greater clarity on:

- which types of residential care are regulated;
- what powers can be used where;
- what rights the children and young people have in these environments; and
- who is responsible and accountable.

Considerations

That any changes reflect:

- The purposes and principles of the Act.
- The duties under s 7AA, including that the policies, practices, and services of Oranga Tamariki have regard to whakapapa, mana tamaiti and whanaungatanga responsibilities.

Draft issues

- Which types of residential environments should be subject to specific residential care regulations?
 - Which powers are needed in residential care?
 - Should these powers be applied consistently across all types of residential care?

(Working assumption that intensive, paid or rostered 24/7 care will be within scope and those that are more home-like, i.e. Family Homes should be out of scope.)
- Should there be varying or graduated regulations and thresholds for use of powers across varying types of residences or varying levels of need?
 - between Care & Protection and Youth Justice environments?
 - between those residences which are—
 - currently established s364 residences
 - for young people with high and complex needs which may have features and practices that may restrict freedoms
 - all other homes or residences where care is currently provided.
- What thresholds are needed to ensure powers are proportionate to the needs and characteristics of young people?

- Regulations linked to the physical location?
- Regulations linked to the young person's behaviour, needs, and/or risk profile for offending?
- Regulations linked to the staff roles & functions (e.g. levels of qualifications & training)?
- A mix of the above? (e.g. For complex & challenging young people cared for by kaimahi with specialist training in the therapeutic approach matched to the purpose and risk of the specific residence.)
- What are the appropriate accountability mechanisms that are needed to ensure that when powers or restrictions are exercised, that appropriate corresponding system responses are engaged?
- How best to ensure the framework is founded in an overarching principled approach, and is able to be translated at local/ partner level?
- How should the new framework be reflected in legislation and regulations? Do the Act, the Residential Care Regulations and the National Care Standards be amended, retained or repealed to reflect the proposed regulation of residential care?

Current legislation

1. The definition of residence in s2 of the Act currently covers a broad description of types of residential care “any residential centre, family home, group home, foster home, family resource centre, or other premises or place, approved or recognised for the time being by the chief executive as a place of care or treatment for the purposes of this Act.” It also clarifies that a residence need not be administered by the Crown. Prisons, hospitals and facilities under the IDCCR legislations are expressly excluded.
 2. Various sections in the youth justice part of the Act (Part 4) envisage the chief executive taking responsibility for youth who are waiting for a hearing, or who have been arrested, or who are on bail, or who are serving their sentences. There are four residences set up under s364 to provide secure care for youth justice and there are other remand homes that currently exist where children and young persons can be placed on remand pending court appearances.
 3. Section 364 of the Act authorises the chief executive to “establish and maintain” residences with the approval of the Minister. It allows for residences to be ‘established’ for “the purpose of providing for the care and control of children and young persons”. The provision is flexible in terms of the number, type and range of residences that can be established and maintained.
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