

Strengthening oversight of the Oranga Tamariki system

Summary of Engagement

June 2024



**MINISTRY OF SOCIAL
DEVELOPMENT**
TE MANATŪ WHAKAHIATO ORA

Contents

Introduction.....	3
Background	3
Engagement Summary.....	4
Are the reviews covering a broad enough scope? What else should they consider?... 4	
What other issues should the Terms of Reference cover?	5
With whom should the Independent Reviewer engage?	7
How should the Independent Reviewer engage with children?	9
How would you communicate the Terms of Reference and the reviews to children? How could we use the reviews to make the system more accessible and engaging to children?	13
With reference to paras 14 and 15 of the TOR, what are your thoughts on the definition of working effectively?.....	13
Out of scope	15
Appendix 1 – List of stakeholders	19
Appendix 2 – Discussion Document	1

Introduction

In May 2024, the Ministry of Social Development (MSD) undertook targeted engagement with key stakeholders¹ involved in the oversight and monitoring of the Oranga Tamariki system to gain feedback on the draft Terms of Reference (ToR) for the statutory reviews of the Oversight of Oranga Tamariki System Act 2022 and Children and Young People's Commission Act 2022.

Legislation requires that the reviews must commence no later than 3 years after the commencement of the Acts, which would be mid-2026. However, the responsible Minister for the two Acts, Hon Louise Upston, intends to start and complete the reviews in 2024 to align with the structural changes that she has announced in relation to the Monitor and the Children and Young People's Commission. This would ensure that any other potential changes to strengthen the oversight of the children's system could be considered at the same time as when the Bill would be introduced to Parliament. The reviews will provide further input on how we can make the oversight of the Oranga Tamariki system work better for everyone who interacts with the system.

We would like to thank all those people who made the effort to meet with us. Their contributions were insightful, wide ranging and provided significant value to this work.

Background

On 2 May 2024, Minister Upston announced changes to strengthen oversight of the Oranga Tamariki System. This included returning the Children and Young People's Commission back to a single Commissioner, moving away from the current five-member board structure, and making the Monitor, which is currently a departmental agency, an Independent Crown Entity to further strengthen its independence. The Minister intends to introduce a Bill later this year to progress this work.

Alongside these changes to the Monitor and the Commission, the Minister also announced starting and completing the reviews of the Oversight of Oranga Tamariki System Act 2022 and Children and Young People's Commission Act 2022 by the end of this year.

To support further advice to Ministers on what the scope of the reviews of the Acts could cover, MSD undertook targeted engagement from 20 May to 31 May with key stakeholders who interact with the Oranga Tamariki system. Given our engagement was over a two-week period, the stakeholders we engaged with were predominantly umbrella organisations that represented multiple organisations.

These discussions were based on what the Independent Reviewer must consider, as set out in section 58 of the Oversight Act and section 38 of the Monitor Act, and whether there was anything else people wanted to include or clarify as part of the scope. The findings of MSD's engagement have been summarised into key themes in this report.

¹ A list of stakeholders is available at Appendix 1.

Engagement Summary

Following engagement, feedback from all participants was collected and thematically analysed. This document provides a summary of the insights received, presented under the questions that were asked during engagement sessions.

A discussion document was provided to stakeholders in advance of engagement sessions to provide context and support the discussions. This document is provided in Appendix 2.

Are the reviews covering a broad enough scope? What else should they consider?

Scope is broad enough but there are gaps

All stakeholders across the engagement agreed the scope of the draft ToR is broad enough and covers the most important issues in relation to the monitoring and oversight of the Oranga Tamariki System, but also identified gaps, which they felt should be part of the review.

The main gaps stakeholders identified pertain to the Royal Commission of Inquiry into the abuse of children in care and the Concluding Observations by the Committee of the United Nations Convention on the Rights of the Child (UNCRC) following New Zealand's examination in 2023.

Gaps that stakeholder identified that are in scope are presented below. Further feedback from stakeholders on the proposed changes is provided in the Out of scope section at page 16.

a. Royal Commission of Inquiry Report

Stakeholders suggested incorporating the recommendations of the Royal Commission of Inquiry into abuse of children in care when it becomes available into the TOR. This position resonated with almost all stakeholders. One stakeholder noted:

"We think the Royal Commission should be included in the scope, because these findings could inform pathways of accountability and redress".

Another expressed concern at its exclusion from the TOR:

"The Royal Commission of Inquiry's report is due in June, which means we are concerned to see the reviews "may consider" the recommendation after the report is released. In context of the review and the system, they should take into account these recommendations".

b. The UNCRC's 2023 Concluding Observations

The majority of stakeholders called for the reviews to consider how the two Acts can give more effect to the UNCRC Committee's Concluding Observations:

"Interested to know if review can look at how the two Acts give intent to the UN convention – concluding observations, had section relating to the oversight".

This will ensure New Zealand is continuously meeting its obligations to the International Convention on the rights of the child. A cross-section of stakeholder groups shared this view.

c. *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)*

Issues surrounding OPCAT also came through strongly with stakeholders expressing various views, including:

"Regarding OPCAT monitoring – don't lose sight of the rights elements of that function – the Commission holds the expertise on rights. If the function moves, how will that expertise be maintained in the function? Important that children are seen as part of the process from end to end and the rights expertise is crucial to that".

The general view among some stakeholders, however, was that moving the function from the Commission could weaken its monitoring role.

What other issues should the Terms of Reference cover?

The Ombudsman needs to be better represented in the Reviews

Stakeholders called for the Ombudsman to be better and strongly represented in the reviews and more adequately covered in the ToR in relation to its additional powers that support children. Including the Ombudsman in the reviews better reflects the agencies in the oversight system and the key functional areas of monitoring, advocacy and complaints.

"Interesting to talk strongly about advocacy, complaints, and monitoring – whereas the Ombudsman isn't strongly represented in the reviews as laid out so far. If you look at the three areas, it feels right that the Ombudsman should be part of that review. Feels like the Ombudsman and complaints isn't in the review".

The Independent Children's Monitor (ICM) needs to have more 'teeth'

A range of stakeholder groups told us they believed it was necessary for the ICM to have more power or 'teeth' in the performance of its functions to ensure it can enforce compliance. They would like the reviews to explore this perspective as they would have things to contribute. Stakeholders acknowledged the great reporting and monitoring role of the ICM, which in some cases has led to practice improvement. However, the ICM needs to go beyond monitoring to enforcement, including the ability to be able to go into residences to act based on what they uncover in their monitoring role. One stakeholder thought:

"It would be good for [the] ICM to have more powers – good for them to be able to go in – already too many adults in these children's lives – they are having to tell their stories too many times – if it could only be one person and it would be consistent it would be better".

The perceived lack of teeth by the Monitor was emphasised by a cross-section of the stakeholders as seen in this quote:

"The biggest feedback is that we feel the ICM is powerless, feel the Monitor doesn't have the 'teeth' to enforce. If there were any changes to the oversight, we would like to see the ICM having more power beyond reporting and monitoring".

Despite the perceived lack of 'teeth', some stakeholders see that ICM reports as a real strength, and very useful to the sector and to children.

Closely allied to the ICM lack of 'teeth' to bite was the notion of lack of a level 'playing field' for all stakeholders in the oversight system to ensure accountability. Whereas some organisations adhere to their accountability responsibilities and requirements in terms of reporting, with severe consequences for not reporting, this could not be said of all agencies. One stakeholder noted:

"There is not enough accountability for Oranga Tamariki, while the [XXX]² responds to questions and provides data to the ICM, we don't believe Oranga Tamariki is meeting these obligations. If [XXX] was to not meet these obligations, they would lose contracts and accreditation, feel as though it is an unfair process".

Stakeholders cited examples of how organisations in the children care space do not seem to face standardised reporting and accountability measures, for example:

"The [most] severe thing that happens to Oranga Tamariki is a review and report – whereas Māori organisations get shut down. Who holds the crown responsible? Bring that into view so people can see it as it is. [The] Monitor can see and encourage, [OT] still don't have to and if they do, they don't change all that much to cover the gaps".

The stakeholders shared the view that this creates unfairness in the oversight system.

The role of Māori voice in the reviews

There were concerns raised about how the reviews will capture Māori voice and the specific role of Māori in the review process. Stakeholders noted that they *"want more strength and visibility, purpose, focus in the terms of reference around the role that Māori (iwi/hapū) will have in the system"*. While the engagement provided an opportunity to address the issue of capturing Māori voice, some stakeholders felt it was an after-thought and not enough as Māori should have been more involved in the process at the earliest opportunity:

"Feels like being brought in on the back end of something that's been partially decided. But it's so important. Finding it really difficult to add any value to this conversation – feels like rubber stamping something that's already going. Need a lot more reading done before this".

Decisions regarding the changes to the oversight system were perceived as already made and that stakeholders were only asked to comment on a small portion of a big policy change.

However, a member of the stakeholder group said that whilst more time would have been better, they are at least in a position to influence the ToR and should make the most of it. There was also a sense of support for the changes from some stakeholders:

"We weren't happy with the last changes – wanted more independence. Need community's voice in the monitoring process".

Incorporate the Commission in paragraphs 17 & 18 of the ToR

A stakeholder group recommended that Paragraphs 17 and 18 of the ToR should incorporate the Commission, not just the Monitor:

"Questions 17 and 18 are specific to the Monitor. We recommend an equivalent section and two questions for the Commission".

² Name removed to protect privacy.

Applying an intergenerational focus, future children

One stakeholder group mentioned including explicit consideration of future generations and the application of an intergenerational focus under the ToR, a growing area of advocacy and policy both internationally and in Aotearoa New Zealand. The need for children and young people's advocates should be supplemented by the need for independent advocates for future generations, children who will inherit the decisions being made today.

Resourcing of the Commission and the Monitor

Stakeholders proposed the need to look at whether the Commission and the Monitor are adequately resourced to fulfil their functions. Adequate resourcing will ensure that the role of a sole Children's Commissioner is sustainable, and that the Commissioner is a strong public advocate for children. Stakeholders questioned the extent to which the new structure places constraints on resourcing and the ability to deliver for children.

The Social service system is as important as the health system

Some stakeholders suggested drawing lessons from the health system regarding protection and safety to improve the oversight system and the overall social services system regarding protection and safety of children and young people:

"The social services system is younger than the health system but should be viewed as important and could look at health benchmarks to learn how to establish safety as a system (for accountability for workers etc)".

Learning from overseas and other sectors in New Zealand

Two of the stakeholder groups suggested the reviews should consider looking at overseas systems and other monitoring systems that are done effectively:

"Particular countries are trying to have a cohesive approach to improving lives for vulnerable children and families. In Scandinavia, they are united around priority of putting the child first and agencies have the mandate to report cases, which is reflective of Māori values. There are also similar good things in Scotland".

Other examples given included the European Union and Ireland as well as New Zealand's health system for complaints handling and management.

With whom should the Independent Reviewer engage?

Use past learnings to inform the reviews

The majority of stakeholders pointed out the extensive material already in existence that explores relevant aspects of the reviews and recommended that previous consultations, reports and processes be used to inform the reviews. This should also include stakeholder relationships established through previous reviews. Those specifically mentioned included the Waitangi Tribunal, Royal Commission Inquiry into Abuse in Care, as well as the work done by the Children and Young People's Commission.

We also hear that people with an intellectual disability have put forward a lot of ideas to the government of what they need/want and don't always feel listened to. A good

reference point is the Tell Me About You Report [Tell Me About You | Abuse in Care - Royal Commission of Inquiry](#).

Don't overburden children and young people

We heard clearly at every engagement session that including the voice of children was crucial to inform the reviews, and that the reviews must be child-centred but not create a burden for children. Stakeholders observed that:

"There is a balance to be struck between hearing their voice but to also letting them be kids."

We were told that there were many complaints that the 2022 changes did not have enough youth/child voice, and stakeholders echoed this, but care must be taken as *"[children] are already having to tell their stories too many times."*

Engagement with care experienced children should be intentional and considered as there are already too many adults talking to Tamariki to get their voice on how things are working for them. We need to avoid them being retraumatised or feeling overwhelmed by government continuing to ask the same questions on their experiences.

Diverse representation must include intellectual disabilities

Stakeholders suggested an all-inclusive approach to those who should be engaged with. Mention was made of people with intellectual disabilities, especially in relation to children and their whānau. One stakeholder group emphasised why child protection needs to highlight intellectual disability:

"A parent with an intellectual disability is 15x more likely to have a child taken into care, and children with an intellectual disability [are] 8x more likely to be taken into care. But there is very little in the system that mentions intellectual disability in the Acts and current arrangement, not much discourse on how to help children, young people and whānau with an intellectual disability."

Therefore *"we are very interested in being engaged further and having our perspectives sought, including in helping intellectually disabled parents to not lose their children to state care"*. The stakeholder group also recounted *"how people with intellectual disability have put forward a lot of ideas to the Government of what they need/want and don't always feel listened to and feel they might be approached on the same thing again"*.

For this stakeholder group, giving prominence to children and whānau with intellectual disabilities is essential because *"engagement can be difficult with intellectually disabled people because it can take time to explain, build trust, and find effective ways to gather their perspectives. A lot of government agencies don't because they don't know how to"*.

There was a particular mention of the Royal Commission for doing a lot of work to reach out to intellectually disabled people and the importance of emphasising this group because *"they don't always know how to report/raise abuse and may not be aware when it has happened"*.

Engaging broadly is necessary

Stakeholders stressed the importance of the Independent Reviewer talking to representatives from the wide range of stakeholders involved in the lives of children and young people. The following is a cross section of those mentioned:

- Government agencies
- Frontline staff including disability services and social workers
- Hapū, Iwi, and Māori organisations
- Whānau of children with care-experience
- Those with international expertise
- NGOs
- Related sector practitioners across fields such as health, disability, education and legal
- A broad range of children and youth-led advocacy groups including children and young people who don't have Oranga Tamariki experience but want to see advocacy on their rights.
- Care experienced – including those who have had time to reflect on past experiences because those in it can find it hard to express themselves or may not realise there are problems with what they are experiencing. Those who have a bit of distance have had enough distance to reflect. "Don't just rely on the young people in pressurise[d] situations"
- Children and young people in youth justice
- Care-experienced tamariki and rangatahi, and their whānau
- Partnered care providers
- OPCAT-ex-residents of residencies
- Advocates
- Carers and foster parents
- Whanau who have had their children returned home
- Iwi care providers
- National Kōhanga Reo Trust
- CMG partners e.g., UNICEF, Child Rights Alliance
- Intellectually disabled parents
- Intellectually disabled children
- Advocates for people who are intellectually disabled
- Grandparents raising grandchildren
- Ex-carers
- Survivor experience groups
- Those in Family Group Conference –pre-care stage

How should the Independent Reviewer engage with children?

"Relationship, connection, commitment and communication are the big ones"

Across all our engagement sessions we heard that engagement with children and young people must be approached delicately and sensitively. Nearly all those we spoke to had extensive experience in delivering engagement to children and young people, as well as observing unsuccessful or ineffective approaches and the feedback on this subject was broadly unanimous.

The Independent Reviewer must not rely on one way of engaging, and adequate time and resources must be allocated to ensure broad and appropriate engagement across populations of children and young people.

It was pointed out that best practice for child and youth engagement must be child-centred and needs to incorporate end-to-end involvement of children and young people in safe and ethical ways. This includes using child-friendly language and spaces, utilising

child and youth-led platforms and networks, and ensuring the right support is in place before, during and after engagement.

Stakeholder recommended investing in someone who specialises in talking to children and making things understandable for them, such as 'Talking trouble' who are experts who make things accessible and child friendly. We heard that the Commission is actually a good resource/expert on how to appropriately engage with children. Stakeholders also provided examples of frameworks and methodologies to deliver engagement safely for tamariki and rangatahi who are care experienced. Examples included:

- VOYCE Whakarongo-Mai's Kia Tika, Kia Pono – Honouring Truths.
- UNICEF rights tool provides a rights based approach
- <https://ndhadeliver.natlib.govt.nz/webarchive/20240412190031/https://www.childyouthwellbeing.govt.nz/resources/engagement-children-and-young-people-best-practice-guidelines#about-these-guidelines>

We also heard that the Independent Reviewer must have the skills and resources to effectively and safely engage with children. They would ideally be trauma informed and have connections into the children's sector. Rigorous procedures to respond or escalate any disclosures of harm when engaging with children and young people would need to be in place.

Several stakeholders also noted the limitations of the current elect committee process for child and young people as it is not child-centred and comes late in the process of decision-making.

Timing was also raised as an important consideration. Stakeholders recommended delivering messages when children and young people have capacity, not when they are preoccupied. School holidays and exam times are not good times to deliver messages.

Engaging with Māori, hapū and iwi

Many stakeholders also took this opportunity to discuss effective engagement with Māori, hapū and Iwi. We were told that the reviews must reflect the relationships between the Crown and Treaty Partners.

"Building conversations using the kawa of marae to inform that."

The importance of the subject will require wānanga, not a 1- or 2-hour hui, and time will need to be given to allow participants to prepare in advance.

Age and stage appropriate

A multi-layered engagement approach that is age and stage appropriate was recommended by all stakeholders, to engage safely and effectively with children and young people.

Suggestions of the variety of engagement methods that would need to be considered included anonymised digital surveys, focus groups, simplified documents, interactive platforms, targeted outreach, social media campaigns, youth ambassadors and network partnerships.

Online surveys were widely promoted as a useful tool, but only as part of a range of other methods. Surveys are suitable for older children given the ability to complete these

on their own and without pressure, but caution was also expressed regarding lack of digital accessibility for some.

We also heard that younger children like filling in forms/postcards and face-to-face focus groups, although the latter must be comfortable and not traumatising. Having kōrero is a great way to open the floor to children being able to ask questions

Ensuring the material provided to children is accessible to them was also highlighted with suggestions including using simple language, visuals and stories to help children understand.

End to end engagement

Several stakeholders pointed out that Article 12 of the UNCRC emphasises the importance of, and requirement to connect with tamariki and rangatahi from the start and throughout any decision-making process.

Children and young people need to understand the parameters of engagement and this should be made clear from the start and throughout engagement. It is also vital to ensure their valuable insights are taken for a reason and used for a purpose, and children will need to be told how their feedback will be used.

Effective feedback loops will need to be built into consultation to ensure children and young people are provided with information on how their voices have been heard and what their insights influenced. It is important that these feedback loops utilise the same methods and platforms that children were engaged through.

Structure of engagement sessions and channels

The importance of structuring sessions to protect tamariki and rangatahi and engage effectively was emphasised by all stakeholders:

"It is important to understand and engage with how diverse children and young people wish to be heard and represented in the review."

A variety of modalities to engage tamariki should be explored alongside adequately resourced staff to develop participatory processes, ideally in co-design with tamariki.

We heard that it can be exhausting to re-tell your story over and over again and can be retraumatising or feel like no one is listening to you. One stakeholder provided the following quote from a young person to highlight the need for light touch engagement through trusted providers,

"Working with relationships children already have. Just make it about everyone. One child said: 'don't make me special, I'm special enough in a bad way'. Give these people the space to speak!"

Another stakeholder suggested:

"Make it general questions in general spaces, rather than isolating who you're talking too. Normalise the complexity of families."

A number of suggestions were provided to support this. Using broad questions like "what are your greatest challenges/dreams?" and "what do you think should happen?" and framing things as imaginary e.g., "What if you were your best friend, what would you want to see?" This allows children to put themselves in third person as a conceptual

exercise. We should talk to children about their vision/dreams – rather than require them to complain.

Stakeholders stressed that there must be balance in children being able to express what a good life looks like without relying on them to “solve their own issues” and putting the ring on them to carry the complaints system.

Using advocates to help children express these complex perspectives was also recommended, as well as familiar environments that help them feel safe around engagement, e.g., in schools, many children can be reached in a familiar place.

“Different engagements, children in care would need quite a tailored session for their experience and their current situation.”

We were told that to allow people to share freely, particularly those who are currently engaged in the system, they need to be reassured that there won’t be recourse. To support this, anonymity will need to be guaranteed and the independence of the reviews emphasised:

“Can’t just look independent – has to be independent, so no fear that what they say could negatively impact them. Social worker can open the door, but doesn’t come in.”

Use trusted relationships

Stakeholders also highlighted another essential aspect of safe and effective engagement with children and young people is using the people who have already built trust and connections with young people:

“Community consultations work well, as can kanohi-ki-to-kanohi or face-to-face engagement through trusted relationships”.

Another stakeholder noted that:

“There is a difference between hearing young people and understanding young people, so it is important that the people talking to tamariki and rangatahi can relate to the care community and understand and interpret what is being said.”

Specific examples given of those trusted by children and young people include:

- Youth mentors
- School counsellors
- VOYCE Whakarongo Mai
- NGOs
- Iwi and Māori organisations, as they already have the trusted relationships
- Youth councils
- Life Education Trust that has 42 educators going out to many schools (82%) and engaging/explaining things to young groups.
- Collectives such as the Youth Workers Collective.

Using trusted people was highlighted as particularly relevant for children with intellectually disabilities:

“Engagement can be difficult with intellectually disabled people because it can take time to explain, build trust, and find effective ways to gather their perspectives. A lot of govt agencies don’t because they don’t know how. The Royal Commission did a lot of work to

reach out to intellectually disabled people. They don't always know to report/raise abuse and may not be aware when it has happened. So be aware it takes careful effort."

How would you communicate the Terms of Reference and the reviews to children? How could we use the reviews to make the system more accessible and engaging to children?

Stakeholders told us that engagement itself can be a tool to familiarise children with the system by engaging with them on what they want from the Commissioner. It is an important opportunity in relation to a complex system, that will have significant impact on children and young people, therefore:

"It is important that adequate time and resources are allocated for this as part of the process."

We also heard that it will be important not to overwhelm children and young people with too much detail: *"Keep it simple – just tell them outcomes"*.

It will also be necessary to feedback through the same channels that engagement was conducted and use the targeted audience comms that was used in the first round. Several stakeholders provided specific comments on making these channels accessible to children:

- *"Child friendly versions of report that tells them how their input shaped the final version."*
- *"For the TOR, it could be useful to change words to pictures, visualise the text for young people."*
- *"Adapt the way info is presented to provide what children need to understand."*

Stakeholders stressed the importance of making the system more visible – to children, to organisations, to whanau and to Māori – *'no-one knows what the role of the Ombudsman is, only those in prison are aware of the Ombudsman'*.

With reference to paras 14 and 15 of the TOR, what are your thoughts on the definition of working effectively?

Although the question pointed to the definition of working effectively in terms of paragraphs 14 and 15 of the ToR, many of the stakeholders took the chance to reflect on the effectiveness of the oversight system as a whole.

Integrated and close-knit working relationship of the three oversight bodies

Stakeholders expressed the view that effectiveness in part was determined by how the three organisations of the oversight system work together. The oversight system can only work when the agencies are working together effectively to achieve their goal and ultimately improving the lives of children.

"The review needs to give good insights into how each part of the system is working but also how the separate elements are working together. An effective oversight system needs closer tripartite sharing of information".

Stakeholders told us that the agencies seem like they are three siloed systems, rather than one system that works together, and that *"individual effectiveness does not equate to system effectiveness if they are not working together."*

Stakeholders commonly noted that there is the perception that the three parts are not reflecting the nature of what a tripartite relationship should look like:

"Although a special marker on paras 14 and 15, [the TOR] doesn't encapsulate the depth of working collaboratively together."

There was also some confusion amongst stakeholders on who is responsible for whom in the tripartite and what the connection is between the three parts. There was also some uncertainty about how under the changes the three agencies will be able to work together.

'Working effectively' is a vague term

Many of the stakeholders identified that the term 'working effectively' is vague and can be interpreted in many ways. This issue is important because:

"With vague statements it leaves room for risk that the system becomes crisis-driven rather than strengths based."

However, getting tied down in the specifics of how to measure effectiveness runs the risk of limiting what effectiveness is.

Working effectively with and for Māori

Stakeholders also noted that these sections didn't accurately reflect Māori and what it means for the system to work effectively with and for Māori:

"Working effectively is knowing what the hapu, iwi and Māori groups are and working them into conversations, there needs to be something that captures those groups and who is engaging with them."

They asked whether this section can be expanded to better reflect the role that Māori play within the oversight system and that effective outcomes also need to work for Māori.

Defining effectiveness

Effectiveness for whom?

One of the key questions that was asked to us was "Effective for whom?" It isn't clear who it is effective for. Feedback noted that this needs to be more explicit that it has to be working effectively for children in care. Effective would mean that children are safe and supported and that the system is resourced to do this.

Effectiveness means alignment with international obligations and national treaties

Effectiveness could also be meeting the requirements of the rights frameworks such as the United Nations Convention on the Rights of the Child (UNCRC) and other relevant rights frameworks such as the United Nations Declaration on the Rights of Indigenous People (UNDRIP), Te Tiriti o Waitangi and the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). These frameworks include a focus on process, such as partnership, listening to children, and non-discrimination, as well as the impact and

outcomes covering a range of dimensions of life. We heard that demonstrating the use and understanding of these frameworks would be effective because of the different population groups that these frameworks cover.

Effectiveness means meeting measurable goals and visibility

Another question that was raised was "Working effectively towards what?" What are the goals that the oversight system is trying to achieve? The outcomes set by the oversight system need to be achievable, if the outcomes are unattainable, it can lead to people giving up early. Further, effectiveness cannot be measured against unattainable goals.

Effectiveness can be determined in the visibility and accessibility of the oversight system. We heard from stakeholders that children largely don't know what the oversight system is and what it's for. One of the stakeholders said that "*no one knows what the role of the Ombudsman is, only those in prison are aware of the Ombudsman*". When the system is working well and the agencies are working cohesively together, the system is easily accessible with people knowing what the entry points are into the oversight system.

Effective alignment with other agencies and sectors

It was raised whether or not effectiveness needs to be considered beyond the oversight agencies and the interactions that legislation has with other systems, such as health, education and justice. For example, if criminal acts against children are uncovered where does this sit within the system? What are the processes when there is a strong criminal justice link when issues arise beyond the scope of Oranga Tamariki? What are the avenues within the system that allow opportunities for the system to work together?

Working effectively needs to also extend to external organisations that interact with the oversight system, we heard from stakeholders that they find the system is working well when the agencies work collaboratively with them. One stakeholder noted that they appreciated that the Monitor let them do reporting in a way that suited their organisation and were able to shape questions in a way that allowed them to truly capture and share the stories of the Tamariki they work with.

Out of scope

There were a number of issues raised by stakeholders that were outside the scope of this engagement, which was focused on the ToR for the independent reviews. However, they all pertain to the oversight system, and it is important to record them as they were common themes brought up across nearly all engagement sessions.

Repeal of 7AA

Stakeholders raised strong concerns about the repeal of Section 7AA and its impact on the oversight system and wanted the Reviewer to consider its implication in the reviews.

"It seems plausible that the recent policy changes at OT, including the proposed cuts to the OT evidence centre and intended repeal of section 7AA will have some impact on the effectiveness of the Oversight system and therefore should be in scope. Perhaps the reviews could shine a light on the extent to which the current system depends on those aspects of OT."

Stakeholders suggested the Reviewer should comment on the impact of Section 7AA being removed, and where the Treaty fits in and how the Treaty obligations would be effectively discharged in the oversight system. Others felt the repeal of 7AA means the loss of a big monitoring function in the oversight system and questioned what will replace it to ensure Tamariki are safe.

Proactive system

"A proactive oversight system also implies a system that puts children first."

During the engagement, stakeholders expressed their preference for a proactive oversight system that is responsive to children's needs; a system that is reactive and doesn't have to rely on complaints for the Ombudsman to take up the issue; a system with a safe whistle blower culture; and a system that looks at the big picture including indigenous culture.

For instance, if the ICM uncovers practice failure – they need to act on it. Children should not have to be the ones making complaints:

"[Children] shouldn't have to raise issues in the system – get nervous when too much is put on children. They are very vulnerable, but they are equal partners to try and create change. But it shouldn't be completely on them, they should have voice with protective elements in place to keep them safe while doing so... A system that puts the onus on children's ability to complain and know how to navigate the system is troubling/concerning. Children need to be central and that needs are being met".

Functioning of complaints system for children

One of the issues that came up in most of the engagement sessions was around how the complaints' function is working for children and young people. Suggestions were that the system should not place responsibility on children to understand, explain or make complaints:

"We don't want to set up a system where children must be able to articulate abuse and experience with care while in the system. When in care, it's hard for children to understand – shouldn't expect them to have to explain it when they are in a vulnerable position".

Rather the system should be simple and clear for children and young people to navigate. Children shouldn't be stuck in the system and should know where to go. The complaints system needs to be child-centred. The reviews should determine how the complaint's function is working for children and whānau.

References were also made regarding the Optional Protocol on a Communications Procedure (OPCP) and complaints taken to the United Nations:

"At [13] of the TOR, it asks which agency is best placed to monitor for the purposes of the optional protocol under the UNCRC. We note that NZ has recently ratified the [OPCP] under the UNCRC, coming into effect December 2022. We recommend adding an additional question: Under the Optional Protocol on a Communications Procedure (OPCP) under UNCROC, complaints that NZ has breached its obligations under the Children's Convention can be taken to the Committee on the Rights of the Child. Which agency would be in your view be best placed to engage the OPCR if necessary?"

Proposed structural changes

Almost all stakeholder groups mentioned the newness of the system and wondered whether it is too soon to review. Most stakeholders pointed to the fact that the structures have not been in place for long enough to assess how effective they have been:

"Seems quite soon to be calling for a new review, given the new system is still not fully embedded, but the new structures generally match what many stakeholders were hoping for last time round".

"The system is only just embedded and still evolving and it would be better to test how that's working before making changes."

Most stakeholders told us the proposed new structures generally match what they were hoping for in the previous changes in 2022, and many commented on the amount of recent change. The quote below is representative of what we heard from many stakeholders:

"Most young people are feeling hopeful about the changes, after the last changes were unpopular a few years ago, and were stressful."

However, we also were told:

"The current structure seems to be working, it seems positive and productive. What would the difference be, what does this substantially change?"

Many stakeholders commented on the current timeframes for proposed changes and questioned whether it needed to be so quick:

"The timeframes are an issue. Carrying out a review with Leg change there is a risk of not taking sufficient time to receive the necessary feedback (especially from Māori). This should be [a] comprehensive process and allow time for discussion, to ensure no gaps, necessary rigor of ensuring that leg is written properly that won't hinder down the track. Prudent to challenge timeframe."

Although they had hesitations about timeframes and more changes for children and young people, many felt that the changes were important and that the benefits outweighed the disadvantages.

Several stakeholders emphasised the importance of diverse representation on the Children's Commission's Board, and were concerned about what would be done to ensure diversity would still be reflected in the Commission:

"We were a big part of selecting the board of 5 people because previous commissioners were all pakeha, and how can people advocate about people they don't know about."

They were also wanting to ensure that the Monitor's Board is diverse, with the majority of the stakeholders supporting a Board model for the Monitor. For example, one stakeholder said they: *"Love that the Monitor will have a board"*.

Some also talked about the type of board with most suggesting that a Governance Board is appropriate and even requested that this be stipulated in the Act. They also noted that a letter of expectation from the Minister was a good lever for the Board to understand their role.

Māori stakeholders were not happy with the process around the structural changes, recommending that it would be more appropriate to involve them in the design of the structure before going ahead – they also asked whether a community-led approach (not Crown entity) had been considered. An example from one stakeholder session is:

"Finding it really difficult to add any value to this conversation – feels like rubber stamping something that's already going."

Reflecting on the changes, several stakeholder groups expressed their desire to see the Commissioner continue for their full term to mitigate lack of consistency and potential further disruptions caused by further changes:

"We strongly recommend that the Commissioner remain in the role for a long time. Constantly changing one person makes it so much harder".

More Power to the Monitor

Majority of the stakeholders felt the Monitor doesn't have enough power or authority to back its monitoring function. They wondered what provision can be made for the Monitor to have more scope.

"More power to the ICM. Also, for ICM to Monitor every child in care – partnered care children are often lost. Reviewer can look at how kids are reported on in partnered care."

Appendix 1 – List of stakeholders

MSD undertook targeted engagement with key stakeholders who interact regularly with children in the Oranga Tamariki system.

Barnardos

Caring Families

Children’s Rights Alliance

Family For Every Child

E Tipu E Rea Whānau Services

Foster Hope

Human Rights Commission

IHC

Kōkiri marae

NZ Council of Christian Social Services

Ngāpuhi Iwi Social Services,

Ngāti Kahu Iwi Social Services

Open Home Foundation

Save the Children

Social Services Providers Aotearoa

Social Workers’ Registration Board

Tātai Aho Rau – Core Education

Te Kāhui (Māori advisory group for the Independent Children’s Monitor)

Te Puea Marae,

UNICEF

VOYCE – Whakarongo Mai

Appendix 2 – Discussion Document



**MINISTRY OF SOCIAL
DEVELOPMENT**
TE MANATŪ WHAKAHIATO ORA

Strengthening the oversight of the Oranga Tamariki system

Discussion Document

May 2024



1 Table of Contents

2	Introduction	3
3	Background	3
4	Strengthening oversight of the system	5
5	Timeline	6
6	What we want to know from you	7
7	Draft Terms of Reference	8

Introduction

The Government is committed to supporting children and young people in care by ensuring they are safe and have access to the same opportunities as others.

As the Hon Louise Upston, Minister for Social Development and Employment, announced on 2 May 2024, independent and focused oversight and monitoring will give New Zealanders confidence that the organisations trusted to care for children and young people are keeping them safe and giving them the best start in life.

The Government, therefore, intends to introduce an Omnibus Bill (the Bill) later this year. It will propose amendments to the Oversight of Oranga Tamariki System Act 2022 and the Children and Young People's Commission Act 2022 with the aim to strengthen the monitoring and oversight of the Oranga Tamariki system.

Specifically, the Bill will propose changes to the structure and form of the Independent Children's Monitor and the Children and Young People's Commission to ensure they can operate autonomously and independently. These changes also will help young people in care, their families and the public better understand how the Oranga Tamariki oversight system works.

In addition to these structural changes, the Government will bring forward the statutory reviews of the two Acts to ensure that the oversight system is working for children in care, their families and the people working in the system.

We are undertaking engagement with key stakeholders involved in the oversight and monitoring of the system to gain feedback on the Terms of Reference for the reviews, which will provide advice on whether any further changes are required to improve the oversight system's performance and operations.

Extensive public and sector feedback on the structure of the oversight system was provided through the 2022 select committee process, and the proposed changes build on the submissions provided at that time. A similar opportunity will be provided later this year and early in 2025 when a select committee considers the Bill.

Background

The Oranga Tamariki system is responsible for providing services or support to children, young people, and their families and whānau under the Oranga Tamariki Act 1989. The system includes several cross-government agencies, such as Oranga Tamariki – Ministry for Children, New Zealand Police, the Ministries of Health, Social Development, Education, and Justice, and the Department of Corrections.

Three entities are legislated to oversee the Oranga Tamariki system and check how it functions. They were established in their current forms through the Oversight of Oranga Tamariki System Act 2022 (Oversight Act) and the Children and Young People's Commission Act 2022 (Commission Act), which commenced in May and July 2023, respectively. They are:

- the Children and Young People's Commission (the Commission), a new independent Crown entity replacing the Office of the Children's Commissioner, broadly responsible for advocating for all children and young people in New Zealand
- the Independent Children's Monitor (the Monitor), a departmental agency responsible for monitoring the Oranga Tamariki system, and
- enhancements to the Ombudsman's function, to manage complaints in relation to support and services provided by care or custody providers.

Strengthening oversight of the system

On 2 May 2024, the Minister for Social Development and Employment, Hon Louise Upston, announced the Government's intentions to make structural changes to strengthen oversight of the system. They include two key elements:

- making the Monitor truly independent by changing it from being a departmental agency hosted within the Education Review Office (ERO) to an independent Crown entity, and
- enhancing the visibility of the advocacy role of the Commission by making it a corporation sole Crown entity, moving away from the current five-member board structure.

In addition, Minister Upston stated that the statutory reviews of the Oversight and Commission Acts will be brought forward, commencing later in 2024. The reviews will help further inform the changes to the Monitor and the Commission.

Increasing the independence of the Monitor

Making the Monitor truly independent will improve the effectiveness of the whole Oranga Tamariki oversight system. While the Monitor does operate at arm's length from Government, an agency within a government department may not be seen as fully independent of political considerations.

The Government wants the Monitor to be truly independent and for this to be crystal clear for young people in care and their families. Under the proposed changes, the Monitor will become an independent Crown entity with a full governing Board to oversee its work.

Enhancing the role of the Commission

Improving the effectiveness of the oversight of the Oranga Tamariki system requires a highly visible advocate that represents and expresses the concerns of children and young people.

When changes were made to the oversight of the Oranga Tamariki system in 2022, stakeholder feedback emphasised the need for a single individual acting in the role of advocate – in other words, having a clear Children's Commissioner. This was suggested during the select committee process and through stakeholder engagement.

Statutory reviews of the Oversight of Oranga Tamariki System Act 2022 and Children and Young People’s Commission Act 2022

The Oranga Tamariki oversight system was changed significantly in 2022 and the Government wants to be sure those changes are fit for purpose.

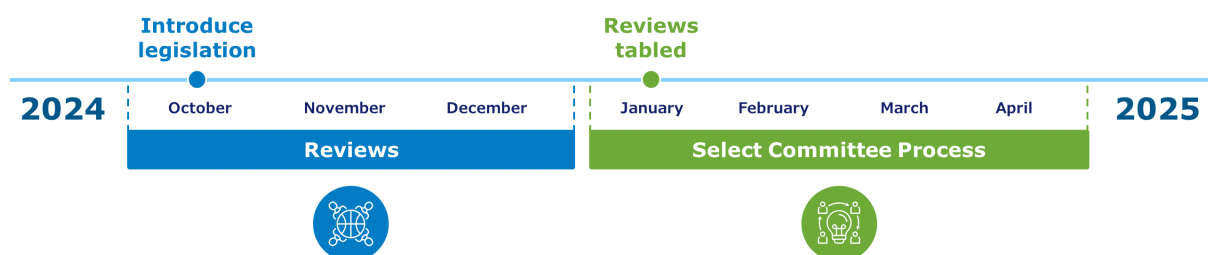
To this end, the Government intends to commence and complete the statutory reviews of the Oversight and Commission Acts by the end of 2024. This is well ahead of the timetable set out in legislation, which requires the reviews to be completed by mid-2026.

Completing the reviews by the end of the year will provide sufficient time to make any necessary adjustments to the proposed changes to the Monitor and the Commission as the Bill progresses through the select committee process.

There will be an opportunity for individuals and organisations to share their views on the oversight system’s effectiveness and performance through the reviews. The scope of the reviews is still being finalised, and the initial framework is provided in the draft Terms of Reference, which is attached.

The reviews also may consider the recommendations of the Royal Commission of Inquiry on Abuse in Care, and this will be determined when the Commission releases its report and recommendations in late June.

Timeline – Strengthening the Oranga Tamariki oversight system



What we want to know from you

As we prepare for the independent reviews of the Acts, we are seeking your input to develop the Terms of Reference (ToR). The reviews will help the Government understand where to focus efforts and what actions need to be taken so we can make the system work better for children in care, their families, and all New Zealanders.

The ToR will guide the independent reviewer in their consultations with New Zealanders, government agencies, and key stakeholders responsible for monitoring, advocating, and promoting children's rights.

We would like any feedback you have on the ToR, specifically regarding the following areas:

- Are the reviews covering a broad enough scope? What else should it consider?
- With whom should the independent reviewer engage?
- How should the independent reviewer engage with children and young people?
- How would you communicate the ToR and the reviews to children? How could we use the reviews to make the system more accessible and engaging to children? How would you communicate the findings to children?
- With reference to paras 14 and 15 of the ToR, what are your thoughts on the definition of 'working effectively'?
- Are there any other issues you would like to see addressed in the reviews?

Draft Terms of Reference

Reviews of the Children and Young People's Commission Act 2022 and Oversight of Oranga Tamariki Act 2022

Purpose

- 1 This document sets out the Terms of Reference to conduct independent reviews of the legislation that sets out the monitoring and oversight of the Oranga Tamariki system, as commissioned by the Ministry of Social Development.
- 2 These reviews will be guided, at a minimum, by the statutory requirements outlined in the Oversight of Oranga Tamariki System Act 2022 (Oversight Act) and the Children and Young People's Commission Act 2022 (Commission Act). Each Act stipulates that an independent review must commence within three years of its introduction.

Background and context to the reviews

- 3 The Oranga Tamariki system is responsible for providing services and 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; Department of Corrections; and these agencies' contracted partners.
- 4 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:
 - the Children and Young People's Commission (the Commission), a new independent Crown entity (ICE) replacing the Office of the Children's Commissioner, broadly responsible for advocating for all children and young people in New Zealand
 - the Independent Children's Monitor (the Monitor), a departmental agency responsible for monitoring the Oranga Tamariki system, and
 - enhancements to the Ombudsman's function to manage complaints in relation to support and services provided by care or custody providers.

(a)

5 The Oversight and Commission Acts require the government to commence independent reviews within three years of their introduction. This requirement is articulated in:

- Section 58 of the Oversight Act 2022, and
- Section 38 of the Commission Act 2022.

Objectives of the reviews

6 On 2 May 2024, Hon Louise Upston, Minister for Social Development and Employment announced the Government's intention to strengthen the independence, monitoring, and oversight of the Oranga Tamariki system. The proposed reforms will bring into effect structural changes to the Monitor and the Commission, specifically:

- transforming the Monitor from a departmental agency hosted by the Education Review Office into an ICE with a small, part-time board, and
- reverting the Commission, which currently is an ICE with a board, to a corporation sole Crown entity with a single Commissioner.

7 These changes are intended to ensure the entities involved in the oversight of the Oranga Tamariki system are truly independent and autonomous from government, have clearly defined roles and responsibilities, and ensure the concerns of children and young people can be better represented.

8 The reviews of the Oversight and Commission Acts will be undertaken this year to align with the changes planned for the Monitor and the Commission. This will give people an opportunity to have a say in how they think the oversight of the Oranga Tamariki system is working and how it could be improved.

Scope

Minimum Requirements

9 The reviews must consider the operation and effectiveness of each Act, the operation of the Commission and the Monitor, and whether any amendments to the Acts are necessary or desirable. This is provided in more detail below.

The operation and effectiveness of both Acts

10 Are the oversight bodies operating effectively under the Oversight and Commission Acts?

Functions, duties, and powers of the Commission and the Monitor

- 11 Do the functions, duties, and powers set out in the Commission Act give effect to the Act's purpose to establish the Commission "to promote and advance the rights, interests, and participation of children and young people and to improve their well-being (without limitation) within the context of their families, whānau, hapū, iwi, and communities?"
- 12 Do the functions, duties, and powers set out in the Oversight Act give effect to the Act's purpose "to uphold the rights and interests and improve the well-being of children and young people who are receiving, or have previously received, services or support through the Oranga Tamariki system and promote the effectiveness of that system by:
- setting out the functions, duties, and powers of the Monitor; and
 - giving the Ombudsmen additional duties and powers when dealing with matters that may fall under the Ombudsmen Act 1975 and that relate to services or support delivered by—
 - Oranga Tamariki, and
 - care or custody providers³
 - creating a framework for the Monitor and the Ombudsmen to work together in a comprehensive, cohesive, and efficient way and to consult one another and share information, as appropriate."
- 13 With respect to the designated National Preventative Mechanism under the Crimes of Torture Act 1989 for the purposes of the Optional Protocol on the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which entity within the oversight system would you view as best placed to perform its monitoring function to greatest effect?

Effectively engaging with relevant stakeholders to support its role

³ Section 8(1) of the Oversight Act defines a 'care and custody provider' as any of the following, in their role as such an organisation or body under the Oranga Tamariki Act 1989:

- (a) an organisation into whose care any child or young person is placed under section 362 of that Act
- (b) an organisation that operates a residence established under section 364 of that Act
- (c) an organisation or body approved under section 396 of that Act.

- 14 Is the Commission working effectively with hapū, iwi, and Māori organisations?
- 15 Is the Monitor working effectively with the Ombudsman, hapū, iwi, and Māori organisations?

Amendments to the Commission and Oversight Acts

- 16 Are there any amendments to the Oversight and Commission Acts that are necessary or desirable?

Specific considerations for the reviews of the Oversight of Oranga Tamariki System Act 2022

Monitoring function

- 17 Is the Monitor being effectively supported by agencies and their contracted partners in the Oranga Tamariki System and is there any evidence that the Monitor is being obstructed in performing their functions duties or powers under the Act?

Resourcing to support the delivery of its functions

- 18 Is the Monitor appropriately resourced to efficiently and effectively discharge their functions, duties, and powers, and to support the resilience of the Oranga Tamariki System?

Out of Scope

- 19 The following issues are out of scope of the reviews:
 - Role and functions of Oranga Tamariki – Ministry for Children, including recent changes to the Oranga Tamariki Act 1989.
 - Any functions or duties of the Ombudsman that are not part of its complaints oversight function outlined in the Oversight Act.
 - Timing of the Minister’s proposed legislation to increase the independence of the Monitor and make changes to the Commission.
 - The decisions to make the Monitor an ICE and the Commission a corporation sole crown entity (given the Minister has already decided this).

Timelines and Process for the reviews of the two Acts

Timeline for the reviews

- 20 The Reviewer's final report will be completed by December 2024/January 2025 (at the latest).
- 21 A draft report will be circulated for feedback/comment from those consulted prior to publication of the final report.

Reviews' components

- 22 The Reviewer will be required to assess the Acts themselves, and the operation of the oversight of the Oranga Tamariki system, against their legislated purposes and functions.
- 23 Additionally, the reviews require engagement with key stakeholders in the Oranga Tamariki system, including organisations that represent children and young people, and with hapū, iwi, and Māori organisations.

Reporting findings of the reviews of the Acts

Children and Young People's Commission Act 2022

- 24 A draft report on findings is to be provided to the Ministry of Social Development by [insert date].
- 25 A final report is to be sent to the Minister for Social Development and Employment, as the responsible Minister, by [insert date].
- 26 The Minister for Social Development and Employment is to present the final report to the House of Representatives as soon as practicable.

The Oversight of Oranga Tamariki System Act 2022

- 27 A draft report on findings is to be provided to the Ministry of Social Development and Oranga Tamariki by [insert date].
- 28 A final report is to be provided to the Minister for Social Development and Employment (as the Minister responsible for the Oversight Act and the Monitor), the Minister for Children (as the Minister responsible for administration of the Oranga Tamariki Act 1989), and as far as they relate to the Ombudsman, by [insert date].
- 29 The Minister for Social Development and Employment is to present the final report to the House of Representatives as soon as practicable.

DRAFT