

## In Confidence

Office of the Minister for Social Development and Employment  
Cabinet Social Wellbeing Committee

## Oversight of Oranga Tamariki System and Children and Young People's Commission Acts: Policy Decisions for regulations

### Proposal

- 1 This paper seeks agreement to policy proposals for regulations to support the oversight system established by the Oversight of Oranga Tamariki System Act 2022 and Children and Young People's Commission Act 2022 (the Acts).

### Relation to government priorities

- 2 The development of regulations to support the oversight system established by the Acts aligns with the Government's priority of improving child wellbeing and laying the foundations for the future.

### Executive Summary

- 3 The Oversight of Oranga Tamariki System Act 2022 and the Children and Young People's Commission Act 2022 (the Acts) contain empowering provisions to make regulations to support the implementation of the Acts.
- 4 This paper seeks agreement to matters concerning the commencement of the legislation and regulations. This includes decisions:
  - 4.1 to draft an Order in Council to specify that the commencement date for the Oversight of Oranga Tamariki System Act should be 1 May 2023;
  - 4.2 that regulations for the Oversight of Oranga Tamariki System Act be drafted to come into effect on 1 May 2023;
  - 4.3 that the Children and Young People's Commission Act commence on 1 July 2023, unless earlier commencement is required due to the pre-election period; and
  - 4.4 that regulations for the Children and Young People's Commission Act commence on 1 July 2023, unless earlier commencement is required.
- 5 I consider that regulations for the following matters are required to support the primary legislation when it comes into effect:
  - 5.1 whom 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;
- 5.3 what the timeframes are for publishing reports of the Monitor and responses to reports; and
- 5.4 who can endorse a candidate applying to be a member of the board of the Children and Young People's Commission (the Commission).
- 6 There are also some empowering provisions in the Acts concerning the codes of ethics that the Monitor and the Commission must have. I am not seeking policy decisions for these codes.
- 7 The intent of the codes of ethics is to support the Monitor and the Commission to undertake safe and ethical engagement, particularly with young people. Cabinet has previously made a number of decisions relating to the codes of ethics [CAB-19-MIN-0687 refers], which I feel are sufficient to provide guidance, and to ensure that engagement carried out by the Monitor and the Commission is safe and ethical, without needing regulations for this. Officials have also sought input from the child's rights sector and key providers on whether this needs to be regulated, and the feedback received supports the approach proposed in this paper.

## Background

- 8 The Acts are designed to strengthen the oversight of the Oranga Tamariki system in three key areas:
- independent monitoring and assurance of the operations and obligations under or in connection with the Oranga Tamariki Act 1989 and associated regulations;
  - oversight and investigation of complaints in matters related to the application of the Oranga Tamariki Act 1989; and
  - system-level advocacy for all children and young people in Aotearoa New Zealand.
- 9 I consider that some regulations are required to support the primary legislation. This means that two sets of regulations need to be developed and in place for when the Acts respectively come into effect.

## Timing of commencement of legislation and regulations

- 10 I propose that the Oversight of Oranga Tamariki System Act should commence on 1 May 2023, rather than the fallback date of 1 July 2023 specified in the Act.
- 11 I further propose that the regulations for the Oversight of Oranga Tamariki System be drafted to come into effect on the same date. An Order in Council is needed for the commencement of the Act to occur earlier than 1 July 2023. This paper seeks agreement to this.

- 12 Commencement on 1 May 2023 will ensure the machinery of government for the independent monitoring of the Oranga Tamariki system is settled as quickly as possible, reflecting the importance of this work – and well ahead of the pre-election period. Full monitoring, as set out in the Oversight of Oranga Tamariki System Act, will begin as planned on 1 July 2023.
- 13 Te Kawa Mataaho – the Public Service Commission is leading work to establish Orders in Council to create the Monitor as a new departmental agency, and is also leading work to appoint a Chief Executive for the Monitor. Advice on both these matters is expected to go to Cabinet next year.
- 14 I further propose that the Children and Young People’s Commission Act should commence on 1 July 2023, as set out in the Act, and that regulations to support this Act be drafted to come into effect on that date. This will ensure a robust process for appointing the board for the Commission, and will support the current Children’s Commissioner and her Office as they prepare for the transition to the new Commission.
- 15 I note that if the election is announced to take place prior to 1 October that the commencement date may need to be brought forward to ensure appointments take effect ahead of the pre-election period. I seek agreement from Cabinet to bring forward the commencement date by Order in Council if required. Agreement to this would enable an Order in Council to be prepared directly for the Cabinet Legislation Committee, if an earlier election date is decided.

### **Regulations for the Oversight of the Oranga Tamariki System Act 2022**

- 16 Section 57 of the Oversight of Oranga Tamariki System Act 2022 sets out the purposes for which regulations may be issued to support that Act. I consider that regulations are required for:
- whom 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;
  - what the required reports of the Monitor must contain at a minimum; and
  - what the timeframe should be for publishing reports of the Monitor and responses to those reports.

### *Regulations are needed to specify whom the Monitor notifies of certain matters*

- 17 Section 57(1)(a) of the Oversight of Oranga Tamariki System Act 2022 enables regulations to be made for “*Prescribing, for the purposes of section 55, 1 or more persons whom the Monitor must notify and the subject of the notification where the Monitor becomes aware of any non-compliance with national care standards regulations or any other matter that places a child or*

*young person in care or custody at immediate risk of suffering, or being likely to suffer, serious harm.”*

- 18 I propose that regulations be drafted to set out that where the Monitor becomes aware of certain matters under section 55 of the Oversight of Oranga Tamariki System Act 2022, the Monitor must notify the Chief Executive of Oranga Tamariki and a constable of the New Zealand Police.
- 19 This is consistent with how other reports of concern for children and young people can be made in New Zealand. In addition, feedback from the Children’s Rights sector strongly supported the notification being made to both Oranga Tamariki and the New Zealand Police.
- 20 I do not propose the regulation refer to the subject of the notification, as Oranga Tamariki advises it considers the subject of the notification to be the child or young person. It would not be possible for the Monitor to make the notification without referencing the child or young person to whom it relates, so I consider this unnecessary to include in the regulation.
- 21 Section 55 of the Oversight of Oranga Tamariki System Act 2022 refers to serious harm. As serious harm is not defined in the Oversight of Oranga Tamariki System Act 2022, I propose that this regulation include a link to the definition of serious harm in the Oranga Tamariki Act 1989, consistent with the current National Care Standards. This is also consistent with section 8(2) of the Oversight of Oranga Tamariki System Act.

*Regulations should specify minimum requirements for the reports of the Monitor*

- 22 I propose that regulations are drafted under section 57(1)(e) and (f) of the Oversight of Oranga Tamariki System Act 2022 to specify minimum requirements for the matters that should be contained in the following reports required of the Monitor:
- 22.1 annual reports on compliance with national care standards regulations;
  - 22.2 annual reports on outcomes for Māori children and young people, and their whānau; and
  - 22.3 three-yearly reports on the State of the Oranga Tamariki system.
- 23 The minimum reporting requirements should be broadly consistent, so that common themes can run through all three of the required reports, as relevant. This consistency is important because when read together, all three reports will provide a view across the Oranga Tamariki system, and how it is meeting the needs of children, young people, and their families and whānau. I note that reporting on the Oranga Tamariki system in this respect includes other system responses, such as Health and Education, to those children and young people in the Oranga Tamariki system.
- 24 In addition to the minimum reporting requirements, I note that the Monitor has an Outcomes Framework which is informed by the Child and Youth

Wellbeing Strategy, and that to this end, reporting on outcomes will be a key feature of the annual and three-yearly reports. Further, as required by the Oversight of Oranga Tamariki System Act, reporting will be informed by engagement undertaken by the Monitor, which among others includes children and young people who receive services or support through the Oranga Tamariki system, and the families, whānau, hapū, iwi, and communities associated with those children and young people.

- 25 In-line with the objectives of the Monitor in the Oversight of Oranga Tamariki System Act, reporting will also cover how the system supports the rights of children and young people within the Oranga Tamariki system, to the extent that this information is available to the Monitor. I note that information on rights is more likely to be brought to the attention of the Monitor via community engagement and as such this will likely vary from year to year and report to report. Further, I do not propose requiring reporting on rights to be specified in regulation as I do not want reporting of the Monitor to duplicate existing reporting on rights that the Commission is mandated to undertake. Both the Oversight of Oranga Tamariki System Act and the Children and Young People's Commission Act include provisions for information to be shared between the Monitor, the Commission, and the Ombudsman to support the respective functions of the oversight bodies, and I am confident this will support the bodies to fulfil their reporting functions. I envisage that reporting on rights by the Monitor and the Commission will also help inform New Zealand's periodic reporting to the United Nations Committee on the Rights of the Child.

#### Annual reports on compliance with national care standards regulations

- 26 Section 23 of the Oversight of Oranga Tamariki System Act 2022 requires the Monitor to prepare an annual report on compliance with national care standards regulations. This is akin to the report currently produced by the Independent Children's Monitor under regulation 81 of the Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018 (National Care Standards).
- 27 I propose that the minimum requirements for this report should be informed by what is in regulation 81 of the National Care Standards (which will be revoked when the Oversight of Oranga Tamariki System Act 2022 comes into effect). This means that the minimum requirements for the annual report on compliance with national care standards regulations would include:
- 27.1 the number of children and young people in care or custody<sup>1</sup>, the length of the time spent in care or custody, and a summary of the reasons why they are in care or custody;
  - 27.2 a profile of the characteristics of children and young people in care or custody, including gender, ethnicity, age, disability, and health needs;

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<sup>1</sup> Care or custody under the National Care Standards relates to being in the care or custody of the chief executive of Oranga Tamariki. To this end, the reporting on compliance with the National Care Standards will also 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.

**I N C O N F I D E N C E**

- 27.3 information on the number of times children and young people in care have had a change of placement including the reasons why;
  - 27.4 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;
  - 27.5 information on identified incidents of abuse and neglect found to have occurred in care or custody, and the procedures followed to resolve these matters;
  - 27.6 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, young people, and their whānau;
  - 27.7 identification of areas of good practice as well as areas recommended as a focus for improvement;
  - 27.8 separate information for disabled children and young people, including Māori disabled children and young people, in terms of the level and degree of compliance with National Care Standards regulations;
  - 27.9 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
  - 27.10 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.
- 28 Relevant themes from the annual reports on compliance with National Care Standards will also flow through to the three-yearly State of Oranga Tamariki system report.

Annual reports on outcomes for Māori children and young people, and their whānau

- 29 Section 24 of the Oversight of Oranga Tamariki System Act 2022 requires the Monitor to prepare an annual report on the performance of the Oranga Tamariki system in respect of outcomes being achieved for Māori children and young people, and their whānau.
- 30 This requirement recognises that Māori are, and historically have been, over-represented in the care and protection and youth justice system and that this contributes to poorer outcomes for Māori. It also recognises the Crown's responsibility to give effect to Te Tiriti o Waitangi, and to improve the wellbeing of tamariki and rangatahi Māori. The annual report will demonstrate whether and what progress is being made, as well as provide insights into what is supporting improved outcomes for Māori, and where further work is required.

- 31 I propose that minimum reporting requirements for the annual report on outcomes for Māori children and young people, and their whānau should include commentary on:
- 31.1 the application of section 7AA of the Oranga Tamariki Act 1989, and outcomes being achieved for Māori children and young people, and their whānau;
  - 31.2 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;
  - 31.3 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;
  - 31.4 strategic partnerships Oranga Tamariki has with iwi and Māori organisations;
  - 31.5 separate information on Māori disabled children and young people; and
  - 31.6 any impact on the issues raised in paragraphs 31.1 to 31.5 have on the measurable outcomes that have been set to reduce disparities for Māori children and young people.

Three-yearly reports on the State of the Oranga Tamariki system

- 32 Section 22 of the Oversight of Oranga Tamariki System Act 2022 requires the Monitor to prepare a State of the Oranga Tamariki system report at least once every three years.
- 33 I expect that this report will cover the culmination of the three years of annual reporting to the date of the three-yearly report. It will include any themes or trends that are identified as part of the annual reporting, as well as any improvements that have been made or are yet to be made, in order to give a view of how the Oranga Tamariki system is working on the whole.
- 34 I propose that the minimum requirements for the State of Oranga Tamariki system report<sup>2</sup> should be commentary on:
- 34.1 the number of children who have received services or supports under the Oranga Tamariki Act 1989;
  - 34.2 compliance with the Oranga Tamariki Act 1989, the National Care Standards Regulations, and other regulations made under the Oranga Tamariki Act 1989;

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<sup>2</sup> The term 'services and support' in the context of this report includes responding under the Oranga Tamariki Act 1989 to offending (or alleged offending) by children and young people, as well as services and support related to care and protection.

**I N C O N F I D E N C E**

- 34.3 the quality and impact of service delivery by Oranga Tamariki or approved organisations;
- 34.4 the application of section 7AA of the Oranga Tamariki Act 1989; and an assessment of outcomes for tamariki, rangatahi, and their whānau;
- 34.5 how services and supports provided under the Oranga Tamariki Act 1989 interface with other systems, including the Ombudsman;
- 34.6 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;
- 34.7 areas of good practice and areas for improvement;
- 34.8 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
- 34.9 identified incidents of abuse and neglect found to have occurred in care or custody, and the procedures followed to resolve these matters.

*Regulations are needed to prescribe the timeframe for publishing the Monitor's reports and responses to those reports*

- 35 Section 31 of the Oversight of Oranga Tamariki System Act 2022 includes a requirement for the Monitor to publish its final reports and any responses it receives to these reports on an internet site maintained by or on behalf of the Monitor, and within a timeframe specified in regulations. The requirement to publish final reports and responses supports accountability, which was a theme heard strongly throughout the development of the bill and the submissions process on it.
- 36 I propose that a regulation be drafted to require the Monitor to publish its final reports and any agency responses to these reports 10 working days after agency responses are due.
- 37 I considered two factors:
  - 37.1 ensuring there is sufficient time for Ministers to consider reports prior to publication; and
  - 37.2 that the timeframe for publication should take effect from the time that any agency response to the report is due rather than from when it is received, to ensure publication of reports cannot be delayed by an agency not responding in the allocated timeframe set in legislation.
- 38 As Ministers are not able to influence the content of the Monitor's reports, the time required by Ministers to consider reports prior to publication needs



to be sufficient only for Ministers to have time to review the reports and responses prior to publication.

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

- 39 Section 37 of the Children and Young People's Commission Act sets out the purposes for which regulations may be issued to support that Act. I consider that only one regulation is needed, which is to define what constitutes a relevant agency for the purpose of endorsing a candidate for the board of Commission. This is a requirement for section 14(2) of the Children and Young People's Commission Act 2022 and ensures that potential applicants for the board have the support of the sector as well as relevant governance experience.
- 40 I consider that relevant agencies or organisations could be defined in a list of categories in regulations, and propose that these categories include:
- 40.1 any national organisation which represents Māori, particularly Māori welfare;
  - 40.2 any organisation that has the mandate to represent an iwi;
  - 40.3 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;
  - 40.4 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;
  - 40.5 any child- or youth-led organisation; and
  - 40.6 any organisation that represents the views and ideas of children and young people, including care-experienced children and young people.

### **I consider further regulation of codes of ethics is not required**

- 41 Under section 21 of the Oversight of Oranga Tamariki System Act and section 26 of the Children and Young People's Commission Act, the Monitor and the Commission are respectively required to have a code of ethics relating to engagement and to review those codes of ethics at least every five years.
- 42 There are also provisions to allow for regulations to be made prescribing:
- 42.1 the information that must be contained in the respective codes of ethics for the Monitor or the Commission;
  - 42.2 the intervals at which the Monitor and the Commission must review their respective codes of ethics (if shorter than five years); and

- 42.3 any one or more persons who must be consulted by the Monitor or the Commission when developing their respective codes of ethics or any amendments to their codes of ethics.
- 43 Cabinet has previously made a number of decisions relating to the codes of ethics, which I consider are sufficient to provide guidance and ensure that engagement by the Monitor and the Commission is safe and ethical [CAB-19-MIN-0687 refers]. In particular:
- 43.1 in developing their respective codes, oversight bodies must, where possible, take a common approach to support certainty and minimise any potential burden on individuals or those who are responsible for them, seek input from ethics specialists and from Māori, and consult with the Privacy Commissioner, to ensure the content of the code is appropriate;
- 43.2 prior to engaging directly with individuals, oversight bodies must obtain their informed consent; and
- 43.3 where the individual does not have the capacity to provide informed consent the person responsible for their day-to-day care may object to engagement on the grounds that engagement may place the individual at a risk of physical or emotional harm.
- 44 Officials have also sought input from the child's rights sector and key providers on whether this needs to be regulated, and the feedback received supports the approach to not regulate the codes of ethics.
- 45 Feedback from the sector did, however, support wider consultation when codes of ethics are developed or amended, in particular that this should include children and young people, Oranga Tamariki, and community organisations working with or for children and young people, such as VOYCE – Whakarongo Mai. In addition, there was support for the Monitor to consult with the Children and Young People's Commission on its code of ethics. Feedback also supported the Monitor undertaking a review of its existing code of ethics with those it is working with in the community, rather than developing a new code of ethics. I seek Cabinet agreement to this approach.
- 46 Further, as the purpose of the codes of ethics is to ensure safe and ethical engagement, and the legislation specifically requires the development of this, I anticipate that the Monitor will review its existing code, and the Commission will develop a new code of ethics, as a priority action once the legislation commences.

### **Financial Implications**

- 47 There are no financial implications arising from the development of regulations. Funding for the Monitor and for the Commission, which the proposed regulations will impact on, will be determined through Budget processes.

**Legislative Implications**

48 The proposals in this paper will inform the development of regulations.

**Impact Analysis**

**Regulatory Impact Statement**

49 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**

50 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.

**Te Tiriti o Waitangi Implications**

51 As with the primary legislation, the proposals in this paper relating to the development of regulations are upholding the Crown's obligations under Te Tiriti o Waitangi. In particular, the reporting requirements include a focus on supporting improved outcomes for Māori children and young people in the Oranga Tamariki system including what contributes to supporting improved outcomes and where further work is required. This is consistent with Article Three of Te Tiriti o Waitangi which guarantees Māori the same rights as other New Zealanders. In addition, the regulation defining a relevant agency for endorsing applicants for the board of the Children and Young People's Commission is expected to support greater representation of Māori on the board.

**Population Implications**

52 The proposals in this paper are designed to improve the oversight of the Oranga Tamariki system and how it meets the needs of children and young people within the care and protection and youth justice systems. It also seeks to ensure effective advocacy for all children and young people in Aotearoa New Zealand. The table below sets out the population impacts of the policy proposals for key groups:

Population group	How the proposal may affect this group
Māori	Māori children and young people are overrepresented in the care and protection and youth justice system. The proposed reporting requirements include a focus on improving outcomes for Māori

**IN CONFIDENCE**

	<p>children and young people and their whānau. This is expected to demonstrate whether and what progress is being made to support improved outcomes for Māori children and young people, and their whānau, as well as providing insights into what is supporting improved outcomes for Māori, and where further work is required.</p>
Children and young people	<p>All proposals in this paper are expected to support improved outcomes for children and young people. The proposed regulations regarding the oversight of the Oranga Tamariki system will support improved accountability across the Oranga Tamariki system with respect to achieving improved outcomes for children and young people in the Oranga Tamariki system.</p> <p>The proposed regulation for the Children and Young People's Commission will support the appointment of members to the board of the Commission who have the skills and experience to be able to advocate for the interests of all children and young people in New Zealand.</p>
Disabled people	<p>Disabled children and young people are disproportionately represented in the Oranga Tamariki system. The proposed reporting requirements include a specific focus on how the needs of disabled children and young people are being met, and includes a focus on Māori disabled children and young people. This reporting is expected to support greater accountability with respect to how the Oranga Tamariki system ensures the care and protection of disabled children and young people, as well as improved outcomes for disabled children and young people in the Oranga Tamariki system.</p>
Rainbow children and young people	<p>I considered whether reporting should include a focus on Rainbow children and young people in the Oranga Tamariki system. The recent Youth Health and Wellbeing Survey results indicate wellbeing for Rainbow young people generally is significantly lower than that of other young people, and a recent survey has indicated Rainbow young people may be overrepresented in the Oranga Tamariki system.</p> <p>However, the Monitor are not confident that they could adequately report on the situation for Rainbow children and young people in the Oranga Tamariki system on a regular basis due to a lack of available and reliable information.</p> <p>I note that the Oversight of Oranga Tamariki System Act enables the Minister responsible for the Monitor to request a specific review, and for the Monitor to undertake reviews of its own initiative, and I consider this would be a more appropriate mechanism to consider how the needs of Rainbow children and young people in the Oranga Tamariki system are being met.</p>
Pacific children and young people	<p>Pacific children and young people make up a similar proportion of children in care to their proportion of children and young people as a whole. However, Pacific children and young people are significantly more likely to be in care or otherwise come to the attention of Oranga Tamariki compared to children who are neither Pacific nor Māori. The proposed reporting requirements will support continuous improvements for Pacific children and young people in the Oranga Tamariki system as for other children and young people. Many Pacific children in care also whakapapa Māori and will benefit from the specific emphasis on reporting on outcomes for Māori children.</p>

## Human Rights

- 53 The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

## Consultation

- 54 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 (including the Office for Disability Issues), 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.
- 55 Officials sought feedback from organisations in the Children’s Rights sector and key providers on the proposals in this paper. Feedback from this engagement with the sector has been used to inform the proposals in this paper. Overall, the feedback received supported the proposals. Organisations consulted included: *Amnesty International New Zealand, Barnardos, Caring Families, Children’s Rights Alliance Aotearoa, the Fono, Hoani Waititi Marae, the Human Rights Commission, IHC New Zealand, Save the Children New Zealand, Social Service Providers Aotearoa, Southseas, the Paediatric Society of New Zealand, Te Puea Marae, UNICEF New Zealand, and VOYCE – Whakarongo Mai.*

## Communications

- 56 Any communications on the development of regulations will be made following drafting by the Parliamentary Counsel Office and confirmation by the Cabinet Legislation Committee.

## Proactive Release

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

## Recommendations

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

- 1 agree that the date of commencement for the Oversight of Oranga Tamariki System Act 2022 and related regulations should be 1 May 2023, and that an Order in Council be drafted to give effect to this
- 2 agree that:
  - 2.1 the date of commencement for the Children and Young People’s Commission Act 2022 and related regulations should be 1 July 2023

**IN CONFIDENCE**

- 2.2 but that this date be brought forward by Order in Council if the 2023 election is announced as being on or before 1 October 2023
- 3 agree that regulations be developed to specify that when the Monitor is required to notify certain matters under section 55 of the Oversight of Oranga Tamariki System Act 2022 (section 55), it must notify the Chief Executive of Oranga Tamariki and a constable of the New Zealand Police
- 4 agree that the regulation should link to the definition of serious harm in the Oranga Tamariki Act 1989
- 5 agree that the minimum requirements for the annual report of the Monitor on compliance with National Care Standards should include:
  - 5.1 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
  - 5.2 a profile of the characteristics of children and young people in care or custody, including gender, ethnicity, age, disability, and health needs
  - 5.3 information on the number of times children and young people in care have had a change of placement including the reasons why
  - 5.4 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
  - 5.5 information on identified incidents of abuse and neglect found to have occurred in care or custody, and the procedures followed to resolve these matters
  - 5.6 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
  - 5.7 identification of areas of good practice as well as areas recommended as a focus for improvement
  - 5.8 separate information for disabled children and young people, in terms of the level and degree of compliance with National Care Standards regulations
  - 5.9 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
  - 5.10 Information on the efficacy of practice by Oranga Tamariki, as required under the Oranga Tamariki Act 1989, to inform persons who have

**IN CONFIDENCE**

**IN CONFIDENCE**

made a report of concern whether the report has been investigated, and whether any further action has been taken.

- 6 agree 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:
  - 6.1 the application of section 7AA of the Oranga Tamariki Act 1989; and outcomes being achieved for Māori children and young people, and their whānau
  - 6.2 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
  - 6.3 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
  - 6.4 strategic partnerships Oranga Tamariki has with iwi and Māori organisations
  - 6.5 separate information on Māori disabled children and young people
  - 6.6 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.
- 7 agree 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:
  - 7.1 the number of children who have received services or supports under the Oranga Tamariki Act 1989
  - 7.2 compliance with the Oranga Tamariki Act 1989, the National Care Standards Regulations, and other regulations made under the Oranga Tamariki Act 1989
  - 7.3 the quality and impact of service delivery by Oranga Tamariki or approved organisations
  - 7.4 the application of section 7AA of the Oranga Tamariki Act 1989; and an assessment of outcomes for tamariki, rangatahi, and their whānau
  - 7.5 how services and supports provided under the Oranga Tamariki Act 1989 interface with other systems, including the Ombudsman

**I N C O N F I D E N C E**

- 7.6 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
- 7.7 areas of good practice and areas for improvement
- 7.8 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
- 7.9 identified incidents of abuse and neglect found to have occurred in care or custody, and the procedures followed to resolve these matters
- 8 agree 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
- 9 agree that a regulation be drafted to specify 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):
  - 9.1 any national organisation which represents Māori, particularly Māori welfare
  - 9.2 any organisation that has the mandate to represent an iwi
  - 9.3 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
  - 9.4 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
  - 9.5 any child- or youth-led organisation
  - 9.6 any organisation that represents the views and ideas of children and young people, including care-experienced children and young people
- 10 invite the Minister for Social Development and Employment to issue drafting instructions to the Parliamentary Counsel Office to give effect to the decisions in recommendations 1-9
- 11 agree that regulations are not needed at this stage for the following matters relating to codes of ethics:
  - 11.1 to prescribe the content of the respective codes of ethics for the Monitor and the Commission



**I N C O N F I D E N C E**

- 11.2 to prescribe the intervals at which the Monitor and the Commission must review their respective codes of ethics
- 11.3 to prescribe who the Monitor and the Commission must consult when developing or amending their respective codes of ethics
- 12 agree that rather than creating a new code of ethics, the Monitor should review its existing code of ethics
- 13 agree that in addition to the groups previously agreed by Cabinet, the following groups should be consulted when the Commission develops, and when the Monitor or the Commission review their codes of ethics:
  - 13.1 Children and young people
  - 13.2 Oranga Tamariki
  - 13.3 community organisations working with or for children and young people, including VOYCE – Whakarongo Mai
- 14 agree that in addition to the above, the Monitor should consult with the Commission on any amendments to its code of ethics.

Authorised for lodgement

Hon Carmel Sepuloni

Minister for Social Development and Employment