

FEE FOR SERVICE POLICY

The well-being and best interests of tamariki and rangatahi are the first and paramount consideration when contracting services

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Purpose

1. To outline our approach to Fee for Service Arrangements. This includes what they are, when they should be entered into, the Standard Form Agreement and how it should be used, and how price should be set.
2. This policy aligns with Oranga Tamariki values and is underpinned by our obligations to:
 - a. comply with relevant law
 - b. ensure a healthy, safe, and secure environment
 - c. be a good employer
 - d. act in accordance with the Public Service principles and the Public Service Code of Conduct.

Scope

3. This policy covers all Fee for Service Arrangements Oranga Tamariki enters. It does not cover Outcome Agreements, bespoke contracting arrangements, or volunteer caregiver arrangements.
4. This policy applies to all delegation holders who have the authority to enter Fee for Service Arrangements.
5. This means all those within the scope are expected to understand and comply with this policy.
6. This policy should be read alongside any other relevant policies, processes and procedures relating to Fee for Service Arrangements.

Key Definitions

Term	Definition
Alternative Contracting Arrangement	An Oranga Tamariki approved form of contract including an Outcome Agreement that is not covered by the Standard Form Agreement.
CFO	The Oranga Tamariki Chief Financial Officer.
Emergency Situation	Is when a care arrangement must be entered into because of an immediate threat of harm as defined in sections 14 and 14AA of the Oranga Tamariki Act 1989.
Fee for Service Arrangement	Any arrangement that is for the provision of social sector services where an alternative contracting arrangement is not in place. This includes both Interim Care Arrangements and ad hoc service provision.
Financial Delegations	Oranga Tamariki Financial Delegation Instrument and Standard Operation Procedure.
Interim Care Arrangement	Where care is required for a period of up to 28 days while an ongoing care arrangement is arranged or return to whānau can be facilitated.
Normal Business Hours	Normal Business Hours are between 9am and 5pm on a Business Day. Business Days exclude Saturdays and Sundays, New Zealand (national) public holidays and all days between Boxing Day and the day after New Year's Day ¹ .
Oranga Tamariki Act	Oranga Tamariki Act 1989.

¹ Government Procurement Rules – Rule 32: Business Day

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Term	Definition
Procurement	All aspects of acquiring and delivering goods, services and works. It starts with identifying the need and finishes with either the end of a service contract or the end of the useful life and disposal of an asset.
Providers	Entities and individuals funded by Oranga Tamariki to provide care and other services to (or for the benefit of) tamariki, rangatahi, whānau, and caregivers. This includes iwi social services, cultural social services, and child and family support services accredited under section 396, and community services approved under section 403 of the Oranga Tamariki Act.
Rate Card	A list of rates that will be paid by Oranga Tamariki for specific types of service. This is set as part of the pricing strategy.
Record of the Engagement	Is a written record of the agreement between Oranga Tamariki’s delegate and the Provider. This must include start and end date and the nature and detail of the services and charges. This must be in writing; a verbal record is not sufficient.
Service Order	A Service Order is a document that records the engagement of the Provider to provide the Service. There is a standard form for this, which must be used.
Standard Form Agreement	The Standard Form Agreement means: <ul style="list-style-type: none"> • The Standard Terms and Conditions – Fee for Service, available on Te Pae; and either: • any agreement including details and description of service; and/or • any Service Order and/or Service Specifications; or • in circumstances where no agreement details and description of service and/or Service Order apply any documentation including correspondence between a delegate with appropriate authority to act for Oranga Tamariki and the Provider recording the details of the engagement of the Provider to provide the services.

Rules relating to Fee for Service Arrangements

What kinds of Fee for Service Arrangements are there?

7. There are two types of Fee for Service Arrangements:
 - Interim Care Arrangements
 - Ad hoc service provision.
8. Both Fee for Service Arrangement types can be urgent or non-urgent.

Interim Care Arrangements

9. If a care placement decision is required, then the Fee for Service Arrangement is an Interim Care Arrangement.
10. A care placement decision is a decision to place an individual child or young person with a specific individual or organisation (see s362 of the Oranga Tamariki Act 1989).
11. If the organisation or individual has the primary responsibility for the care of the child, then this is a care placement. This includes security guards/trackers in motels.

12. Care placement decisions require both that the individual or organisation is generally suitable to care for children and that the individual placement is suitable for the specific child or young person.

Ad hoc service provision

13. Ad hoc arrangements may include mentoring, minding, tracking, daytime respite, or resource workers. This is when some other individual or organisation has the primary responsibility for the care of the child. These kind of services may support the care placement but do not require a care placement decision.

Urgent

14. When a care placement decision or a service is required to support a care placement decision outside of normal business hours.

Non-urgent

15. When a care placement decision or a service is required to support a care placement decision during normal business hours.

Why would a Fee for Service Arrangement be used?

16. The well-being and best interests of the child or young person are the first and paramount consideration in deciding what arrangements should be used for any service provision.
17. To reflect this, Fee for Service Arrangements should only be used where it is not appropriate to enter an alternative contracting arrangement.
18. This may include when an Interim Care Arrangement is required (including in an Emergency Situation), for small ad hoc service provision such as a limited mentoring arrangement, or where the intent is to move to a different arrangement over time but the terms of this have not yet been agreed.
19. You should consider whether an existing Outcome Agreement or other formal contracting arrangement could be used. If you are satisfied that this is not the case, you can consider a Fee for Service Arrangement.

Interim Care Arrangements

20. Fee for Service Interim Care Arrangements must only be used where there is no other appropriate care placement available and only for the interim period while the ongoing care arrangement is organised and confirmed. This includes when there is an urgent need for care.
21. Fee for Service is not appropriate for ongoing care provision.

Ad hoc service provision

22. For some ad hoc services Fee for Service may be an appropriate permanent contracting arrangement. You must take the nature of the service and other any other arrangements we have with a Provider into account when determining this.

What constraints are there on the use of Fee for Service Arrangements?

23. Fee for Service Arrangements are subject to the same operational, financial and procurement rules as other arrangements.
24. There is an opt-out of the Government Procurement Rules by type for Fee for Service Arrangements under Rule 12.3 (k) Public Services.

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25. The following rules apply to all opt-out procurements; Rule 4 Protection of suppliers' information, Rule 16 Broader Outcomes, Rule 50 Supplier complaints, Rule 52 Maintaining records, and Rule 54 Audit. You must check which rules do apply and that you are meeting these requirements for all Fee for Service arrangements.
26. This opt-out must be reconsidered at least once every two years.
27. You should still conduct the procurement according to procurement good practice guidance. Any procurement should also achieve the best public value over the life of the contract.
28. The decision maker for any Fee for Service Arrangement must have the appropriate operational and financial delegation.
29. The decision maker must also be satisfied that all relevant rules are complied with, and any relevant tests met.
30. This should include:
 - a. the Disclosure of Interests Policy
 - b. the Code of Conduct
 - c. any controls and assurance processes that already exist
 - d. the Fee for Service Arrangements processes.

What checks need to be carried out on the service?

31. The decision maker always has the responsibility to ensure appropriate checks have been carried out in relation to the Interim Care Arrangement or other service covered by the Fee for Service Arrangement.
32. This is not a mechanism to avoid other forms of accreditation or approval. All relevant criteria must still be met.

Interim Care Arrangements

33. In the case of Interim Care Arrangements, the decision maker must approve the care placement decision. They must be satisfied that both that the individual or organisation is generally suitable to care for children and that the individual placement is suitable for the specific child or young person.
34. The relevant policies and processes relating to the suitability of an individual or organisation's suitability to provide care to children and young people generally must be followed.
35. The relevant policies and processes relating to the suitability of the individual placement for the specific child or young person must be followed.
36. The decision maker must be certain that they have considered the full range of tests and checks they are required to have undertaken.

Ad hoc service provision

37. In the case of ad hoc service provision, it is the responsibility of the decision maker to ensure that the appropriate checks are carried out.
38. This includes, but is not limited to, that appropriate (Core) Children's Worker safety checks and risk assessments have been undertaken, including identify confirmation, police vetting, and assessments to ensure that the people/person providing the services are appropriate to work with children and young people.
39. The decision maker must be certain that they have considered the full range of tests and checks they are required to have undertaken.

What should be recorded about Fee for Service Arrangements?

40. Approval for the Fee for Service Arrangement must be recorded. This includes the specific description of services and costs, rationale for using this service and expected duration.
41. For all Fee for Service Arrangements the relevant processes for tracking the arrangements must be followed.
42. The decision maker must confirm they have the appropriate delegation/s and that there are no Conflicts of Interest that need to be managed.

Interim Care Arrangements

43. For Interim Care Arrangements the decision makers consideration and approval of the care placement decision must be recorded.
44. A transition plan to an ongoing care arrangement must be approved and recorded.

What other considerations should be made about Fee for Service Arrangements?

45. Appropriate reporting and monitoring arrangements must be considered for all Fee for Service Arrangements.
46. These should take into account the nature of the Fee for Service Arrangement, the duration of the Arrangement and any other relevant factors.
47. Any required reporting or monitoring should be recorded in the Service Order.

Interim Care Arrangements

48. For Interim Care Arrangements there must be a pathway in place to support the child or young person to return to whānau or move into an ongoing care arrangement within 28 days.
49. All Fee for Service Care Arrangements must be reviewed at a Regional Hui around the Child. (See Regional Hui process).

What terms and conditions apply to Fee for Service Arrangements?

50. When entering a Fee for Service Arrangement the Standard Form Agreement applies.
51. This set out the rights and obligations of each party and is the default starting point for the contractual relationship.
52. Having a consistent framework for Fee for Service Arrangements will make roles, obligations, and rights of the Provider and Oranga Tamariki clear. It will also support improved financial and other controls.

How do Providers know that they are operating under the Standard Form Agreement?

53. All Providers currently listed in the finance payment system have been provided with a copy of the Standard Form Agreement and notified that if alternative contracting arrangement is not in place any service provision is subject to these terms and conditions.
54. Any new Providers will also be given the Standard Form Agreement when they commence any form of contractual relationship with Oranga Tamariki.
55. The Standard Form Agreement will come into effect when a service is provided with no alternative contracting arrangement in place.

What else is needed as part of the Standard Form Agreement?

56. Alongside the standard terms and conditions, the Standard Form Agreement also includes either:
- a. any agreement including details and description of service; and/or
 - b. any Service Order and/or Service Specifications; or
 - c. in circumstances where no agreement details and description of service and/or Service Order apply any documentation including correspondence between a delegate with appropriate authority to act for Oranga Tamariki and the Provider recording the details of the engagement of the Provider to provide the Services.

Making an agreement including setting price

Who can approve a Standard Form Agreement?

57. Any Oranga Tamariki contracting arrangement can only be entered into by a person who holds an appropriate Financial Delegation. This includes Fee for Service Arrangements.

What should be assessed when entering a Standard Form Agreement?

58. The delegate should assess, using this Policy, whether the proposed arrangement and proposed Provider are the most appropriate arrangement and Provider for the situation and that the proposed cost is appropriate.

What total value can a Standard Form Agreement have?

59. The total value of the arrangement cannot exceed the Financial Delegation level of the person entering into the agreement.

What happens if the total value exceeds the delegation level of the person entering the Standard Form Agreement?

60. The total value of the agreement cannot exceed the person's delegation level. The person approving the Standard Form Agreement must have authority to do so.

What rate should be paid for the Fee for Service Arrangement?

61. Oranga Tamariki has a Rate Card for Fee for Service Arrangements. This is the rate Oranga Tamariki expects to pay for arrangements except in exceptional circumstances (exceptional rate).
62. Where an exceptional rate will be paid this must be approved in advance by the CFO.

What will be considered in setting an exceptional rate?

63. The Provider should be asked to provide documentation to demonstrate the rationale for the proposed rates. This will include (but is not limited to):
- a. staffing costs and rosters
 - b. incentive payments
 - c. direct and indirect costs
 - d. allocation of overheads
 - e. operating surpluses
 - f. sources of funding
 - g. any other relevant information to determine the reasonableness of the proposed rate.

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64. The CFO will consider the evidence and determine if the rate is appropriate.
65. Where the CFO considers the rate appropriate, they will confirm the rate in writing to the Provider.
66. Where they require further information to assess the rate, they will request this in writing from the Provider.
67. Where they consider the rate is not appropriate, they will provide their reasons for declining in writing to the Provider. The Provider must be given a reasonable chance to respond and have any request reconsidered.

Can an exceptional rate be paid in an Emergency Situation?

68. If an agreement is entered into in an Emergency Situation this must be funded in accordance with the Oranga Tamariki Rate Card in the first instance.
69. Any actual reasonable costs that exceed the Rate Card rate may be paid for the period prior to the CFO assessing a request for an exceptional rate. The CFO must assess any documentation for additional actual reasonable costs and decide whether or not to approve an additional payment.
70. Where the CFO considers the costs appropriate, they will confirm the payment in writing to the Provider.
71. Where they require further information to assess the costs, they will request this in writing from the Provider.
72. Where they consider the costs are not appropriate, they will provide their reasons for declining in writing to the Provider. The Provider must be given a reasonable chance to respond and have any request reconsidered.
73. A variation may be made to the original arrangement where the Provider meets the test for exceptional rates as described above. This can only be paid for any service delivered in a period after the approval is made.

Contract Reporting requirements

74. Standard reporting requirements form part of the Standard Form Agreement. These include weekly operational reporting, financial disclosure requirements, and disclosures of interest requirements.

Financial disclosures

75. A broad range of financial disclosures can be required. Actual requests for information should consider:
 - a. the value of the Fee for Service Arrangement
 - b. the overall value of Oranga Tamariki funding the Provider receives
 - c. the overall size of the Provider organisation
 - d. any known risk factors.
76. Requests for information should be proportionate to these considerations and should be made in consultation with appropriate Finance representatives.
77. Providers have 20 working days to respond to requests. If they require an extension to this, the reasons for the extension should be considered. No extension should be granted for more than five working days without the approval of the CFO.

Sanctions

78. It is important that this reporting is received. Where regular operational or financial reporting is not received payments should be suspended until such time as the appropriate reporting is received.

High level explanation of the Standard Form Agreement

79. This is provided for guidance and does not form legal advice. For questions about the specific application of the agreement engage the National Office Legal Team (legalteam@ot.govt.nz).

Requirements

80. The Standard Form Agreement requires Providers and Oranga Tamariki to record the specific details of each arrangement including the start and end date; children or young person or whānau to whom service is provided; and charges.

81. These terms and conditions automatically apply to the provision of:

- a. any service provided under a Service Order; and
- b. any other service not recorded in a Service Order and not otherwise contracted for under an Oranga Tamariki approved form of contract (e.g. Outcome Agreement).

82. For certain high-risk types of services (where the services require a children's worker), there is also a standard description of services which will automatically apply to relevant agreements.

Acceptance of contract

83. The Standard Form Agreement includes provisions that mean that an organisation providing a service indicates their acceptance of the terms and conditions when they commence to provide a service without another contracting arrangement in place. They do not need to sign a separate agreement; the arrangement automatically becomes valid when a service is provided if no other agreement covering the service is in place.

Length of agreement

84. The length of time arrangements will be able to operate is limited by the Financial Delegations which includes limits on the length of time and total value of Fee for Service Arrangements.

85. The intent, in most cases, is to move to other contract arrangements as quickly as possible for new Fee for Service Arrangements. That is either an Outcome Agreement, individual Fee for Service agreement or a bespoke contracting arrangement.

Payment

86. Providers must provide Goods & Services Tax (GST) invoices as described in the Standard Form Agreement and a purchase order in the form we specify before a payment for service can be processed.

Variation and termination provisions

87. There are requirements for both Oranga Tamariki and the Provider where a variation or termination is required. Minimum notice periods for a Provider to terminate an arrangement will support consistency for tamariki and rangatahi.

Other standard terms and conditions

88. The Standard Form Agreement creates consistent processes for a number of areas. These include:

- a. a disputes process

- b. defined referral paths when the agreement relates to a care arrangement
- c. other policies Providers are required to comply with including relevant Service Specifications available on Oranga Tamariki's website
- d. Service Order limitations of the contract including time that the Standard Form Agreement can be in place and that it does not create a contract of service (employment).

Related Procedures and Guidance

89. Additional information that supports this Policy can be found in:

- Oranga Tamariki Act 1989
- CO (18) 2: Proposals with Financial Implications and Financial Authorities
- Oranga Tamariki Code of Conduct
- Oranga Tamariki Contracting Policy
- Oranga Tamariki Delegations Policy
- Oranga Tamariki Disciplinary Policy
- Oranga Tamariki Disclosure of Interests Policy
- Oranga Tamariki Financial Delegation Instrument & Standard Operating Procedure
- Oranga Tamariki Operational Delegations
- Oranga Tamariki Protected Disclosures Policy
- Oranga Tamariki Risk Management Policy
- Oranga Tamariki Social Procurement Policy
- Oranga Tamariki Standard Form Agreement, Fee for Service.

Key Accountabilities and Responsibilities

90. The key roles and responsibilities relating to this policy are outlined in the table below:

Role	Responsibilities
DCE with responsibility for contracting	<ul style="list-style-type: none"> • Approving the compliance program of work for this policy • Ensuring any breaches of this policy have been addressed, with Human Resources and relevant managers • Reviewing the policy bi-annually to ensure it is up-to-date and meets the needs of Oranga Tamariki.
Chief Executive	<ul style="list-style-type: none"> • Approving the Fee for Service Contracting Policy and any subsequent changes/ updates to the policy.
Te Riu (Leadership Team)	<ul style="list-style-type: none"> • Embedding this policy in their directorates • Leading and promoting Oranga Tamariki in exercising a high standard of judgement in relation to Fee for Service Arrangements.
Financial Delegation and sub-delegation holders	<ul style="list-style-type: none"> • Compliance with intent and limits of their Financial Delegations • Escalation of any issues pertaining to this policy to the policy owner.

Monitoring and Assurance

Measures of Success

91. This policy will be monitored by Service Delivery for effectiveness. This policy will be effective if:
- a. the Standard Form Agreement requirements are communicated to Providers
 - b. breaches of this policy are monitored by Service Delivery and dealt with appropriately in a timely manner
 - c. breaches of any instrument of delegation are monitored by the Financial Control Team and dealt with appropriately in a timely manner
 - d. the number of policy breaches reduce.

Compliance Management

92. The owner of the Policy is responsible for ensuring compliance and managing non-compliance, including:
- a. appropriate controls are to ensure that Providers comply with the Standard Form Agreement
 - b. a six-monthly risk-based review is carried out to provide assurance that delegated authorities have been complied with (any breaches must be followed up).

Last updated: 1 December 2023

Due for review: 1 December 2025