Note: The Minister for Children has not received any advice, nor made any decisions regarding the draft policy proposals in this paper. These proposals do not represent Government policy and should be treated solely as ideas for feedback. They are preliminary proposals that are under review and may change.

Improving information sharing with iwi and Māori partners and providers

Background

In July 2019, changes to the information sharing provisions of the Oranga Tamariki Act came into effect (see Annex A for a summary). The new provisions were designed to enable more timely and consistent information sharing between a wider group of agencies and organisations involved in the lives of children and whānau, for the purposes of promoting the safety and wellbeing of children.

At the same time, section 7AA came into force, which outlined the duties of the chief executive in relation to the Treaty of Waitangi / te Tiriti o Waitangi. Section 7AA(2)(c)(iii) provides a duty on the Chief Executive that the department seek to develop strategic partnerships with iwi and Māori organisations, including to "enable the robust, regular, and genuine exchange of information between the department and those organisations."

In August 2021, the Minister for Children agreed that officials undertake work to understand whether any changes to the information sharing provisions were needed to meet the section 7AA obligations and aspirations (noting that s7AA did not in itself empower the sharing of personal information). This was based on concerns that legislative constraints and / or operational issues were preventing the intended exchange of information with iwi and Māori partners.

At the same time, the Ministerial Advisory Board (MAB) made two similar recommendations related to information sharing in their report, *Te Kahu Aroha* –

> That Oranga Tamariki builds its ability to be responsive to partners and to community requests for the information needed in order to know what support whānau require and what resourcing will be required to support provision of this for as long as success takes.[1]
>
> Information sharing should be improved, taking into account the purpose and enabling functions of the Privacy Act 2020. This could include Oranga Tamariki and the Office of the Privacy Commissioner working together to ensure that Oranga Tamariki designs a future-proofed tikanga approach to sharing information with hapū, iwi, Māori collectives, and communities.[2]

Against this background, officials undertook work to:

- understand the barriers and enablers to information sharing with iwi and Māori partners and providers
- determine whether changes to the information sharing provisions were required in order to improve information sharing.

[1] Recommendation 6
[2] Recommendation 25

Summary of feedback / submissions received to date

In working through these questions, we spoke with iwi and Māori partners and providers, Oranga Tamariki relationship managers, regional / site managers and frontline staff, and other government agencies carrying out similar work. We also received a range of written submissions.

Broadly speaking, submitters agreed that there is much room for improvement in the way that Oranga Tamariki collects, uses and shares information with its iwi and Māori partners. Many commented on the inconsistency of current information flows, noting related concerns about the detrimental impact of this on children and young people. There was consistent agreement regarding the importance of the work and timeliness of the current review.

There was broad support for consideration to be given to understanding how tikanga-Māori can inform a nuanced approach to information sharing. This was seen to be particularly important in building the necessary cultural competence to support improved information sharing and in breaking down cultural bias as a key barrier to current information flows. However, iwi and Māori partners and providers tended to caution the Crown not to overstep or adopt a tikanga lens that it did not fully understand.

A number of providers felt ill-informed in understanding their legislative rights to ask for and receive relevant information. Similar concerns were heard from the front-line in terms of a lack of awareness of what can be shared with whom.

Looking ahead, partners and providers called for better and more equal access to information – "if you trust us to care for children, you need to trust us with their information."

Purpose

This document provides a summary of the issues and potential options for change, and is intended to support further consultation. We welcome your feedback on any of the issues and options described within. You can email us at legislation@ot.govt.nz.

Making the case for change

Strategic context

The Oranga Tamariki Future Direction Plan (FDP) and *Te Kahu Aroha* set out a clear expectation that Oranga Tamariki move towards:

- greater partnership with hapū, iwi and Māori organisations
- community-led prevention strategies
- collaborative decision-making
- proactive and robust data, research and information flows
- a de-centralised operating model under the banner of 'community led, regionally enabled, and nationally supported'.

As we shift collectively towards this vision, effective information exchange will become paramount, particularly as partners, providers, and communities increasingly take on key functions under the Oranga Tamariki Act. A future in which partners increasingly take the lead is one in which Oranga Tamariki will

no longer be the primary agency for the collection and dissemination of information, meaning that information needs to flow freely between all agencies operating in the sector. We need to ensure the appropriate legal frameworks are in place to support this shift.

In the context of caring for children and young people, having access to the right information is fundamental. It can support the development of accurate assessments of risks and needs, and ensure that early and appropriate supports and interventions are offered to tamariki and whānau by the right organisations and at the right time. Its importance cannot be overstated – as one iwi partner described, "withholding information can be dangerous".

Problem definition

Our iwi and Māori partners have told us that they don't always have access to the information they need to ensure the safety and wellbeing of tamariki Māori. For example, information to enable appropriate placement decisions or sufficient medical history to ensure child safety.

We know that some iwi and Māori partners have had legitimate information requests denied; others have waded through slow and cumbersome bureaucratic processes to obtain information; and others still are not aware of the information held by Oranga Tamariki that may be of vital importance to their ability to support tamariki and whānau. This includes both individualised identifiable information about specific tamariki and whānau, as well as aggregate data sets relating to specific iwi.

This is problematic for a range of reasons, including because:

- whakapapa information, personal information and Māori whānau are a taonga protected under Te Tiriti – Te Tiriti recognises Māori tino rangatiratanga over these taonga
- a lack of information can prevent iwi and Māori partners from making informed strategic decisions and ensuring tailored support is available for tamariki / whānau who need it
- any barriers to information flow undermine the strategic shift towards partners taking a greater lead in providing services.

Barriers to information sharing with iwi / Māori

In response to these issues, the MAB challenged Oranga Tamariki to clarify the perceived and / or real barriers to information sharing with iwi and Māori partners. We also set out to determine the significance of any potential legislative barriers in preventing information flow.

We found there were a range of interconnected issues that may prevent effective information flow with iwi and Māori partners – both legislative and non-legislative.

Many of the non-legislative barriers described to us were operational in nature and indicative of broader trends across the agency. Stakeholders described barriers such as perceived cultural bias, a lack of confidence in implementing tikanga and te ao Māori-informed practice, and uncertainties regarding the agency's evolving operating model and its impact on partners' current and future roles and responsibilities. Many of these barriers are being addressed by new or existing work programmes, such as Te Hāpai Ō – the agency's cultural capability framework, or the work to implement a Māori-centred practice approach. More specific data and information projects seeking to address other discrete barriers are also underway, such as work to improve the quality of information collected by Oranga Tamariki.

Legislative barriers – our primary focus – were also identified. We found that the changes that were introduced to the information sharing provisions in 2019 had not adequately considered the impact on iwi and Māori partners. Because of this, we found issues with their applicability and framing more generally, and, in some specific cases, legal limitations. Issues included:

- some iwi and Māori partners fall outside the legal definition of a 'child welfare and protection agency', which means that the provisions do not apply – this includes groups such as hapū and marae, as well as some strategic partners[3]
- the provisions do not reflect or indicate the importance of sharing information with iwi and Māori nor provide dedicated direction for doing so – as noted in the Waitangi Tribunal Report (WAI2915), "when the legislation does not specifically name hapū and Iwi, there is the possibility that frontline practitioners across Crown agencies do not always consider them"
- the purposes for which information can be shared at s66C are limited and do not explicitly include purposes for sharing with iwi and Māori.[4]

We also found the information sharing provisions to be symptomatic of wider issues with the Act, which put Oranga Tamariki in a position of power (e.g., in making decisions about Māori data), and do not provide a fit-for-purpose framework in terms of the desired future state and its commitment to partnership.

Moreover, we heard there was confusion as to the interpretation of the provisions, which were overly complex and difficult to understand, particularly when considered alongside the Privacy Act 2020. In many cases, we found that a misinterpretation of the provisions could prevent the necessary exchange of information, more so than legal limitations. We found that this complexity and confusion contributed to a significant lack of consensus regarding use of the provisions in key situations, for example, to enable bulk sharing or case-by-case sharing with specific iwi and Māori partners.[5] This lack of consensus could be further exacerbated by competing views and practices internally regarding the best practice approach to privacy (as well as how we conceptualise privacy, including through a tikanga-Māori lens).

Taken together, these issues contributed to inconsistent approaches to information sharing with iwi and Māori partners across the agency, in ways detrimental to the safety and wellbeing of tamariki.

[3] Note that in many instances the Privacy Act 2020 may provide an alternative basis for sharing. There are also additional legal arguments and mechanisms within the Oranga Tamariki Act that can empower information sharing, such as via membership of a care and protection resource panel (as per sections 428-430). The key point here is that the primary information sharing mechanism within the Oranga Tamariki Act does not include relevant iwi and Māori partners – contributing to confusion, cultural bias, and interpretation issues. Moreover, we consider the provisions to be misaligned with section 7AA and the Chief Executive's duty to develop strategic partnerships with iwi and Māori organisations to "enable the robust, regular, and genuine exchange of information between the department and those organisations." It is problematic that the information sharing provisions do not enable this for all strategic partners.

[4] This is despite section 65A specifying that the purpose of sections 66 to 66Q is to facilitate the gathering and sharing of information to achieve the purposes in section 4(1)(a) to (j), which include purposes such as recognising mana tamaiti (tamariki), whakapapa, and the practice of whanaungatanga and maintaining relationships between the child or young person and their whānau, hapū and iwi.

[5] In many cases, the information sharing provisions in the Oranga Tamariki Act can support both bulk sharing and case-by-case sharing with iwi and Māori partners.

Objectives	1. Ensure a unified agency approach to information sharing with iwi and Māori partners, informed by tikanga-Māori and the Treaty / Te Tiriti. 2. Ensure the robust, regular, and genuine exchange of information with iwi and Māori partners as being fundamental to upholding the right of Māori to care for and raise the next generation.

Draft options

Draft options	Following initial stakeholder engagement, we have short-listed 4 potential legislative solutions. Non-legislative solutions are included at Annex B and may be considered internally as key organisational priorities. While we consider that a number of the operational barriers could be resolved by the non-legislative solutions, none of them would directly address the discrete legislative issues identified. Options 1 to 4 below propose cumulative amendments to the information sharing provisions in the Oranga Tamariki Act (sections 65A-66Q), plus a potential amendment to the duties of the chief executive in section 7AA.
Option One	<u>Amend the **parties** to the voluntary information sharing provisions</u> Option 1 would expand the parties to whom the voluntary information sharing provisions apply. The power to voluntarily use and disclose personal information would be extended to include all 7AA Strategic Partners, iwi, hapū, Māori collectives and other iwi / Māori organisations involved in the lives of tamariki and whānau. This would mean that any so-named partner could request personal information about tamariki from Oranga Tamariki or another Child Welfare and Protection Agency (who must consider the request), and would also enable Oranga Tamariki or another Child Welfare and Protection Agency to share information proactively and voluntarily with any so-named partner. The proposed amendment would give all relevant parties access to the provisions, resolving the aforementioned issue regarding limited legal definitions. The primary impact of this change would be in providing clarity to kaimahi (both within Oranga Tamariki and those of partners / providers) regarding the intended parties to the provisions, as well as providing a more appropriate legal lens to support the shift towards greater partnership with communities – acknowledging who those communities are made up of. In terms of the actual information shared, this amendment would not significantly impact what can already be shared with partners. This is because in many instances the Privacy Act and / or other parts of the Oranga Tamariki Act provide alternative avenues to share information with iwi and Māori partners. In this case, the amendments would serve to group all relevant provisions in one logical place, supporting kaimahi to overcome the confusion, cultural bias, and interpretation issues linked to the current articulation of the provisions.

Option Two

Amend the parties to and **purposes** of the voluntary information sharing provisions

In addition to amending the parties to the provisions, Option 2 would amend the purposes for which information can be voluntarily shared. Any amendment would be intended to:

- uphold a more holistic concept of wellbeing, including cultural wellbeing
- clarify the intended use of the provisions, including to enable bulk information sharing
- condense / simplify the provisions to support ease of interpretation.

This would be achieved by replacing the existing six purposes in s66C(a) for which information can be voluntarily used and disclosed with a single purpose statement, intended to be more holistic than the existing prescriptive purposes e.g.,

> Section 66C –
>
> A child welfare and protection agency [*as newly defined under Option 1*] that holds information relating to a child or young person …may, irrespective of the purpose for which that information was collected,—
>
> *(a) use that information for the purposes of ensuring the wellbeing, including cultural wellbeing, of children and young people,[6] or*
>
> (b) disclose (whether on request or on the agency's or independent person's own initiative) that information to another child welfare and protection agency [*as newly defined under Option 1*] or an independent person if the agency or independent person disclosing the information reasonably believes that disclosing the information will assist the agency or independent person receiving the information to carry out the purpose described in paragraph (a).

This would simplify the legislation without departing from the original intent of the provisions, and support kaimahi in their ability to both interpret and operationalise intended outcomes, which is the proactive exchange of information for the safety and wellbeing of children and young people. It would also serve to enable improved information sharing with iwi and Māori by encompassing purposes for that intent.

[6] When considered in line with the existing purposes and principles of the Act, we would expect any such interpretation of wellbeing to include –

- assisting families and whānau, hapū, iwi, and family groups, at the earliest opportunity, to fulfil their responsibility to meet the needs of their children and young persons (including their developmental needs, and the need for a safe, stable, and loving home) (s4(1)d)
- recognising mana tamaiti (tamariki), whakapapa, and the practice of whanaungatanga for children and young persons who come to the attention of the department (s4(1)g)
- maintaining and strengthening the relationship between children and young persons who come to the attention of the department and their— (i) family, whānau, hapū, iwi, and family group; and (ii) siblings (s4(1)h)
- the well-being of a child or young person must be at the centre of decision making that affects that child or young person, and, in particular,—

  mana tamaiti (tamariki) and the child's or young person's wellbeing should be protected by recognising their whakapapa and the whanaungatanga responsibilities of their family, whānau, hapū, iwi, and family group (s5(1)(b)(iv))

	Additional amendments would seek to clarify the intended use of the provisions in terms of enabling bulk information sharing in addition to case-by-case sharing. This would remove existing ambiguity and lack of consensus on the issue. Similar to Option 1, Option 2 would serve primarily to bring clarity to kaimahi and better reflect the future state, as well as honour the agency's Treaty / Tiriti obligations, particularly in recognising mana tamaiti (tamariki), whakapapa, and the practice of whanaungatanga. These changes would not fundamentally alter the existing framework or intended use for the provisions, but rather state them unambiguously and in a way that would ensure better alignment within the Oranga Tamariki Act itself.
Option Three	Amend the parties to and purposes of the voluntary information sharing provisions, and include a **stronger duty on the Chief Executive** to share information with iwi and Māori partners In addition to amending the parties to the provisions (Option 1) and the purposes of the provisions (Option 2), Option 3 would add a direct duty on the Chief Executive to ensure the robust, regular and genuine exchange of information, including personal information, with iwi and Māori partners (including but not limited to strategic partners). The amendments outlined at Options 1 and 2 would ensure the information sharing provisions in the Oranga Tamariki Act provide a fit-for-purpose mechanism to support the Chief Executive in giving effect to such a duty. As with Options 1 and 2, Option 3 does not fundamentally depart from the existing purposes and principles of the Act or the agency's existing strategic or operating context. Rather, the cumulative changes proposed would serve to streamline relevant sections of the Act to better reflect the existing strategic and operational context, uphold the agency's Treaty / Tiriti obligations, and provide much needed clarity to kaimahi and partners.
Option Four	Amend the parties to and purposes of the voluntary information sharing provisions, include a stronger duty on the Chief Executive to share information with iwi and Māori partners, and **extend the information sharing framework** In addition to the amendments per Options 1 to 3, Option 4 would extend the information sharing provisions in the case of a sub-set of named partners, intended to provide a stronger mechanism for information sharing, remove any residual barriers to sharing, and enable a future state where Oranga Tamariki is only one of a number of core organisations charged with the care and protection of children and young people. This future state is one that requires information to flow freely between those core organisations, and without limitation, balanced by a high threshold before any organisation could be included. Option 4 would add a new provision that would authorise the free flow of information between certain named parties – this would be managed by regulation or another mechanism that includes appropriate checks to ensure the careful use of personal information before a named party can be added. We would anticipate named parties to include iwi organisations and other child welfare and protection agencies undertaking key functions under the Act, meaning these parties would be a smaller group than those described in Options 1-3. The staff of named parties could have access to information and

information platforms (such as CYRAS) in the same way as if they were employed by Oranga Tamariki.

Option 4 would be intended to remove the "us and them" divide or perceived separation between Oranga Tamariki and its key partners / providers. The effect would be to treat those partners and Oranga Tamariki as a single agency for privacy and information sharing purposes. This would require careful implementation to ensure kaimahi were aware of and comfortable with the shift and actively involved in encouraging the free flow of information.

The key difference between this option and the current articulation of the information sharing provisions would be the absence of the limitations imposed by purpose and the requirement to consult with children and young people prior to sharing their information. Appropriate checks would be part of the regulatory steps required before a partner could be included, rather than managed by each individual kaimahi in every instance of sharing. In this way, Option 4 would shift the onus of decision-making (and perceived risk) away from individual kaimahi and towards the initial decision to add the partner to the group. We consider this would help to remove existing concerns or uncertainties kaimahi have raised around sharing – particularly in terms of a lack of knowledge around who they can share with and what can be shared.

Option 4 would not depart from the existing principle that the wellbeing and best interests of any child or young person, in general, take precedence over any duty of confidentiality – rather, Option 4 would seek to further uphold the wellbeing and best interests of children and young people by removing information sharing barriers that can have a detrimental effect on their outcomes.

Do you agree that we have short-listed the right options?

Are there other options that we have not considered?

What is your preferred option?

Draft assessment criteria

Once options are finalised, we propose to assess them against the following criteria in order to determine a preferred option. The preferred option should:

support a unified agency approach to information sharing with iwi and Māori partners – options should support kaimahi to share information with partners in a consistent manner, and based on an agreed approach to key issues e.g., bulk sharing

enable the robust, regular, and genuine exchange of information with iwi and Māori partners in a way the upholds the agency's future direction and partnership aspirations – options should support proactive information sharing with partners so that they have the right information at the right time to ensure the safety and wellbeing of tamariki Māori

be informed by tikanga-Māori and aligned with the Treaty / Te Tiriti – options should be informed by an understanding of tikanga and te ao Māori and reflect a genuine approach to Treaty partnership[7]

[7] During earlier phases of this work, we undertook to understand the key tikanga-Māori principles relevant to information sharing and against which any future option could be assessed. These include:

- Kāwanatanga: recognises the agency's role as a temporary caretaker of personal information.

have suitable checks and balances to protect tamariki / whānau right to privacy – options must not unjustifiably encroach on tamariki or whānau right to privacy; any option that limits the right to privacy must have suitable checks and balances in place to ensure information is handled appropriately

be clear and easy to understand – options must account for the status quo and acknowledge existing difficulties in interpretation and understanding around information sharing; any option must be streamlined with best practice, simple, clear, and easy to understand.

Do you agree with these assessment criteria?

Would you recommend additional / amended criteria?

- Mana tamaiti: recognises that information is a taonga; requires accurate and complete recording of iwi affiliations; recognises whakapapa as tapu.
- Whakapapa: recognises that information contains whakapapa; recognises that iwi and Māori need access to information; considers tamariki Māori as part of a collective.
- Rangatiratanga: provides for proactive sharing of information with iwi and Māori, enables rangatiratanga over personal information, and takes a rohe-based approach.
- Mana whenua: enables a flexible approach that is adaptable to the different needs of iwi and Māori.
- Whakamana tangata: enables capacity building to support iwi and Māori to be able to look after information appropriately.

Annex A: Summary of sections 65A – 66Q of the Oranga Tamariki Act 1989 (information sharing)

Sections 65A – 66Q (information sharing) provide for the gathering and sharing of information to achieve the purposes in section 4(1)(a) to (j). The provisions:

- empower Oranga Tamariki and Police to *require* agencies to provide information related to the safety or well-being of children in set circumstances and outline rules around the subsequent disclosure of that information
- give child welfare and protection agencies[8] and independent persons the ability to *voluntarily* use and disclose personal information for specified purposes[9] (referred to as the voluntary provisions)
- allow *authorised* child welfare and protection agencies and independent persons to *require* other *authorised* child welfare and protection agencies and individuals to share information – (referred to as the mandatory provisions and are not currently operational)
- provide that consultation must be undertaken prior to disclosing information about children (where practicable and appropriate)
- describe the purpose of a code of practice for information sharing and the process by which it can be brought into force – note there is currently no code in force
- describe the relationship between the information sharing provisions in the Oranga Tamariki Act and other legislation.

[8] Child Welfare and Protection Agencies are defined in section 2(1) of the Oranga Tamariki Act.

[9] Purposes are:

(i) preventing or reducing the risk of a child or young person being subject to harm, ill-treatment, abuse, neglect, or deprivation
(ii) making or contributing to an assessment of risk or need in relation to a child or young person, or any class of children or young persons
(iii) making, contributing to, or monitoring any support plan for a child or young person, where the plan relates to the activities and functions of the department
(iv) preparing, implementing, or reviewing any prevention plan or strategy issued by the department
(v) arranging, providing, or reviewing services facilitated by the department for a child or young person and their family or whānau
(vi) carrying out any function in relation to family group conferences, children or young persons in care, or other functions relating to care or protection under this Part.

Annex B: Non-legislative options

Option	Description
Do nothing	This is the status quo option. It recognises that Oranga Tamariki is on a journey towards: • implementing a Māori-centred practice approach • proactive approaches to information sharing (following the 2019 changes to legislation) • improved cultural competence • a future state that envisages a greater role for iwi and Māori partners. A 'do nothing' option recognises that this will take time and that it is still early days in the implementation of the amendments that commenced in 2019.
A sliding scale of operational solutions	Non-legislative / operational solutions recognise that many of the issues regarding information sharing with iwi and Māori partners are driven by structural or knowledge-based barriers. The details of such an option would be worked through by Oranga Tamariki, but could include any one of the following: • a dedicated communications exercise • establishment of a Māori Data Governance Group • development of targeted training • structural / capacity solutions • development of a tikanga-Māori resource to support kaimahi.
Develop overarching information sharing MoU with strategic partners	Memorandums of understanding would provide clarity to all parties around information sharing expectations and clarify which legislation and which provisions can support the desired intent.
Designate partners as 'Child Welfare and Protection Agencies'	This would bring all partners within the sector, meaning that all partners could share information on the basis of the existing information sharing provisions.
Introduce a code of practice for information sharing (as per s66L – 66N)	A code of practice would provide guidance and direction about the application of the information sharing provisions in sections 66 to 66K – with a focus on their applicability to iwi / Māori and tikanga-informed practice.

Operationalise the mandatory information sharing provisions	Designate 'iwi and Māori organisations' and Oranga Tamariki – via the code of practice – as 'authorised Child Welfare and Protection Agencies', authorised to exercise powers or perform functions under s66G to J (mandatory provisions). This would enable iwi / Māori partners within the current child welfare and protection sector to require Oranga Tamariki to provide information relevant to the safety or well-being of tamariki Māori.
Develop an Approved Information Sharing Agreement (AISA) with iwi and Māori partners	A legal instrument under the Privacy Act 2020 that permits information sharing with multiple parties for aligned purposes.