

[BUDGET: SENSITIVE]

Office of the Minister for Social Development and Employment

Social Wellbeing Committee

THE CHILDREN AND YOUNG PEOPLE'S COMMISSION ORGANISATIONAL MODEL**Proposal**

- 1 This paper seeks endorsement of the organisational model for the new Children and Young People's Commission (the Commission). The Commission needs to be established by 1 July 2023 under the Children and Young People's Commission Act 2022 (the Act).

Relation to government priorities

- 2 The decisions in this paper support the Government's priority of laying foundations for the future. This is because the Commission will promote and advance the rights and interests of the children and young people of New Zealand.

Executive Summary

- 3 The Office of the Children's Commissioner (OCC) will transition to become a new independent Crown entity, the Children and Young People's Commission (the Commission), commencing 1 July 2023 as per the Act.
- 4 The OCC currently carries out functions related to advocacy for children, promoting their rights, and encouraging their participation and voices. The Act strengthens these functions and expands them to care-experienced young people. The new Commission also has new duties relating to its relationships with Māori organisations and to support improved outcomes for Māori children and young people.
- 5 The new Commission will continue to exercise responsibilities for monitoring places of detention where children are held, but will require ongoing funding for this work.
- 6 Under the Act, the new Commission will not have the statutory functions related to monitoring the Oranga Tamariki Act 1989 that are currently part of the Children's Commissioner Act 2003. These functions are already being fulfilled by the Independent Children's Monitor, so not holding this function does not affect the resourcing required for the new Commission.
- 7 I am proposing the implementation of Model 2 (the Model) because it will enable the Commission to successfully deliver on its duties and functions under the Act.
- 8 I am proposing that the new Commission will have five board members as per the Model, including a full-time Chief Children's Commissioner, with the current Commissioner to be a board member, in accordance with the Act.

Background and context

- 9 The Office of the Children's Commissioner (OCC) is a corporation sole Crown entity (meaning it has a sole member acting as the Board and Chief Executive) with 42 staff, including the Children's Commissioner.
- 10 The OCC has been a strong and effective advocate for children and young people in New Zealand. The Children's Commissioner's current functions under the Children's Commissioner Act 2003 include functions related to advocacy for children, promoting and advancing children's rights and encouraging the participation and voices of children and young people.
- 11 This Government introduced the the Children and Young People's Commission Act 2022 (the Act) to increase the effectiveness of the advocacy function by allowing the OCC to focus on advocacy and build on its considerable strengths in this area.
- 12 For example, the Act specifies that its function relating to participation and voice includes modelling best practice engagement, and providing support and advice to organisations carrying out engagement. The new Commission's mandate is also expanded to include care-experienced young people aged 18-24 years.
- 13 On 1 July 2023 the Act comes into force. Under the Act, the Commissioner sole model will be replaced with a Children and Young People's Commission (the Commission), an independent Crown Entity. The Commission has a clear, legislated mandate to advocate for all children and young people in Aotearoa New Zealand.
- 14 The purpose of the new Commission is to promote and advance the rights, interests, and participation of children and young people and to improve their well-being within the context of their families, whānau, hapū, iwi and communities.
- 15 A Chief Children's Commissioner will lead a Board consisting of at least two, but not more than six other board members.
- 16 The Board will allow for a wide range of skills and experience to be represented in the board's membership, and will help to support greater Māori representation and expertise within the board.
- 17 To recognise the Crown's responsibility to give effect to Te Tiriti o Waitangi, and to improve the well-being of children and young people, the Act also sets out specific requirements, duties and functions for the Commission, including to build and maintain relationships with hapū, iwi, Māori organisations, and setting strategic priorities that support improved outcomes for Māori children and young people.
- 18 In addition to its functions under its own Act, the Commission will carry on the Children's Commissioner's monitoring function under the Crimes Against Torture Act 1989 (CAT Act) and United Nations Optional Protocol to the Convention Against Torture (OPCAT). Under the CAT Act and OPCAT, the Children's Commissioner is responsible for examining and monitoring the treatment of children and young people in certain places of detention.

- 19 The new Commission will not hold functions related to monitoring the Oranga Tamariki Act 1989, as they are included in the Children’s Commissioner Act 1989. However, this does not affect the resourcing required for the new Commission because monitoring of the Oranga Tamariki system is already performed by the Independent Children’s Monitor.

Options for the organisational arrangements of the new Children and Young People’s Commission and Board

- 20 Through the Budget 2023 process, funding has been agreed to support the cost of establishing the new Commission and implementing the transition of the OCC into the new entity.
- 21 The key choices for the organisational model are: the number of Board members; whether Board members are full-time or part-time; and the structure and staffing needed to support the Board to carry out its functions.
- 22 The options and funding requirements are based on the attached document, *Establishing the Children and Young People’s Commission – The Investment Case* (the *Investment Case*), developed by the OCC based on what they consider are required to deliver on the duties and functions outlined in the Act and needs of the Commissioners (see Appendix 1).
- 23 The options are designed to support a smooth transition to the new entity and deliver on our vision for promoting and advancing the rights and interests of the children and young people of New Zealand.
- 24 The options set out in Appendix 1 and below are all based on a board of five Commissioners which includes the Chief Children’s Commissioner. I consider five Commissioners strikes the right balance between ensuring the Board has the necessary knowledge, skills and capabilities to fulfil its responsibilities under the Act.
- 25 The OCC developed three models to consider:

Option	Composition	Additional annual funding required for Commissioners and staff *
Model 1	<ul style="list-style-type: none"> • A full-time Chief Children’s Commissioner • A full-time Commissioner – Māori • 3 part-time commissioners • 64 staff 	\$2,288,921
Model 2	<ul style="list-style-type: none"> • A full-time Chief Children’s Commissioner • 4 part-time Commissioners • 64 staff 	\$2,010,706
Model 3	<ul style="list-style-type: none"> • A full-time Chief Children’s Commissioner • 4 full-time Commissioners. • 81 staff 	\$4,944,400

* The current baseline funding of the OCC is \$3.157m, including Commissioner and staff costs.

- 26 I propose the implementation of Model 2 (the Model) because it will enable the Commission to successfully deliver on its duties and functions under the Act. In particular, the use of part-time Commissioners provides for the diversity of backgrounds and perspectives we are looking for to strengthen system level advocacy for all New Zealand children and young people, while helping to manage costs.¹
- 27 On the proposal to include a full-time Commissioner – Māori under Model 1, I note that the statutory duties around building and maintaining relationships with hapū, iwi, Māori organisations and others, and supporting improved outcomes for Māori children and young people, are on the Board, not individual Commissioners. Accordingly, the Act requires that the Commission must have, among its Board members ‘knowledge and understanding of Te Tiriti o Waitangi’, and at least half of the Board must have Māori knowledge and experience in, and knowledge of, tikanga Māori (section 13).
- 28 Consequently, I believe that these statutory requirements, combined with the support provided to the Board by the Commission’s Te Tiriti team, will enable the Board to fulfil its responsibilities with regard to Māori children and young people and under Te Tiriti o Waitangi.
- 29 I believe the structure that underpins Model 2 is the right one and that it will appropriately support the Board in its duties and the Commissioners in their roles. The proposed organisational structure comprises:
- a chief executive, and their executive assistant
 - staff supporting Te Tiriti o Waitangi obligations, to provide support, advice and guidance from a mātauranga Māori perspective to teams
 - policy staff, responsible for setting the policy agenda for the tari and supporting Commissioners by highlighting ad hoc issues that arise through the political, governmental or community arena
 - advocacy and rights staff, responsible for providing advice which promotes the interests, rights, and wellbeing of mokopuna, with the ultimate goal of achieving The Commission’s moemoeā: kia kuru pounamu te rongo – all mokopuna live their best lives
 - participation and engagement staff, responsible for developing and implementing a strategic plan of engagements and initiatives that provides the opportunity to listen to mokopuna and understand their needs (Mai World)

¹ The *Investment Case* notes that with part-time Commissioners there are some opportunities for cost savings – notably travel and the level of communications support – but that there are a number of supports needed that will be largely unchanged by scaling back board members time commitment, eg policy, and advocacy advice and support.

- communications staff, responsible for working across the tari to identify opportunities that ensure the voices of mokopuna and issues are amplified across different communications channels
- monitoring capacity, responsible for monitoring the application of the Children's Convention under the United Nations Optional Protocol to the Convention Against Torture (OPCAT) in Oranga Tamariki youth justice and care and protection residences, sites and remand homes as well as Department of Corrections Mother and Baby Units in the three Department of Corrections Women's Prison Facilities, and children and young people detained in Mental Health Facilities (by delegation from the Chief Ombudsman)
- corporate staff, including a secretariat to support the board, and HR staff.

Implementation timeframes

- 30 Work to support the transition is being progressed by the OCC, including work to ensure:
- 30.1 the smooth transition of current OCC staff, and of their existing work programmes, to the new entity
 - 30.2 arrangements are in place to induct and support the new Board of Commissioners including the establishment of new Secretariat roles and associated operating processes to meet the requirements for Independent Crown Entities
 - 30.3 the new Commission's Board will be well positioned to progress legislative requirements such as the Code of Ethics and Information Rules
 - 30.4 an interim Chief Executive for the Commission is in place from 1 July 2023 and the new Board is able to progress appointment of a permanent Chief Executive as quickly as possible
 - 30.5 agreements are in place on how the three agencies that form the Children's Oversight System (Independent Children's Monitor, Ombudsman and Children and Young People's Commission) will operate and share information
 - 30.6 both staff and stakeholders, including mokopuna and whānau, understand what the change means and the future role of the new Commission.
- 31 The Commission's establishment will continue across its first year of operation while the Board determines its operating model, develops its strategic view and appoints a permanent Chief Executive. Further detail of key establishment tasks and timeframes is in Appendix 3.

Financial Implications

- 32 The Budget 2023 cost pressure initiative I have submitted will enable the implementation of the new Board structure, a Secretariat and the operating model for one year, based on Model 2 (as set out above).

- 33 The main costs are outlined in the tables below.
- 34 Additional funding of \$0.350m will be included in 2022/23 to fund a specialised project team to transition the organisation to the new entity.
- 35 Total additional funding for this initiative in 2023/24 is \$8.967m, including capital of \$1.300m:
- 35.1 impact to operating baseline for 2022/23 is a net increase of \$0.350m from \$4.797m to \$5.147m
- 35.2 impact to operating baseline for 2023/24 will be a net increase of \$7.667m from \$3.157m to \$10.824m
- 35.3 additional capital funding of \$1.300m required for 2023/24.
- 36 The impact to operating baseline for 2024/25 and onwards will be a net increase of \$7.756m from \$3.157m to \$10.913m, to be held in a tagged contingency.

Funding requirements and rationale

- 37 The OCC will cease to exist on 30 June 2023, and the new entity, complete with its own governance arrangements, operational framework, financial systems, and leadership structure must be in place by 1 July 2023. There is an aspect of transition, namely the movement of existing staff and functions into the new Commission, nevertheless the new functions required of the Commission under the Act will require additional personnel, and an increase in capacity and expertise.

Funding for Commissioners and staff (under the Model)

- 38 The *Investment Case* sets out more detailed information on the OCC's current organisational structure, existing investment in staff, the funding required to resource the additional staff proposed and the rationale for the additional staff (see pp 9-15).
- 39 In summary, additional funding is needed to:
- 36.1 appropriately remunerate the Commissioners provided for under the Act
- 36.2 to provide the additional staff are needed to effectively meet requirements under the Act, including a chief executive for the new entity.

The funding needed for these additional staff is \$1,682,872. Appendix 2 itemises the additional staff needed and summarises the rationale from the *Investment Case*. The total number of staff needed is 64. The following table summarises current investment and proposed investment for staff under the Model.

	Current investment	Proposed
Chief Children's Commissioner (and EA)	\$423,150	\$472,769
4 Part-time Commissioners	0	\$278,215
Staff	\$4,850,409	\$6,533,281
Total	\$5,273,559	\$7,284,265

The monitoring function

- 40 As noted above, the Commission will retain monitoring responsibilities under the CAT Act and OPCAT.
- 41 While no additional monitoring staff are proposed, funding is needed to maintain current staffing. Additional one-off funding of \$1.640m was received in 2022/23 to fund this service, which will be required on an ongoing basis and is included in Budget 2023 funding.

Consolidated costs for establishing the Commission

- 42 In addition to the costs outlined above, there will be further costs associated with establishing and operating the Commission (including one-off funding for the Establishment Unit). These are outlined in the table below.

	Rationale	Costs
Establishment unit	One-off funding is needed for a specialised project team to ensure OCC has the capacity to deliver BAU and have everything in place for the new entity to operate from day one.	\$350,000
Associated staff costs	To cover KiwiSaver, eyecare, ACC etc.	\$1,008,053
Travel	To cover Commissioners and staff travelling to fulfil the duties and functions of the Commission	\$565,000
Operating expenditure (minus travel)	This will include accommodation for additional staff and to establish an Auckland office (see <i>Investment Case</i> , p6).	\$1,700,500 ²
Capital costs	To cover: <ul style="list-style-type: none"> new furniture – to replace old furniture and to meet needs of additional staff IT capacity and software – to cover new means of engaging with children and young people, and ensure quality, capacity and robustness is fit for purpose for additional Commissioners and staff. 	\$1,300,000

² Note that the Investment Case this cost is based on was completed before recent significant increases to the cost of office accommodation were known and that the cost of accommodation for the new Commission may require additional investment. In addition, depreciation has not been included in this costing.

Legislative Implications

43 This paper does not have any legislative implications.

Impact Analysis

44 A Regulatory Impact Assessment (RIA) has not been undertaken for this paper because the proposals do not have legislative or regulatory implications.

Climate Implications of Policy Assessment

45 The Climate Implications of Policy Assessment (CIPA) requirements do not apply to this paper as the initiatives either do not have a direct emissions impact, do not meet the emissions abatement threshold to require a CIPA, or do not have enough certainty to be accurately quantified.

Population Implications

46 Additional funding will benefit children generally, and young people who are or have been in care or custody, including Pacific peoples, ethnic communities and disabled people, by strengthening the capacity of the new Commission to:

46.1 promote their wellbeing and interests through advocacy, research and reporting

46.2 raising awareness and understanding of children and young people's rights by the general public and public sector

46.3 encouraging children and young people's participation in decisions that affect them.

47 Additional funding is expected to benefit tamariki Māori in particular by enabling the new Commission to give due emphasis to specific duties that include:

47.1 building and maintain relationships with hapū, iwi and Māori organisations

47.2 setting strategic priorities and work programmes that support improved outcomes for Māori children and young people within the context of their whānau, hapū, and iwi

47.3 undertaking and promoting research on the rights, interests, or well-being of children and young people, while giving special attention to Te Ao Māori.

Human Rights

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

49 Additional funding will enable the new Commission to fulfil its role in ensuring New Zealand meets its international human rights commitments, in particular by:

49.1 advocating for the advancement of the application of the Convention on the Rights of the Child ('the Children's Convention')

- 49.2 monitoring the application of the Children's Convention by the Crown and reporting to the United Nations
- 49.3 examining and monitoring the treatment of children and young people in places of detention as a national preventive mechanism for the purposes of the Crimes of Torture Act 1989 and Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Consultation

- 50 The following government departments have been consulted on this Cabinet paper: The Treasury and the Department of the Prime Minister and Cabinet.

Communications

- 51 Officials will liaise with my Office to coordinate a communications plan.

Proactive Release

- 52 This paper will be proactively released within 30 business days and published on the Ministry of Social Development's website, with redactions as appropriate under the Official Information Act 1982.

Recommendations

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

- 1 **note** that the Office of the Children's Commissioner (OCC) will transition to become a new independent Crown entity, the Children and Young People's Commission (the Commission), commencing 1 July 2023 as per the Children and Young People's Commission Act 2022
- 2 **note** that under the Children and Young People's Commission Act 2022, the Commission will be responsible for expanded legislative functions related to advocacy for children and young people and new duties relating to its relationships with Māori
- 3 **note** that new organisational arrangements are required to establish the Children and Young People's Commission and deliver on the duties and functions outlined in the Children and Young People's Commission Act 2022
- 4 **note** that funding options were considered as part of Budget 2023, with funding secured to provide a full-time Chief Children's Commissioner, four part-time commissioners and additional support staff, as well as funding for the transition to the new Commission
- 5 **endorse** Model 2 to be adopted, in accordance with funding decisions for 2023/24 made through the Budget 2023 process
- 6 **note** that this organisational model and funding will enable the Commission to successfully deliver on its duties and functions under the Act and provide for the diversity of backgrounds and perspectives in the Commission

- 7 **note** that further funding (\$7.756m each year from 2024/25 and outyears) is held in a tagged contingency, subject to the Minister for Social Development and Employment and the Minister of Finance's satisfaction with the implementation of the Model.

Authorised for lodgement

Hon Carmel Sepuloni

Minister for Social Development and Employment

Appendix 1: The *Investment Case*

Appendix 2: Additional staffing

This table is based on the detailed information provided in the *Investment Case*.

Additional staff needed	Rationale	Additional funding
Chief Executive and Assistant	The Act requires a chief executive and they will need an executive assistant to assist them with the running of the organisation.	\$73,883
4 additional Te Tiriti staff	Additional staff are needed to support the Board to meet its requirements under the new Act. The Board has to give effect to Te Tiriti o Waitangi, to build and maintain relationships with hapū, iwi, Māori organisations, community organisations and agencies with a strong focus on the rights, interests, and wellbeing of mokopuna Māori.	\$401,160
1 additional Policy staff	Policy staff are needed to support the Commissioners by highlighting ad hoc issues that arise through the political, governmental or community arena. They also provide guidance to other teams on their work under the legislation. One additional policy staff member is considered the minimum necessary to meet the Commission's functions.	\$137,499
3 additional participation and engagement staff	It is anticipated that these skills will increasingly be utilised by the public sector, and that additional programmes of work will be initiated by Commissioners. A minimum increase of 3 staff will be required to meet this demand.	\$263,661
3 additional advocacy and rights staff	To meet the expectations of the new Act and the demands of additional Commissioners an increase of 3 staff is considered the minimum requirement.	\$263,661
2 additional communications staff	The addition of four new part-time Commissioners will expand the expectation on the team for assisting with media, speeches, portfolio specific communications plans. This will require a minimum of two additional Communication Advisors.	\$210,750
4 additional corporate staff, including secretariat and HR	<p>The secretariat required to support the Board will consist of a manager and four other staff.</p> <p>The Human Resources Manager is currently a sole charge role. An additional advisor is needed to support the establishment of the new entity, including a change programme, the potential creation of new roles, any alterations to work related policy, and embedding the same.</p>	\$332,258
Total		\$1,682,872.00

Appendix 3: Key establishment tasks and timeframes

Milestone/Activity	Completion by
<p>Entity requirements for the new Commission</p> <ul style="list-style-type: none"> New Appropriation measures are developed and agreed. Data collection and reporting is aligned to new measures. New internal delegations are developed. Develop, deliver and publish new Statement of Intent and Statement of Performance Expectations Align data collection and reporting to new Letter of Expectations. Recruit Chief Executive 	<p>April 2023 30 June 2023 30 June 2023 As agreed with Minister</p> <p>Dependent on timing of the Letter of Expectations December 2023</p>
<p>New legislative requirements</p> <ul style="list-style-type: none"> Develop draft Code of Ethics – align staff expectations and performance management. Incorporate into Commissioner expectations. Information rules on collection, storage and disposal of information – develop, consult, agree with other agencies, publish and align internal processes and protocols. Terms of Reference for how Commission, ICM and Ombudsman will operate. Detailed processes to support the Terms of Reference. Information sharing arrangements with ICM and Ombudsman. 	<p>1 July 2023</p> <p>TBC – dependent on drafting timelines 30 April 2023 30 April 2023</p>
<p>Staff transition</p> <ul style="list-style-type: none"> Formal transfer of staff and alignment of roles and performance expectations with the new Commission. Align staff performance expectations to Code of Ethics. Recruitment of new staff – in line with budget – to support new Commission. 	<p>30 June 2023</p> <p>30 June 2023 31 March 2024</p>
<p>Identity and website</p> <ul style="list-style-type: none"> Initial changes to reflect new name New branding / identity – to be fully completed and in place New website, which will include changes to role and context, and new identity 	<p>30 June 2023 30 June 2024 30 June 2024</p>
<p>New Accommodation</p> <ul style="list-style-type: none"> Extending accommodation as the current OCC accommodation is at capacity and cannot accommodate the new Board and secretariat. 	<p>30 June 2024</p>
<p>Policies and procedures update</p> <ul style="list-style-type: none"> Update all policies and procedures in line with new Commission role and to ensure effectiveness Review in line with Code of Ethics and Info sharing rules 	<p>30 June 2023 30 June 2024</p>
<p>Filing system development</p> <ul style="list-style-type: none"> New requirements create need for more robust information management system – we need to identify and implement a new system. 	<p>30 June 2024</p>
<p>Communications and change</p> <ul style="list-style-type: none"> Internal Communications focus on supporting staff across transition and ensuring they are well placed to support the children and young people and whānau and stakeholders they work with to feel comfortable and confident about the change External communications include new materials for children and young people and stakeholders; materials for external website and media. 	<p>30 March to 30 September 2023</p> <p>30 March to 30 September 2023</p>