

In Confidence

Office of the Minister for Social Development and Employment

Cabinet Legislation Committee

Oversight of Oranga Tamariki System Regulations 2023, and Children and Young People's Commission (Relevant agencies) Regulations 2023

Proposal

- 1 This paper seeks authorisation to submit the attached Oversight of Oranga Tamariki System Regulations 2023 (the Oversight Regulations) and Children and Young People's Commission (Relevant Agencies) Regulations 2023 (the CYPC Regulations) to the Executive Council.
- 2 It also seeks agreement to submit the attached Order in Council to the Executive Council, in order to bring forward the date of commencement of the Oversight of Oranga Tamariki System Act 2022 from 1 July 2023 to 1 May 2023 [SWC-22-MIN-0255 refers].

Relation to government priorities

- 3 The Oversight Regulations and the CYPC Regulations will support the oversight system established by the Oversight of Oranga Tamariki System Act 2022 and the Children and Young People's Commission Act 2022, and they align with the Government's priority of improving child wellbeing and laying the foundations for the future.

Background

- 4 The proposed Regulations form part of the oversight system established by the Oversight of Oranga Tamariki System Act 2022 and the Children and Young People's Commission Act 2022, and they are essential to deliver on the intent of the primary legislation. The regulations will implement policy decisions made by Cabinet [SWC-22-MIN-0255 and CAB-22-MIN-0589 refer]. As they relate to two different Acts, there are two sets of Regulations.
- 5 The Oversight Regulations specify:
 - 5.1 who the Independent Monitor of the Oranga Tamariki system (the Monitor) must notify when it identifies any matter that places a child or young person in care or custody at immediate risk of suffering, or being likely to suffer, serious harm;
 - 5.2 what the required reports of the Monitor must contain at a minimum; and
 - 5.3 what the timeframes are for publishing reports of the Monitor and responses to reports.

- 6 Minor changes to the wording of the minimum reporting requirements as agreed by Cabinet have been made in the drafting of the regulations, as identified by the Parliamentary Counsel Office, to provide greater clarity and ensure consistency with the primary legislation. The CYPC Regulations specify who can endorse a candidate applying to be a member of the board of the Children and Young People's Commission (the Commission).
- 7 In accordance with the Cabinet decisions, an Order in Council has also been drafted to bring forward the date of commencement of the Oversight of Oranga Tamariki System Act from 1 July 2023 to 1 May 2023. This is to ensure the machinery of government for the independent monitoring of the Oranga Tamariki system is in place as quickly as possible, reflecting the importance of this work—and well ahead of the pre-election period [SWC-22-MIN-0255 and CAB-22-MIN-0589 refer].

Regulations for the Oversight of Oranga Tamariki System Act 2022

Whom the Monitor must notify of certain matters

- 8 The regulations give effect to Cabinet's decision that when the Monitor is required to notify certain matters that place a child or young person in care or custody at immediate risk of suffering, or being likely to suffer, serious harm under section 55 of the Oversight of Oranga Tamariki System Act 2022, it must notify the Chief Executive of Oranga Tamariki and a constable of the New Zealand Police. Cabinet also agreed that the regulation should link to the definition of serious harm in the Oranga Tamariki Act 1989 for consistency.

Minimum requirements for the reports of the Monitor

- 9 The Oversight of Oranga Tamariki System Act 2022 requires the Monitor to produce the following three reports:
 - 9.1 annual report on compliance with national care standards regulations;
 - 9.2 annual report on outcomes for Māori children and young people, and their whānau; and
 - 9.3 three-yearly report on the State of the Oranga Tamariki system.
- 10 The regulations give effect to Cabinet's decision on the following:
 - 10.1 the minimum requirements for the annual report of the Monitor on compliance with national care standards;
 - 10.2 the minimum requirements for the new annual report of the Monitor on outcomes for Māori children and young people, and their whānau; and
 - 10.3 the minimum requirements for the Monitor's new three-yearly State of Oranga Tamariki system report.
- 11 The details of the minimum reporting requirements that Cabinet agreed to in December 2022 are provided in **Appendix One**.

- 12 I have subsequently identified, along with the Monitor and Oranga Tamariki, that the minimum reporting requirement to provide information on the efficacy of practice by Oranga Tamariki to inform persons who have made a report of concern on whether the report has been investigated, and whether any further action has been taken, should be included in the 3-yearly State of Oranga Tamariki System Report, rather than the annual report on compliance with National Care Standards.
- 13 This requirement sits in the Oranga Tamariki Act 1989 rather than in the national care standards, and so is more appropriately covered by the system-focused report. For clarity, the Parliamentary Counsel Office has also adjusted the wording of this regulation to refer to the relevant section in the Oranga Tamariki Act 1989—section 17(1)(c).
- 14 Other minor changes to the wording of the minimum reporting requirements, as agreed by Cabinet in December 2022, have been made in the drafting of the regulations to ensure greater clarity and consistency with the primary legislation. I seek your agreement to these minor amendments.

Timeframe for publishing the Monitor's reports and responses to those reports

- 15 The regulations also give effect to Cabinet's decision that the timeframe for publication of final reports of the Monitor and any responses to these reports should be 10 working days after an agency response is due.

Regulations for the Children and Young People's Commission Act 2022

Defining a relevant agency for the purpose of endorsing a candidate for the board of the Commission

- 16 The regulations give effect to Cabinet's decision that the following categories constitute a relevant agency for the purpose of endorsing a candidate applying to be a board member of the Children and Young People's Commission (the Commission):
- 16.1 any national organisation that represents Māori, particularly Māori welfare;
 - 16.2 any organisation that has the mandate to represent an iwi;
 - 16.3 any organisation working with or for children and young people, including but not limited to, organisations focused on advocacy for children and young people, and their rights;
 - 16.4 any organisation focused on services and supports for children and young people, including but not limited to, health and wellbeing, and disability services and supports;
 - 16.5 any child- or youth-led organisation; and
 - 16.6 any organisation that represents the views and ideas of children and young people, including care-experienced children and young people.

Commencement of the Oversight of Oranga Tamariki System Act 2022

- 17 Cabinet agreed in December 2022 that the commencement date of the Oversight of Oranga Tamariki System Act 2022 should be brought forward by Order in Council from 1 July 2023 to 1 May 2023. This is to ensure that the machinery of government for the independent monitoring of the Oranga Tamariki system is in place as quickly as possible, reflecting the importance of this work.
- 18 An Order in Council is attached for this purpose and agreement is sought to submit this to the Executive Council.

Timing and 28-day rule

- 19 If approved, the Oversight Regulations and CYPC Regulations will be submitted to the Executive Council for consideration at the next possible date, and published in the New Zealand Gazette by 3 April 2023, which will meet the 28-day rule.
- 20 Following publication in the New Zealand Gazette, the Oversight Regulations will come into effect on 1 May 2023, at the same time that the Oversight of Oranga Tamariki System Act commences. The CYPC Regulations will come into effect on 1 July 2023, at the same time that the Children and Young People's Commission Act commences.

Compliance

- 21 The regulations comply, where applicable, with the following:
 - 21.1 the principles of the Treaty of Waitangi;
 - 21.2 the rights and freedoms contained in the Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 21.3 the principles and guidelines set out in the Privacy Act 2020;
 - 21.4 relevant international standards and obligations; and
 - 21.5 Legislation Advisory Committee Guidelines: *Guidelines on Process and Content of Legislation*.
- 22 Each regulation in the Oversight Regulations can be made pursuant to section 57 of the Oversight of Oranga Tamariki System Act 2022, as they provide for matters contemplated by the Act and are necessary for giving it full effect. Similarly, the single regulation in the CYPC Regulations can be made pursuant to section 37 of the Children and Young People's Commission Act 2022, as it is contemplated by the Act and is necessary for giving it full effect.

Regulations Review Committee

- 23 There are no grounds for the Regulations Review Committee to draw the Regulations to the attention of the House under Standing Order 327.

Certification by Parliamentary Counsel

- 24 The Parliamentary Counsel Office has certified the Oversight Regulations and CYPC Regulations as being in order for submission to Cabinet. The Ministry of Social Development has assured me that the Regulations implement the Ministry's drafting instructions and are consistent with the policy decisions of Cabinet.

Impact Analysis

Regulatory Impact Statement

- 25 The Treasury's Regulatory Impact Analysis team has determined that the proposals in this Cabinet paper regarding the Monitor's responsibilities and the definition of the type of agencies that can endorse a board member's application for the Children and Young People's Commission are exempt from the requirement to provide a Regulatory Impact Statement. This is on the grounds that, within the context of the legislative framework, the proposals have no or only minor impacts on businesses, individuals, and not-for-profit entities.

Climate Implications of Policy Assessment

- 26 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Publicity

- 27 The Regulations will be notified in the New Zealand Gazette, and relevant stakeholders who have contributed to the development of the regulations will be informed.

Proactive Release

- 28 I intend to proactively release this Cabinet paper within 30 days of decisions being confirmed by Cabinet.

Consultation

- 29 The following agencies have been consulted on this paper Oranga Tamariki – Ministry for Children, the Ministries of/for Education, Health, Justice, Pacific Peoples and Youth Development, the Department of Corrections, New Zealand Police, Te Arawhiti, Te Puni Kōkiri, Treasury, Te Kawa Mataaho, Whaikaha – Ministry of Disabled People, Te Puna Aonui – the Joint Venture for the Elimination of Family Violence and Sexual Violence, the Independent Children's Monitor, the Education Review Office and the Office of the Children's Commissioner. The Department of Prime Minister and Cabinet has been informed.

Recommendations

The Minister for Social Development and Employment recommends that the Committee:

- 1 **note** that in December 2022, Cabinet made policy decisions that informed the development of the Oversight of Oranga Tamariki System Regulations 2023 and the Children and Young People’s Commission (Relevant Agencies) Regulations 2023 [SWC-22-MIN-0255 and CAB-22-MIN-0589 refer];
- 2 **note** that in drafting, the Parliamentary Counsel Office identified minor changes to the wording of some of the regulations that Cabinet had agreed to, which will ensure greater clarity and consistency with the primary legislation;
- 3 **note** that Cabinet agreed that the minimum requirements for the annual report of the Monitor on compliance with National Care Standards should include “information on the efficacy of practice by Oranga Tamariki, as required under the Oranga Tamariki Act 1989, to inform persons who have made a report of concern whether the report has been investigated, and whether any further action has been taken” [SWC-22-MIN-0255, 5.10];
- 4 **agree** that the reporting requirement referenced in recommendation 3 above should instead sit under the minimum reporting requirements for the 3-yearly State of Oranga Tamariki System report;
- 5 **authorise** the submission of the following regulations (attached) to the Executive Council:
 - 5.1 Oversight of Oranga Tamariki System Regulations 2023; and
 - 5.2 Children and Young People’s Commission (Relevant Agencies) Regulations 2023.
- 6 **authorise** the submission of the attached Order in Council to the Executive Council, to bring forward the date of commencement of the Oversight of Oranga Tamariki System Act 2022 from 1 July 2023 to 1 May 2023;
- 7 **note** that the Oversight of Oranga Tamariki System Regulations 2023 will come into effect on 1 May 2023, at the same time that the Oversight of Oranga Tamariki System Act 2022 commences; and
- 8 **note** that the Children and Young People’s Commission (Relevant Agencies) Regulations 2023 will come into effect on 1 July 2023, as the same time that the Children and Young People’s Commission Act 2022 commences.

Authorised for lodgement

Hon Carmel Sepuloni

Minister for Social Development and Employment

Appendix one: Details of minimum reporting requirements agreed by Cabinet in December 2022

1. Cabinet agreed [SWC-22-MIN-0255 refers] that the minimum requirements for the annual report of the Monitor on compliance with national care standards should include:
 - the number of children and young people in care or custody, the length of the time spent in care or custody, and a summary of the reasons why they are in care or custody;¹
 - a profile of the characteristics of children and young people in care or custody, including gender, ethnicity, age, disability, and health needs;
 - information on the number of times children and young people in care have had a change of placement including the reasons why;
 - information on complaints, including but not limited to numbers of complaints, the procedures followed to resolve these matters, and whether and how the complaints have been addressed;
 - information on identified incidents of abuse and neglect found to have occurred in care or custody and the procedures followed to resolve these matters;
 - information or results for Māori children and young people, in terms of the level and degree of compliance with national care standards, and the impact of this on Māori children and young people, and their whānau;
 - identification of areas of good practice as well as areas recommended as a focus for improvement;
 - separate information for disabled children and young people in terms of the level and degree of compliance with national care standards regulations;
 - the state of the systems of self-monitoring and continuous improvement operated by the Chief Executive of Oranga Tamariki and approved organisations with children and young people in care or custody; and
 - information on the efficacy of practice by Oranga Tamariki, as required under the Oranga Tamariki Act 1989, to inform persons who have made a report of concern whether the report has been investigated, and whether any further action has been taken.

2. Cabinet agreed that the minimum requirements for the new annual report of the Monitor on outcomes for Māori children and young people, and their whānau should include commentary on:

¹ Care or custody under the national care standards relates to being in the care or custody of the chief executive of Oranga Tamariki. The reporting on compliance with the national care standards will only capture information on children and young people in the care or custody of the Chief Executive of Oranga Tamariki, not other instances of custody such as Police custody. This is consistent with the definition of in care or custody used in the Oversight of Oranga Tamariki System Act 2022.

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- the application of section 7AA of the Oranga Tamariki Act 1989; and outcomes being achieved for Māori children and young people, and their whānau;
 - the extent to which practices within the Oranga Tamariki system have regard to mana tamaiti and the whakapapa of Māori children and young people and the whanaungatanga responsibilities of their whānau, hapū, and iwi;
 - the measures taken by the Chief Executive of Oranga Tamariki to carry out the duties in subsections (2) and (4) of section 7AA of the Oranga Tamariki Act 1989, including the impact of those measures on improving outcomes for Māori children and young people who come to the attention of the Oranga Tamariki under the Oranga Tamariki Act 1989, and the steps Oranga Tamariki has taken;
 - strategic partnerships Oranga Tamariki has with iwi and Māori organisations;
 - separate information on Māori disabled children and young people; and
 - any impact that points 1-5 above have on the measurable outcomes that have been set to reduce disparities for Māori children and young people.
3. Cabinet agreed that the minimum requirements for the Monitor's new three-yearly State of Oranga Tamariki system report include relevant insights from annual reporting as well as commentary on the following matters:
- the number of children who have received services or supports under the Oranga Tamariki Act 1989;
 - compliance with the Oranga Tamariki Act 1989, the national care standards Regulations, and other regulations made under the Oranga Tamariki Act 1989;
 - the quality and impact of service delivery by Oranga Tamariki or approved organisations;
 - the application of section 7AA of the Oranga Tamariki Act 1989; and an assessment of outcomes for tamariki, rangatahi, and their whānau;
 - how services and supports provided under the Oranga Tamariki Act 1989 interface with other systems, including the Ombudsman;
 - how the system is supporting disabled children and young people, including Māori disabled children and young people, including the provision of reasonable accommodations to ensure inclusive care of disabled children and young people;
 - areas of good practice and areas for improvement;

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- complaints received by Oranga Tamariki in relation to the duties of the Chief Executive of Oranga Tamariki under the Oranga Tamariki Act 1989, including but not limited to, numbers of complaints, the procedures followed to resolve these matters, and whether and how the complaints have been addressed; and
- identified incidents of abuse and neglect found to have occurred in care or custody, and the procedures followed to resolve these matters.