# [In Confidence]

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

Phased approach to strengthening the oversight of the Oranga Tamariki system

# Proposal

1. I am seeking Cabinet agreement to my phased approach to strengthen the oversight of the Oranga Tamariki system, [Redacted content].

# Relation to government priorities

1. This proposal will contribute to fulfilling a commitment in the National-Act Coalition Agreement to create a truly independent children’s monitor. It will also enhance public confidence in the oversight of the Oranga Tamariki system by supporting a series of changes intended to strengthen oversight.

# Executive Summary

1. I am planning changes to the oversight of the Oranga Tamariki system to enhance effectiveness and strengthen independent monitoring. I intend to make the Independent Children’s Monitor (Monitor) an Independent Crown Entity (ICE) rather than keeping its current form as a departmental agency. I also intend to enhance the visibility of the Commission’s advocacy role by making it a corporation sole Crown entity with a single commissioner rather than a board, and have requested further advice from officials on this change.
2. I also intend to commence the statutory reviews of the Children and Young People’s Commission Act 2022 (Commission Act) and Oversight of Oranga Tamariki System Act 2022 (Oversight Act) this year to align with the changes I want to make to the Monitor and Commission. I will report back to Cabinet in late July on the details of the reviews as well as the changes I want to make to the Monitor and Commission through an Omnibus Bill.
3. [Redacted content].

# Background

1. The Oranga Tamariki system is responsible for providing services or support to children, young people, and their families and whānau under, or in

connection with, the Oranga Tamariki Act 1989. The system includes agencies such as Oranga Tamariki – Ministry for Children, New Zealand Police, the Ministries of Health, Social Development, Education and Justice, and Department of Corrections.

1. Three entities are legislated to oversee the Oranga Tamariki system. They were established in their current forms through the Oversight Act and the Commission Act, which commenced in May and July 2023, respectively. They are:
   1. the Commission, a new ICE replacing the Office of the Children’s Commissioner, broadly responsible for advocacy for all children and young people in New Zealand
   2. the Monitor, a departmental agency responsible for monitoring the Oranga Tamariki system, and
   3. enhancements to the Ombudsman's function, in order to manage complaints in relation to support and services provided by care or custody providers.
2. A tagged contingency fund of $7.756 million per annum was established through Budget 2023 and set aside for the Commission, to be released subject to the Minister for Social Development and Employment’s and Minister of Finance’s satisfaction with the implementation of its strategic objectives, how the objectives would be achieved, and implementation of the new operating model. Following the rapid savings exercise the amount available is now $7.368 million per annum.

# I plan to make changes to the oversight of the Oranga Tamariki system to enhance public confidence in independent monitoring and advocacy

1. I am currently planning to fulfil the National-Act Coalition Agreement to create a truly independent children’s monitor alongside other changes to enhance the functions of the oversight of the Oranga Tamariki system. I will report back by late July 2024 with another Cabinet paper to enact these changes.
2. At this stage, I would like to indicate the following areas of focus:
   1. strengthening independent monitoring by shifting the Monitor to an ICE rather than keeping its current form as a departmental agency. Under the Crown Entities Act 2004, independent Crown entities are generally independent of government policy
   2. clarifying how the Commission functions and consolidating its structure and responsibilities by making it a corporation sole Crown entity with a single Commissioner to enhance visibility of its advocacy function, and
   3. commencing the statutory reviews of the Oversight Act and Commission Act in 2024.
3. [Redacted content].

# Details of the tagged contingency fund set aside for the Commission

1. The intent of the tagged contingency fund was to support the Commission in achieving its strategic objectives under the Commission Act, including its capacity to advocate for children and young people and provide oversight of the Oranga Tamariki system. [Redacted content].
2. Further information about the Commission’s Budget and funding in the tagged contingency is laid out in the table below:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Breakdown of the Commission’s Budget** | **23/24** | **24/25** | **25/26** | **26/27** |
| **Overall funding for the Commission** | 12.124\* | 10.525 | 10.525 | 10.525 |
| Baseline funding for the Commission | 3.157 | 3.157 | 3.157 | 3.157 |
| Tagged contingency fund agreed to through Budget 2023 | 0 | 7.756 | 7.756 | 7.756 |
| Rapid Savings exercise | 0 | -0.388 | -0.388 | -0.388 |
| **Total tagged contingency fund** | **0** | **7.368** | **7.368** | **7.368** |

\*Includes establishment costs of $8.967 million for the Commission ($7.667 million operating and $1.300 million capital)

1. [Redacted content].
2. [Redacted content].
   1. [Redacted content]
   2. [Redacted content]
   3. [Redacted content]
   4. [Redacted content].

*Ongoing funding for the Commission*

1. The Commission is currently working to an annual budget of $10.525 million for 2024/25 onwards and requires some of the tagged contingency fund to continue operating as they currently do. Their functions include engaging with children and Māori, which are requirements under the Commission Act, and were the reason for the tagged contingency fund initially being set aside.
2. The Commission is responsible for monitoring under the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (OPCAT) [Redacted content].

*Ongoing or one-off funding for the Monitor*

1. When the Monitor becomes an ICE, they will have a governing board, which will require funding for establishment and ongoing costs. [Redacted content].

*Ongoing or one-off funding to cover the reviews of the Oversight Act and Commission Act*

1. The reviews of the Oversight Act and Commission Act are required to begin no more than three years after the commencement of the Acts, which would be by mid-2026. I am currently considering commencing the reviews earlier than 2026 to align with the changes I want to make to improve the oversight of the Oranga Tamariki system.
2. Funding will be required to complete the statutory reviews of the Oversight Act and Commission Act, which includes tabling the final report to Parliament.

# Cost-of-living Implications

1. No cost-of-living implications are associated with this proposal.

# Financial Implications

1. Decisions in this paper have no direct financial implications but would extend the timeline for drawing down the tagged contingency fund [Redacted content].

# Legislative Implications

1. No legislative implications are associated with this proposal, although legislative change will be required to enact changes supported by the tagged contingency fund in the future.

# Impact Analysis

**Regulatory Impact Statement**

1. The Treasury’s Regulatory Impact Analysis team has determined that this proposal is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

# Climate Implications of Policy Assessment

1. No climate implications are associated with the proposals.

# Population Implications

1. There are no population implications [Redacted content].

# Human Rights

1. Any changes to the oversight of the Oranga Tamariki system that require a Bill will be assessed comprehensively for compliance with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

# Consultation

1. I discussed the proposals in this paper with the Ministerial group focused on the Child and Youth Wellbeing Strategy at a meeting on 1 February 2024, and they are supportive of the approach.
2. The proposals in this paper have been developed through consultation with the Monitor, Commission, Ombudsman, Education Review Office, Public Service Commission, and Ministry of Justice.
3. Other agencies consulted on this paper were Oranga Tamariki, Te Puni Kōkiri, the Treasury, the Public Service Commission, Ministries of Business, Innovation and Employment, Women, Health, Education, and Youth Development, Ministries for Pacific Peoples and Primary Industries, Te Tūāpapa Kura Kāinga – Ministry of Housing, Whaikaha – Ministry of Disabled People, Departments of the Prime Minister and Cabinet, Corrections, Ethnic Communities, and Internal Affairs, the Human Rights Commission, the Mental Health and Wellbeing Commission, Accident Compensation Corporation, Sport and Recreation New Zealand, and New Zealand Police.

# Proactive Release

1. I intend to proactively release this paper, subject to the Official Information Act 1982.

# Recommendations

The Minister for Social Development and Employment recommends the Cabinet Social Outcomes Committee:

1. **note** the Minister for Social Development and Employment is committed to strengthening the oversight of the Oranga Tamariki system through various changes over the next 12 to 24 months
2. **agree** in principle to strengthening independent monitoring by shifting the Independent Children’s Monitor (the Monitor) to an Independent Crown Entity, which is part of the National-Act coalition agreement
3. **note** the Minister for Social Development and Employment is considering clarifying how the Children and Young People’s Commission (Commission) functions and consolidating its structure and responsibilities by making it a corporation sole Crown entity with a single Commissioner, intended to enhance visibility of its advocacy function
4. **note** the Minister for Social Development and Employment will report back to Cabinet by late July 2024 to provide the details of the reviews of the Oversight of the Oranga Tamariki System Act 2022 and the Children and Young People’s Commission Act 2022 and seek agreement to the changes that will be made to the Monitor and Commission through and Omnibus Bill
5. **note** the Minister for Social Development and Employment intends to advise the Board of the Commission about taking a proposal to Cabinet to make it a corporation sole Crown entity, after this paper has been agreed to by Cabinet
6. **note** that, at Budget 2023, Cabinet agreed:
   1. to establish a tagged operating contingency fund associated with the Social Development portfolio for the ongoing costs of the Commission:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | **$m - increase/(decrease)** | | | | |
|  | **2022/23** | **2023/24** | **2024/25** | **2025/26** | **2026/27 &**  **Outyears** |
| Operating Contingency  Capital Contingency | -  - | -  - | 7.756  - | 7.756  - | 7.756  - |
| **Total** | **-** | **-** | **7.756** | **7.756** | **7.756** |

* 1. any drawdown from the tagged contingency fund was subject to the Minister of Finance and the Minister for Social Development and Employment being satisfied with the implementation of the Commission’s strategic objectives and how the new operating model had been implemented, and
  2. the expiry date for the tagged contingency fund would be 30 June 2024

1. **note** that, following adjustments through the Rapid Savings Process, the remaining balance and indicative phasing of the tagged operating contingency fund described above is:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | **$m - increase/(decrease)** | | | | |
|  | **2023/24** | **2024/25** | **2025/26** | **2026/27** | **2027/28&**  **Outyears** |
| Operating Contingency  Capital Contingency | -  - | 7.368  - | 7.368  - | 7.368  - | 7.368  - |
| **Total** | - | **7.368** | **7.368** | **7.368** | **7.368** |

1. **note** the Commission will still need some of their tagged contingency fund to support them continuing to function as they currently are, and to achieve their strategic objectives
2. [Redacted content]
3. **authorise** the Minister of Finance and the Minister for Social Development and Employment jointly to draw down the tagged operating contingency funding provided in the table in recommendation 7 for:
   1. the purposes for which the tagged contingency was originally established, as set out at recommendation 6.2, and
   2. [Redacted content]
4. **agree** that the tagged operating contingency fund described above will now expire on 1 July 2025.

Hon Louise Upston

Minister for Social Development and Employment