



29 November 2022

Tēnā koe

On 30 May 2022, you emailed the Ministry of Social Development (the Ministry) requesting, under the Official Information Act 1982 (the Act), the following information:

- *Under the Official Information Act 1982 I request all information held by the Ministry in relation to policy analysis and advice in regard to policy issues relating to and leading up to the introduction of the Oversight of the Oranga Tamariki System and Children and Young People's Commission Bill that has not already been publicly released.*
- *As part of your response could you identify for me (and provide links to) all material relevant to the request that has been publicly released.*

On 14 June 2022, you agreed to limit the timeframe of your request to 1 January 2018 onwards.

On 29 June 2022, the Ministry emailed you to advise that more time was required to respond to your request as your request is for a large quantity of information, and it would take longer than the 20 working day time limit to collate the material requested and assess whether any interest might be prejudiced by its release.

Please find attached the following documents as **batch one** in response to your request:

- REP/17/12/1362 - Aide-mémoire – *Oranga Tamariki (National Care Standards) Regulations 2018*, dated 2 February 2018
- REP/18/1/1007 – Draft Cabinet paper – *Oranga Tamariki – National Care Standards Regulations 2018*, dated 11 January 2018
- REP/18/2/219 – Aide-mémoire – *Independent oversight of children's issues and Oranga Tamariki system*, dated 15 February 2018

- REP/18/2/219 – Aide-mémoire – *Independent oversight of children's issues and Oranga Tamariki system*, dated 15 February 2018 – Appendix One
- REP/18/2/219 – Aide-mémoire – *Independent oversight of children's issues and Oranga Tamariki system*, dated 15 February 2018 – Appendix Two
- REP/18/2/268 – Report – *Further Information – Independent oversight (children's issues and Oranga Tamariki system)*, dated 23 February 2018
- REP/18/2/268 – Report – *Further Information – Independent oversight (children's issues and Oranga Tamariki system)*, dated 23 February 2018, Appendix Two
- REP/18/3/423 – Aide-mémoire – *Consultation on Options to Strengthen Independent Oversight (Children's issues and Oranga Tamariki system)*, dated 23 March 2018
- REP/18/4/531 – Report – *Future direction briefing from the Children's Commissioner*, dated 12 April 2018
- REP/18/4/564 – Report – *Update on consultation processes for the independent oversight review*, dated 20 April 2018.

You will note that the information regarding some individuals is withheld under section 9(2)(a) of the Act in order to protect the privacy of natural persons. The need to protect the privacy of these individuals outweighs any public interest in this information.

You will note that some information is withheld and marked as 'out of scope', as it is not related to analysis or advice regarding the Oversight of Oranga Tamariki System and Children and Young People's Commission Bill.

The principles and purposes of the Official Information Act 1982 under which you made your request are:

- to create greater openness and transparency about the plans, work and activities of the Government,
- to increase the ability of the public to participate in the making and administration of our laws and policies and
- to lead to greater accountability in the conduct of public affairs.

This Ministry fully supports those principles and purposes. The Ministry therefore intends to make the information contained in this letter and any attached documents available to the wider public. The Ministry will do this by publishing this letter and attachments on the Ministry's website. Your personal details will be deleted, and the Ministry will not publish any information that would identify you as the person who requested the information.

If you wish to discuss this response with us, please feel free to contact [OIA\\_Requests@msd.govt.nz](mailto:OIA_Requests@msd.govt.nz).

If you are not satisfied with this response regarding analysis and advice leading up to the introduction of the Oversight of Oranga Tamariki and Children and Young People's Commission Bill, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or 0800 802 602.

Ngā mihi nui



Christian Opetaiā  
**Policy Manager**  
**Child and Youth Policy**

# Aide-mémoire



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

## Cabinet paper

**Date:** 2 February 2018 **Security Level:** Cabinet Sensitive

**For:** Hon Carmel Sepuloni, Minister for Social Development

**File Reference:** 17/12/1362

### ORANGA TAMARIKI (NATIONAL CARE STANDARDS) REGULATIONS 2018

<b>Cabinet Committee</b>	Cabinet Business Committee
<b>Date of meeting</b>	7 February 2018
<b>Minister</b>	Hon Tracey Martin, Minister for Children
<b>Proposal</b>	The paper proposes regulations be made for care standards for children in the care of Oranga Tamariki
<b>Key issues</b>	<p>The Oranga Tamariki Act requires regulations to be made.</p> <p>Research evidence is that standards of care will be more consistently applied if they are regulated.</p> <p>The standards will apply both to Oranga Tamariki and to contracted service providers.</p> <p>The standards will apply to requirements for assessment planning and monitoring, support to address the child's needs including needs relating to culture, belonging and identity as well as education and recreation, caregiver and care placement assessment and support, support for children to make well informed decisions, express their views and be heard, support for children during transitions, and the independent monitoring process.</p> <p>The Ministry of Social Development is currently undertaking a review of the independent oversight required for the vulnerable children's system. It includes consideration of the future role of the Office of the Children's Commissioner and takes account of the Commissioner's broader responsibilities in relation to children generally.</p> <p>We will continue to work with Oranga Tamariki as work progresses on the financial and operational impacts on the Ministry of future monitoring arrangements – costs in the paper are provided for interim independent monitoring arrangements only.</p> <p>Depending on the Ministry's review of the current monitoring and reporting arrangement, it is possible that a newly</p>
Legislation requires regulations to be made	
They will apply to monitoring – and MSD is currently reviewing the independent monitoring arrangements	
MSD will continue to work through issues with Oranga Tamariki	



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The regulations are proposed to take effect from 1 July 2019 which gives time to work through issues

Funding may be required for new arrangements and may be sought in Budget 2019

established organisation could take over this work which will involve establishment costs down the track.

We note that the Impact Statement outlines that costs will fall largely on Oranga Tamariki, however it is likely that there will be some minor compliance costs for caregivers or other agencies.

The regulations are proposed to take effect from 1 July 2019, which gives time to work through these issues.

Currently, the Office of the Children's Commissioner is funded from the Ministry's baseline (\$2.57m per annum). Oranga Tamariki expects to provide different funding options for buds in Budget 2019.

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**Our advice**

We recommend you **support** the recommendations in the paper.

MSD was consulted on the paper and our views have been taken into account.

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Responsible manager: James Poskitt, General Manager, Community and Families Policy

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT

In Confidence

Office of the Minister for Children

Chair, Cabinet Business Committee [or relevant committee TBC]

**This report contains legal advice and should not be disclosed on an information request without further legal advice**

## **ORANGA TAMARIKI (NATIONAL CARE STANDARDS) REGULATIONS 2018**

### **Proposal**

- 1 The Oranga Tamariki Act 1989 requires me to recommend the making of regulations relating to care standards. This paper seeks policy agreement to the proposals to be included in these regulations and authority to instruct Parliamentary Counsel Office to commence drafting.

### **Executive Summary**

- 2 Evidence shows that those who experience abuse, neglect and other adverse childhood events and enter the care system have a significantly higher likelihood of experiencing poor life outcomes, such as low educational achievement, unemployment, and/or involvement in the adult corrections system. This Government is committed to reducing inequality and poverty and improving the well-being of New Zealand's children and young people, and their families and whānau.
- 3 The current care, protection and youth justice systems have not been operating in a way that ensures children and young people are able to achieve their developmental potential and experience positive outcomes. Recent reviews of these systems have found that children and young people placed in State care often experience repeat referrals, high levels of instability and in some cases, further maltreatment and trauma.<sup>1</sup> It has also been identified that caregivers are not sufficiently supported to provide safe, secure environments for children and young people.<sup>2</sup>
- 4 Care standards, often with legislative underpinning, are a key feature of care systems in most comparable jurisdictions. Where care standards operate in other jurisdictions, there is more accountability on the system and greater public scrutiny.
- 5 New Zealand does not currently have a set of national care standards that apply to all children and young people in care. To date, New Zealand's legislative regime applying to children in care has been comparatively light, with very little outlining rights and guarantees for children in care other than those in residences.<sup>3</sup> Without legislative directives or requirements, children

<sup>1</sup> Modernising Child, Youth and Family Expert Panel (2015). [Expert Panel Final Report: Investing in New Zealand's Children and their Families](#). Wellington, New Zealand, Ministry of Social Development.

<sup>2</sup> Office of the Children's Commissioner (2016). [State of care 2016: What we learnt from monitoring Child, Youth and Family](#). Wellington, New Zealand, Children's Commissioner.

<sup>3</sup> 'Residences' in this context refers to the nine secure care and protection and youth justice residences operated or funded by the Ministry. Care and protection residences are used as a 'last resort' to enable interventions in a secure setting. Youth justice residences are used to place young people detained in the custody of the chief executive pending a court decision, or under a Supervision with Residence Order as a response to proven offending.



and young people in care have been reliant on the Ministry creating and monitoring its own standards, which has not been done to date.

- 6 [Oranga Tamariki–Ministry for Children] (the Ministry) was established in 2017 and a new operating model is currently being developed. Under recent changes to the Oranga Tamariki Act 1989 (new section 447(2)(a)), I am required to recommend the making of regulations relating to care standards by 13 July 2018. These regulations are to prescribe the actions or steps that must be taken to help ensure children and young people in care or custody under Part 2 (care and protection of children and young people) or Part 4 (youth justice) of the Act receive an appropriate standard of care that is consistent with the principles of the Act.<sup>4</sup>
- 7 These regulations provide an opportunity to introduce a regulatory framework that will provide a level of transparency and accountability that has not previously existed within the New Zealand care system. As the first step in this process I am seeking agreement to the policy proposals for these regulations. The direction and shape of the proposals has been guided by consultation with stakeholders, including with children and young people, caregivers and care providers.
- 8 The proposals I am recommending articulate the actions and steps that the chief executive (and delegates) and bodies or organisations approved under section 396 of the Act will take in order to ensure children and young people receive safe, stable and loving care, have their needs met and are supported to achieve their aspirations and developmental potential. I expect these proposals to provide greater clarity for children and young people to understand what they can expect in care, and will assist in creating greater consistency in their care experiences.
- 9 I propose the regulations cover the spectrum of the care experience. This includes the following six areas:
  - 9.1 Assessment, planning and monitoring to support children and young people in care
  - 9.2 Support to address children's and young people's needs
  - 9.3 Caregiver and care placement assessment and support
  - 9.4 Supporting children and young people to have a greater voice in their care experience
  - 9.5 Supporting children and young people during care transitions
  - 9.6 Monitoring and reporting on compliance with the regulations.
- 10 While the proposals presented in this paper are intended to cover the spectrum of the care experience, I note that existing Acts primarily the Oranga Tamariki Act 1989, already impose a number of duties on the chief executive and decision-makers, and protects the rights of children and young people in care. The focus on the regulatory proposals is on the key actions or steps that are essential for achieving good outcomes and are not already covered by an existing Act.<sup>5</sup>
- 11 In some areas the proposals reflect best practice, and in some instances current practice, rather than a major change of approach. However, ensuring they are achieved consistently for all children and young people in care will require a significant effort and focus from the Ministry over several years. This change to the care experience is something the Ministry is

<sup>4</sup> This includes children and young people in secure care and protection and youth justice residences.

<sup>5</sup> For example, there are relevant requirements in other Acts such as the Vulnerable Children Act 2014, Education Act 1989 and the Privacy Act 1993.



focused on and I acknowledge that the care standards regulations alone will not achieve the outcomes we are seeking for this group of children and young people; they will operate alongside the wider programme of change which includes significant changes that have already been made to the Oranga Tamariki Act 1989.

### **The care, protection and youth justice systems are not sufficiently responding to the needs of children and young people**

12 As at 30 June 2017, there were around 5,700 children and young people in care.<sup>6</sup> Sixty-nine percent of children in State care at the end of 30 June 2017 identified as Māori.<sup>7</sup> Children and young people who have contact with the care and protection and youth justice systems have a higher likelihood of experiencing certain poor long-term outcomes. Those in care are highly likely to enter young adulthood with few qualifications, and go on to experience very high rates of benefit receipt and contact with the adult corrections system. Analysis of children born in 1990/1991 shows that children who were placed in State care were:

- twice as likely to have failed to gain NCEA level two by age 21 (77.7 percent compared to 36.3 percent of children overall)
- six times more likely to have been on benefit for more than two years before age 21 than other children (44.4 percent compared to 7.7 percent of all children)
- ten times more likely to have been in prison before age 21 (18.3 percent compared to 1.8 percent of all children)
- estimated to be three times more likely to have been on benefit for more than six months when aged 35 (30.1 percent compared to 9.3 percent of all children)
- estimated to be six times more likely to have been in prison before age 36 (26.0 percent compared to 4.6 percent of all children).

13 The 2016 State of Care report by the Office of the Children's Commissioner found that the Ministry's case management is not sufficiently child-centred and is of variable quality.<sup>8</sup> It also found that it does not listen to, or sufficiently take into account the views of children and young people. It identified that the Ministry needs to improve support for psychological needs and cultural connections and to provide more training and support for caregivers to enable them to provide safe, secure environments for children and young people.

14 In its Final Report the Modernising Child, Youth and Family Expert Panel (the Expert Panel) recommended that, to bring New Zealand in line with comparable jurisdictions, the future system should have a set of national care standards.<sup>9</sup> It described the current system as one in which children and young people experience repeat referrals, high levels of instability and, in some cases, further maltreatment and trauma.<sup>10</sup> It further highlighted that:

14.1 the way the current care support system responds to children and young people in need of care means that care arrangements are not always suited to the needs of

<sup>6</sup> This includes children and young people with whānau caregivers, non-kin caregivers, in other settings (like residences or group homes) and those supported to live at home or independently.

<sup>7</sup> This figure captures children and young people who may have listed Māori as one of multiple ethnicities, as well as those who identified Māori as their sole or primary ethnicity.

<sup>8</sup> Office of the Children's Commissioner (2016). *State of care 2016: What we learnt from monitoring Child, Youth and Family*. Wellington, New Zealand, Children's Commissioner, pages 19-24.

<sup>9</sup> Modernising Child, Youth and Family Expert Panel (2015). *Expert Panel Interim Report: Modernising Child, Youth and Family*. Wellington, New Zealand: Ministry of Social Development, page 91.

<sup>10</sup> Modernising Child, Youth and Family Expert Panel (2015). *Expert Panel Final Report: Investing in New Zealand's Children and their Families*. Wellington, New Zealand, Ministry of Social Development, pages 41-55.



children and young people. Their needs are generally higher and more complex than those of children and young people in the wider population

- 14.2 there is insufficient attention on identifying and addressing the full range of needs of children and young people in care, including their emotional needs
- 14.3 caregivers may also lack the capability, training and support, including financial support, needed to help them address the often complex needs of the children and young people they care for.

### **Introducing care standards forms one part of the wider system changes to better support children and young people in care**

- 15 New requirements in the Oranga Tamariki Act 1989 to introduce care standards regulations were part of a suite of legislative reforms to respond to the findings of the Expert Panel and to underpin and give effect to the new operating model for the Ministry. This included amended purposes and principles of the Act, including principles specifically relating to children in care and acknowledging their need for special assistance and protection.<sup>11</sup>
- 16 The care standards regulations are just one part of the wider system changes to support children and young people in care. The regulations alone will not achieve the enduring changes we are seeking for these children and young people, and will sit alongside primary legislation and other changes underway to underpin the system transformation.
- 17 Under the Act, the regulations cannot place obligations on the chief executives of other agencies. However, I recognise that one government agency alone will not be able to achieve the outcomes we are seeking for children and young people in care. Critical to the success of the regulations will be the co-operation of other agencies and the willingness of other State sector chief executives to meet the needs of these children and young people.

### **The care standards regulations are intended to ensure greater accountability and improved quality care**

- 18 Currently, New Zealand does not have a national set of care standards. This limits the accountability on the system to meet certain standards, and also limits the expectations of children and young people in care and the level of caregiver support that should be provided.
- 19 Care standards, often with legislative underpinning, are a feature of care systems in most comparable jurisdictions (for example England, Scotland, New South Wales, Queensland, Canada). Where care standards operate in other jurisdictions, there is more accountability on the system and greater public scrutiny.
- 20 To date, New Zealand's legislative regime applying to children in care has been comparatively light, with very little outlining rights and guarantees for children in care. The rationale behind regulations as the mechanism to introduce national care standards was that, without legislative directives or requirements, children and young people in care have been reliant on the Ministry creating and monitoring its own standards. This has not been done to date.
- 21 Existing non-legislative measures, such as the children's charter, have not provided sufficient levels of accountability on the care system to ensure quality care. Currently, there is no ability for children and young people to find a clear statement of the standard of care they can expect,

<sup>11</sup> Other changes included new duties on the chief executive (including to provide a practical commitment to the Treaty of Waitangi, report annually on specific outcomes for Māori children and young persons, and establish complaints mechanisms), provisions allowing young people in care to remain or return to living with a caregiver until the age of 21, with transition support and advice available up to age 25, and amended information sharing provisions.



what entitlements they have when they are in care, and how their rights will be protected when they are living in out-of-home placements.

- 22 The purpose of care standards, therefore, is to create transparent accountability mechanisms to ensure quality care and to deliver a set of expectations, rights, and entitlements that clearly articulate what a child or young person can expect when they are in care of the State.

**The Oranga Tamariki Act 1989 requires regulations relating to care standards to be recommended by 13 July 2018**

- 23 The Oranga Tamariki Act 1989, as amended by the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017, requires the Minister to recommend the making of regulations setting out standards of care within 12 months of the commencement of the provision, and to regularly review the regulations.<sup>12</sup> This means I am required to recommend the making of these regulations by 13 July 2018.
- 24 To provide transparency and clarity about accountability, the Act places an explicit duty on the chief executive to comply with the care standards regulations.<sup>13</sup>
- 25 The regulations may prescribe the actions or steps that must be taken by the chief executive, or the chief executive's delegates, or bodies or organisations approved under section 396,<sup>14</sup> to help ensure an appropriate standard of care that is consistent with the application of the principles of the Act. This includes actions and steps relating to:
- 25.1 the provision of care, services, and support to address the rights and needs of children and young persons in care
  - 25.2 the assessment and monitoring of care arrangements and residences, including youth justice residences
  - 25.3 the assessment, training and support of caregivers and care providers
  - 25.4 the creation and maintenance of records for a child or young person recording important matters in their life (including significant life events and significant achievements) occurring while they are in care, and the provision of access to those records for the child or young person
  - 25.5 the manner in which care standards are monitored or reported on, within the department, by the organisations approved under section 396, and by the agency or body appointed to monitor compliance with the regulations.<sup>15</sup>
- 26 The Act specifies that the regulations will apply to children and young people in care or custody under Part 2 or 4 of the Act, which deal with care and protection and youth justice respectively.<sup>16</sup>

<sup>12</sup> [Section 447\(2\)](#). This provision came into force on 14 July 2017.

<sup>13</sup> [Section 7\(2\)\(bac\)](#). This provision will come into force on 1 July 2019 or at an earlier date appointed by Order in Council.

<sup>14</sup> [Section 396](#) covers iwi, social, cultural or child and family support services (for example Barnardos, Open Home Foundation, Youth Horizons, Key Assets). While the majority of the care population are in the legal custody of the Ministry, there are also a small number of providers approved under section 396 who hold legal custody of children and young people (this makes up around 10 percent of the total number of children and young people in care). These organisations will be bound by the care standard regulations.

<sup>15</sup> [Section 447\(1\)\(fa\)](#). This provision came into force on 14 July 2017.

<sup>16</sup> [Section 447\(1\)\(fa\)](#). This provision came into force on 14 July 2017. This also means that children and young people who are in the care of state-approved providers by way of agreement with their parent or guardian or as a consequence of a Family Court or Youth Court order will be within scope of the regulations.



- 27 The Act requires the Minister to appoint an agency or body independent of the department to monitor compliance with the regulations and to report on compliance to the Minister. The Minister must also regularly review the regulations.<sup>17</sup>
- 28 The regulations will be designed to help achieve particular outcomes and, as they confer legal accountability, they will need to have clear requirements to facilitate compliance. However, this means that the regulations alone will not achieve one of the policy objectives underlying the care standards, which is to ensure that children and young people, and their families, whānau and caregivers, have clear and accessible information about what they can expect from the care experience.
- 29 To support this, the Act requires the chief executive to publish information that is publicly accessible to children and young persons and their parents, whānau, families, and caregivers, summarising the rights of children and young persons in the care or custody of the chief executive, and the standard of care they should expect from the department under the Oranga Tamariki Act 1989 or regulations made under the Act.<sup>18</sup>
- 30 It is intended that, in addition to the care standards regulations, a separate Care Standards document, which will contain relevant requirements in existing legislation as well as requirements in the care standards regulations, will be developed.

### **The proposals I am recommending will cover the spectrum of the care experience**

- 31 I am seeking to introduce a regulatory framework that will provide a level of transparency and accountability that has not previously existed within the New Zealand care, protection and youth justice systems. The focus is on the quality of the child's or young person's care experience and supporting them to achieve positive life outcomes.
- 32 The content of the proposals has been shaped by feedback from consultation, including with children and young people in care, caregivers, caregiver social workers, approved care providers, iwi providers, non-government organisations and government agencies. Consideration has also been given to overseas care standards and the new principles of the Oranga Tamariki Act 1989. The new principles will guide decision-makers and will promote taking a holistic approach that sees the child or young person as a whole person; this includes considering their developmental potential, educational and health needs, whakapapa, and disability needs.
- 33 The voices of children and young people, gathered from the consultation, have been central to identifying key actions that will influence positive outcomes for children and young people in care, and will provide them with a clear understanding of the level of care they can expect.
- 34 Stakeholders consulted on the draft regulatory proposals provided largely positive feedback. There was a general consensus that the proposals would deliver on the objectives and would lead to consistent high-quality care for children and young people, as long as they were fully and consistently implemented. Concerns were raised about the level of resourcing required to support these changes.
- 35 The proposals are intended to provide a level of detail that will enable the chief executive (and delegates) or organisations approved under section 396 to have clarity on what steps they are required to take. This has been balanced against the need to respond flexibly to the unique needs of children and young people, and to ensure the new operating model is able to develop and mature in line with future best practice and future Government priorities.

<sup>17</sup> [Section 447A](#). This provision will come into force on 1 July 2018 at an earlier date appointed by Order in Council.

<sup>18</sup> [Section 7\(2\)\(baq\)](#). This provision will come into force on 1 July 2019 or at an earlier date if by Order in Council.



- 36 I am required to regularly review the regulations. I expect these regular reviews, as well as monitoring and evaluation of the regulations, will provide insight into how well they are operating over time and whether any changes are required to ensure they are supporting the outcomes we are seeking for children and young people in care.
- 37 For ease of reference, when the proposals refer to an obligation being placed on the chief executive, this should be taken to mean the chief executive, the chief executive's delegates and bodies or organisations approved under section 396, unless otherwise specified.
- 38 I am proposing that the regulations cover the following six areas:



- 39 Details of the regulatory proposals across the six areas are set out below.

#### **Area 1: Assessment, planning and monitoring to support children and young people in care**



- 40 Assessment and planning for children and young people informs decision-making and provides the focus for interventions and supports for the child or young person; it also keeps those involved on track.
- 41 Aside from requirements in the Oranga Tamariki Act 1989 for family group conference (FGC) plans and Court plans,<sup>19</sup> the requirements for assessment, planning and visits to monitor the child's or young person's well-being are contained in practice policy and guidance only. This is not always followed consistently across the country. There is significant variation in the quality of care provided by the Ministry and non-government care providers and it has been difficult to determine the extent to which current practice guidance is being consistently applied. This has particularly been the case for ongoing monitoring of children's and young people's plans.
- 42 I recommend the regulations cover the following:
- 42.1 *Needs assessment and developing a plan for the child or young person.* Those working with children and young people need to take a holistic approach to understand the child's or young person's full range of needs, and they need to have clarity about what will be expected of them to help achieve improved outcomes for a child or young person. The chief executive must undertake an assessment and develop a plan for the child or young person to ensure their needs are met.
  - 42.2 *Visits to monitor the ongoing safety and well-being of the child or young person.* To achieve a system that is able to meet the need of children and young people, the chief executive must ensure those working with a child or young person actively engage with them.
  - 42.3 *Maintaining and reviewing the child's or young person's plan.* Assessment and planning is an ongoing process for children and young people, it is not a one-off event when they enter care. In line with this, the chief executive must keep a child's or young person's plan updated, in line with their needs, and reflect any changes in their circumstances.
- 43 Details of what I am recommending be required in undertaking the above, are set out in Appendix 1.

## Area 2: Support to address children's and young people's needs

- 44 Young people described they did not receive the support they needed while in care to address the impact of earlier traumatic experiences.<sup>20</sup> The 2016 State of Care report found that, while the Ministry does well at meeting children's and young people's immediate safety needs and ensuring physical needs are addressed, further improvements could be made to ensure the full range of social, emotional and psychological needs are also met.<sup>21</sup>
- 45 As previously outlined, I have proposed that a child or young person will have a plan to ensure their needs are met. I further recommend that the chief executive ensures that support is available for children and young people to address their assessed needs. Support based on the needs of the child or young person would ensure, for example, that the individual needs of children and young people with disabilities are addressed to enable them to have the same opportunities as other children and young people in care, and also recognises that they may

<sup>19</sup> Sections 29(3) and 128 of the Oranga Tamariki Act 1989 respectively.

<sup>20</sup> Modernising Child, Youth and Family Expert Panel (2015). [Expert Panel Final Report: Investing in New Zealand's Children and their Families](#), page 52.

<sup>21</sup> Office of the Children's Commissioner (2016). [State of care 2016: What we learnt from monitoring Child, Youth and Family](#), page 21.



require additional support. Further, caregivers must be provided with information to understand their role in helping to meet the needs of the child or young person in their care.

- 46 There are also a number of needs where it is important to clarify what is expected of the chief executive, and I recommend the regulations cover the following:

46.1 *Connections with whānau.* Recent changes to the Oranga Tamariki Act 1989 introduced Māori concepts of mana tamaiti (tamariki), whakapapa and whanaungatanga.<sup>22</sup> The Act recognises that a child's mana exists in the context of their whakapapa and the whanaungatanga responsibilities of their whānau, hapū and iwi. During stakeholder consultation, young people emphasised the need to ensure they are able to maintain connections with family (siblings in particular), whānau, hapū and iwi. Consistent with this, the chief executive must support children and young people to establish, maintain or strengthen connections with their family, whānau, hapū and iwi.

46.2 *Culture, belonging and identity.* Children and young people who have been involved with the care and protection and youth justice systems have spoken strongly about an overwhelming desire for belonging. In particular, Māori young people within the system reported a lack of understanding they sometimes encountered. Caregivers and those working with children and young people also reported a number of challenges in attempting to meet the identity and cultural needs of Māori children and young people. The chief executive must support children and young people to meet their needs in relation to their culture and identity.

46.3 *Play, recreation and community.* The chief executive must support children and young people to address their play, recreation and community needs. Recognising children's and young people's place within their community will help foster a greater sense of identity and belonging. Play and recreational activity is also important for a child's or young person's healthy development.

46.4 *Health.* Good child and youth health is important not only for the child or young person and their families now, but also for their good health and well-being later in adulthood. The chief executive must ensure children and young people are provided with services and supports necessary to promote good health and address their individual health needs.

46.5 *Supporting children and young people in education or training.* Education is an important determinant of future life choices; success at school is important for cognitive development, self-esteem, and future employment possibilities. The chief executive must support children and young people to be engaged in education and ensure they are supported through their journey of education.

- 47 Further details of what I am recommending be required in undertaking the above, are set out in Appendix 2.

### Area 3: Caregiver and care placement assessment and support

- 48 The right people with the right skills are needed to help children and young people to heal and recover from past trauma. Caregiver approval, assessment and some training and support

<sup>22</sup> These concepts are reflected in the purposes, general principles, further duties of the chief executive in relation to improvement of Māori outcomes, and the care and protection principles of the Oranga Tamariki Act 1989.



form part of current operational practice, however, this is not always provided at consistent levels. The need for improved and widely available caregiver assessment, training and support was emphasised during stakeholder consultation – including by care-experienced children and young people as well as caregivers.

- 49 Section 362 enables the chief executive to place a child or young person in the care of any person whom the chief executive considers suitable to provide for that child's or young person's care, control and upbringing. The regulations cannot limit the chief executive's discretion under section 362. Further, decisions to place a child or young person, who has been removed from the care of the members of their family, whānau, hapū, iwi or family group who are the child's or young person's usual caregiver, are guided by the principles in the Oranga Tamariki Act 1989. However, the regulations can set processes that must be followed by the chief executive, including what they must take into account, when assessing the suitability of any person.
- 50 Under the empowering provision to make the care standards regulations, the regulations also cannot impose obligations on caregivers. The focus of these proposals is, therefore, on the actions and steps that the chief executive will be required to take to ensure caregivers are enabled and supported to provide safe, stable and loving care.
- 51 I recommend the regulations cover the following:
- 51.1 *Caregiver approval.* The chief executive must assess the prospective caregiver and the caregiving household to ensure they have the ability to meet the needs of a child or young person who comes into their care and to provide a safe, stable and loving home. Caregivers must also have a clear understanding of what they can expect and what will be expected of them, prior to becoming a caregiver.
  - 51.2 *Caregiver support plan.* Caregivers play a valuable role in ensuring children and young people are well cared for and safe. To recognise this, the chief executive must ensure caregivers have a plan to support and assist them to provide the best possible care for children and young people in their care.
  - 51.3 *Caregiver support and capability-building.* The chief executive must ensure support and training is provided to caregivers to support them to meet the needs of the child or young person. This will enable caregivers to have the continued ability to provide safe and stable care.
- 52 Further details of what I am recommending be required in undertaking the above, are set out in Appendix 3.

#### **Area 4: Supporting children and young people to have a greater voice in their care experience**

- 53 When children and young people are in care they should know why important things are happening to them and have a say in what happens next. They should also expect to feel welcome, to be well cared for, and to be enabled to speak out if they think something is not right.
- 54 To support children and young people to have a greater voice in their care experience, I recommend the regulations cover the following:
- 54.1 *Enabling children and young people to make informed decisions.* Recent changes to the Oranga Tamariki Act 1989 have strengthened obligations on decision-makers to encourage and assist children and young people to participate in decisions being made



about them. To underpin these changes, the chief executive must ensure children and young people have a strong foundation of knowledge about what they can expect in care to enable them to make informed decisions. At the most basic level, children and young people need to know why they are in care – this was a consistent message that came through consultation with stakeholders.

- 54.2 *Providing feedback and making complaints.* The chief executive must ensure children and young people are supported and enabled to raise concerns and provide feedback, whether positive or negative, about their care. Many children and young people do not understand how to make a complaint about their care and are often dependent on social workers advocating for them if something is not right at home.<sup>23</sup>
- 54.3 *Responding to concerns of abuse or neglect.* Responding to information that raises concerns about the safety of a child or young person in care has not always occurred consistently. To help address this, the chief executive must respond to any information that raises concerns in relation to a risk of harm in a timely manner.
- 54.4 *Ensuring children and young people have their own belongings.* The chief executive must ensure children and young people have belongings they can call their own.
- 54.5 *Maintaining records of important life events for children and young people while they are in care.* The chief executive must collect and maintain records relating to important matters in a child's or young person's life, such as significant life events and achievements that have occurred while they are in care. Ensuring children and young people have access to important information was raised through public submissions to the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017, and the care standards regulation-making power was subsequently amended to explicitly reflect this. Consultation with stakeholders also emphasised that children and young people often find key information about their achievements or photos of significance are lost when they change placement or when they leave care.

- 55 Further details of what I am recommending be required in undertaking the above, are set out in Appendix 4.

## **Area 5: Supporting children and young people during care transitions**

- 56 Care transitions can include when a child or young person comes into care, shifts placements or returns home. To support children and young people during care transitions, I recommend the regulations cover the following:
  - 56.1 *Placement decisions.* The chief executive must ensure decisions to place a child or young person in a particular care placement are guided by the care placement's ability to meet the needs of the child or young person.
  - 56.2 *Assessment, planning and monitoring during transition phases.* To recognise that care transitions can be an unsettling, stressful and confusing time for a child or young person, the chief executive must take the steps required for the child or young person to experience a positive care transition. A child or young person in the custody of the chief executive may have already experienced significant trauma and upheaval in their lives, and any change in placement needs to be carefully managed to reduce further disruption.

<sup>23</sup> Office of the Children's Commissioner (2016). [State of care 2016: What we learnt from monitoring Child, Youth and Family](#), page 20.



56.3 *Support to prepare young people for moving to independence.* Young people who engaged with the Expert Panel spoke of their pronounced vulnerability when they “aged” out of care. Young people leaving care need to be supported to achieve the same positive outcomes as other young adults. The chief executive must ensure that, before they leave care, young people are supported so that they are prepared to live more independently when they transition from care to independence.

57 While supporting young people to move to independence is largely covered by recent amendments to the Oranga Tamariki Act 1989,<sup>24</sup> I recommend that these regulations include actions that need to take place before a young person leaves care in order to prepare them to move toward independence. This is appropriate given these regulations are designed to set out the standards applicable while a young person is in care.

58 Further details of what I am recommending be required in undertaking the above, are set out in Appendix 5.

## **Area 6: Monitoring and reporting on compliance with the regulations**

59 I am required to appoint an independent agency or body to monitor and report on compliance with the regulations. The Ministry of Social Development is currently undertaking a review of the independent oversight required for the vulnerable children’s system. This focuses on independent monitoring, advocacy, complaints review and investigations. It includes consideration of the future role of the Office of the Children’s Commissioner and takes account of the Commissioner’s broader responsibilities in relation to children generally.

60 Depending on the choices Ministers make arising from the review, final decisions may not have been implemented by the time I am required to recommend the making of care standards regulations. I am therefore envisaging that I will need to appoint an independent monitoring body as an interim measure until those final decisions are taken and implemented. I intend to make a decision on the interim independent monitoring body in consultation with the Prime Minister closer to the date when the regulations are presented to Cabinet Legislation Committee for approval. This will enable the decision to be taken having regard to any emerging findings of the review of independent oversight.

61 The Oranga Tamariki Act 1989 outlines that the care standards regulations may include the manner in which care standards are monitored and reported on within the Ministry, by section 396 providers, and by the independent body or organisation appointed by the Minister to monitor compliance with the regulations. I recommend the regulations cover the following:

61.1 *Manner in which regulations are monitored and reported on by the independent monitor.* I am proposing to allow a degree of flexibility to the independent monitor to develop an appropriate monitoring and reporting regime, but consider that some minimum requirements are necessary to ensure an approach that is rigorous, transparent, efficient, useful for improving practice, supports improved outcomes for children and young people in care and will provide insight into how well the care system is functioning.

61.2 *Internal monitoring and reporting requirements.* Effective internal monitoring of compliance with the care standards regulations by the chief executive and other organisations with the custody of children and young people is also essential to the success of the regulations in improving outcomes.

<sup>24</sup> This includes new and amended purposes and principles, an entitlement for a young person to live with a caregiver up to age 21, a requirement on the chief executive to maintain contact with a young person up to age 21, and the provision of advice and assistance for young people up to age 25.



- 62 Further details of what I am recommending be required in undertaking the above, are set out in Appendix 6.
- 63 I expect that the monitoring approach will support the requirement to ensure the regulations are regularly reviewed, through identifying areas where the regulations may not be working as intended.
- 64 I intend for this approach to reinforce the move away from a culture focused on complying with a narrow set of process measures toward an improvement culture where people are supported and motivated to make a difference for children and young people. Performance information needs to avoid creating incentives for people to meet arbitrary, partial or even misleading measures of work. Instead it needs to be designed and used in a way that supports an open and reflective approach that helps to identify the challenges and possible solutions. I recognise that it will take time and investment for the Ministry to address current gaps in performance information to enable this.
- 65 The internal and independent monitoring and reporting requirements I have proposed will be key mechanisms to support the enforcement of the new obligations.
- 66 Another key compliance mechanism is the Ministry's own internal complaints process which is currently being established, which is underpinned by a new duty on the chief executive under recent amendments to the Oranga Tamariki Act 1989. Options for an additional process to provide independent review of complaints are being considered as part of the Ministry of Social Development's work referred to in paragraph 59 above. Any independent process would further support compliance with the Care Standards Regulations.
- 67 The proposals I am recommending for the care standards regulations will create legal obligations and could also be enforced through the courts. The recent amendments to the Act support the use of the Ministry's own internal complaints process and any independent complaints review process in the first instance to resolve disputes. This is achieved through the provision of a limitation that will require a complainant to have exhausted internal complaints mechanisms and any independent complaints review process before court proceedings may be brought.

### Other matters related to the regulations

*Application of the regulations to children and young people in short-term placements or under orders under a different Act*

- 68 The proposals outlined above are intended to cover the range of actions and steps children and young people can expect across the care experience; however, for children and young people in care for a limited time,<sup>25</sup> it will not be possible or desirable for all the care standards to apply in all situations.
- 69 There are also a limited number of cases where a child or young person who will be subject to the care standards regulations may also be subject to another order requiring their detention in a facility run by another agency, for example, under the Mental Health (Compulsory Assessment and Treatment) Act 1992.<sup>26</sup>

<sup>25</sup> This would include placements under sections 39, 42, 48, 78, 139, 235 and 238(1)(d) of the Oranga Tamariki Act 1989.

<sup>26</sup> Other examples include orders under the Criminal Procedure (Mentally Impaired Persons) Act 2003 and the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003. Also note that a young person who is not in the care or custody of the chief executive under Part 2 or 4 of the Act will not be subject to the care standards regulations, this includes for example, young people who are in Police custody and are not in the care or custody of the chief executive under Part 2 or 4 of the Act.



- 70 In these instances, I recommend the regulations should apply to the extent that is reasonably practicable. The exact detail will be worked through during drafting.

*Interaction with the Oranga Tamariki (Residential Care) Regulations 1996*

- 71 On 7 September 2016, Cabinet agreed to revoke the Oranga Tamariki (Residential Care) Regulations 1996 once the care standards regulations are made [SOC-16-MIN-0114; CAB-16-MIN-0460 refer].
- 72 The care standards regulations are intended to cover the spectrum of the care system, including residential care settings. However, the focus of the proposals is on the universal domains of care and therefore they do not provide the level of specificity or prescription that is required in more controlled residential care settings, for example, around search and seizure of unauthorised items, and limitations on powers of punishment and discipline.
- 73 The Oranga Tamariki (Residential Care) Regulations 1996 will need to be retained, at least at this stage as an interim measure, until further work is completed to assess whether the Residential Care Regulations are fit for purpose under the new operating model. I propose both sets of regulations will apply to children and young people in residences to the extent practicable in the circumstances. I note that minor and consequential amendments to the Oranga Tamariki (Residential Care) Regulations 1996 may be needed to ensure both sets of regulations can be applied in a workable manner until the longer-term assessment is completed, and I seek Cabinet's authorisation to make changes to this effect.
- 74 I have asked officials to assess the Oranga Tamariki (Residential Care) Regulations 1996 to identify what changes may be required, including to align them with the proposals to be included in the care standards regulations, as well as with other Ministry initiatives being designed to support the new operating model.

*Commencement of the regulations*

- 75 The proposals have been developed with the new and amended purposes and principles of the Oranga Tamariki Act 1989 in mind, as well as other changes to the Act such as new provisions to support young people to move to independence and strengthened obligations to support children's and young people's participation. These changes come into force on a date appointed by Order in Council or by 1 July 2019.
- 76 To align with this, I recommend that the regulations come into force on 1 July 2019. This will also support the regulations to align with other non-legislative projects currently being designed to underpin the new operating model. It will also allow time for detailed implementation planning to take place to ensure the regulations can be met by the Ministry and section 396 providers to which these regulations will apply.

**Consultation**

- 77 This paper was prepared by [Oranga Tamariki–Ministry for Children]. The following agencies were consulted in the development of the proposals: Ministry of Education, Ministry of Health, Ministry of Social Development, Ministry of Justice, ACC, Te Puni Kōkiri, Ministry for Pacific Peoples, Department of Corrections, New Zealand Police, Treasury and Department of the Prime Minister and Cabinet (Policy Advisory Group).
- 78 The Office of the Children's Commissioner was also consulted.
- 79 Detailed information outlining the people and organisations consulted during the development of the proposals are included in the attached Regulatory Impact Statement.



*Further proposed consultation*

- 80 I recommend that consultation outside the Crown be undertaken during the drafting of the regulations, including on possible exposure drafts of the regulations. While a large group of stakeholders was consulted during the development of the proposals, I propose that a smaller group of people and organisations be consulted at this stage of the process. The focus of the consultation will be on how the regulations have been drafted and will be confined to those who will be directly impacted by the regulations and those who have expertise and knowledge in applying regulations. This includes those who will be involved in implementation.
- 81 The details of any consultation will be worked through with the Chief Legal Adviser of the Ministry in accordance with the Attorney-General's protocol for release of draft Government legislation outside the Crown (CO (14) 4).

**Financial Implications**

- 82 It is proposed that the regulations come into force on 1 July 2019. The regulations will apply to all children and young people in care, and I expect the requirements to become part of business as usual for the Ministry.
- 83 The proposals will cut across the care system and in many cases the proposals reflect best practice and/or current practice. However, ensuring the requirements are achieved consistently for all children and young people in care will require a significant level of resourcing.
- 84 Indicative cost estimates to enable the Ministry to comply with the proposed requirements range from \$49 million - \$75 million per annum, which would be required from Budget 19 onwards.<sup>27</sup> This range is based on estimates of the increase in quality of practice that would be needed to raise current practice to the required standard, across a breakdown of different activities that the Ministry carries out for children and young people in care. This range represents both a conservative and a higher estimate as to the quality increase that would be required in each area.
- 85 There will be additional costs to meet both the internal monitoring and reporting requirements and costs for interim independent monitoring arrangements. The indicative cost estimate is between \$1.5 million - \$3 million in establishment funding in Budget 19 and \$1.3 million - \$3.5 million for ongoing monitoring functions in out-years.<sup>28</sup> The actual cost of these monitoring arrangements will be dependent on the services and processes that are designed as part of the implementation of the regulations.
- 86 The proposals articulate the actions or steps required of the chief executive and are not overly prescriptive. This will allow significant scope for operational decision-making to enable the Ministry to meet the requirements. It also allows for fiscal costs to be scaled to respond to changes in practices and services that may be needed to ensure children and young people in care achieve the outcomes we are seeking and to allow the new operating model to mature in line with best practice.
- 87 I expect detailed design and implementation planning to identify the different design and delivery options to meet the proposed requirements in each particular area. Detailed design

<sup>27</sup> This is derived from a breakdown of activity level costs based on Budget 2016/2017 values, isolated to those activities that are relevant for children and young people who have been brought into the care of the chief executive. For care and protection, this covered child and family assessments, investigations, family group conferences, High/Family court wards, plans and orders, care services, caregiver management and therapeutic intervention. For youth justice, this covered plans and orders, restorative services, and aspects of residence and non-residence placements.

<sup>28</sup> In the 2017/18 financial year, the Ministry had a total spend of over \$860 million, of which \$503 million was on statutory intervention and transition.



and implementation planning is underway and will provide a clearer indication of different funding options for Budget 19 and beyond.

- 88 As the proposals cut across the core functions of the Ministry, any funding sought is likely to overlap with the development of other initiatives that will need to be undertaken as part of the delivery of the new operating model. The extent to which Budget initiatives contribute to the Ministry's ability to comply with the care standards regulations will be one of the key priorities for future Budget packages.

## Human Rights

- 89 The proposals in this paper are not inconsistent with the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993. The proposals will increase New Zealand's alignment with the United Nations Convention on the Rights of the Child (UNCROC), particularly Article 20 which provides that children should be entitled to special protection and assistance by the State where they are temporarily or permanently deprived of their family environment.<sup>29</sup>
- 90 The proposals may potentially result in the Ministry providing a higher standard of care than many children and young people in New Zealand who are not in the care of the Ministry may receive. This is particularly relevant in cases where a child or young person returns home or transitions to permanence and is no longer in the care or custody of the chief executive. However, these proposals need to be considered in light of the circumstances for which these children and young people are placed in the care or custody of the chief executive:
- 90.1 This group of children and young people have a significantly higher likelihood of experiencing poor long-term outcomes compared to other children and young people, including compared to children and young people who have had significant levels of contact with the care and protection agency but have not been placed formally in care.
  - 90.2 The chief executive has a common law duty to children and young people in the custody or guardianship of the chief executive to act with care and skill in making decisions about the child and to take reasonable steps to ensure the child or young person's welfare, education and health needs are taken care of. The chief executive also has a duty under section 363(2) of the Oranga Tamariki Act 1989 to ensure payments are made to meet the reasonable needs of the child or young person.
  - 90.3 A decision has been made to remove the child or young person from their home because it has been determined that they will better off in the care of the chief executive than in their own home.
  - 90.4 The chief executive in these situations is acting in the place of a parent and it is reasonable to expect that the chief executive would do what is possible, within available resources, to provide children and young people with an appropriate upbringing.

## Legislative Implications

- 91 Regulations are required to implement the proposals in this paper. Drafting instructions will be issued to the Parliamentary Counsel Office based on Cabinet decisions. I also seek authorisation to make decisions on minor or technical policy changes that are not inconsistent with the policies agreed in this paper, in order to finalise the drafting of the regulations.

<sup>29</sup> Other Articles the proposals will increase alignment with include Articles, 3.3, 8, 12, 13, 19.2, 23, 24, 25, 28, 39 and 31.



## Regulatory Impact Analysis

- 92 The regulation impact analysis requirements apply to the proposals in this paper and a regulatory impact statement has been prepared and is attached.
- 93 *[Statement from independent quality assurance assessment to be inserted here]*

## Gender Implications

- 94 The proposals in this paper are intended to lead to higher quality care and contribute to improved outcomes for children and young people in the care, protection and youth justice systems that are in the care or custody of the chief executive.
- 95 These proposals will have a positive impact on girls and young women as they are less likely to be in education, employment or training than young men. Boys and young men are expected to benefit from the proposals as they are disproportionately represented in the youth justice system and slightly over represented in care.
- 96 Women are more likely than men to be the primary caregivers for children and young people, therefore, the proposals which aim to provide caregivers with greater support and assistance will benefit women and their whānau.

## Disability Perspective

- 97 The proposals are intended to apply across the population of children and young people in the care or custody of the chief executive. There are a number of areas that will ensure the visibility of children and young people with disabilities across the regulations. For example, disability would be considered as part of assessing a child's health needs as well as their identity and cultural needs. Support must be provided to address any identified needs; this could include support to address any communication needs. Under the proposals that relate to participation, information must be explained in a manner that is appropriate to the child or young person, including where they may have barriers to understanding the issues because of age, language or disability. Regard must be given to the needs of children and young people with disabilities when creating and maintaining records of important life events.
- 98 The regulations will apply in addition to the legislative requirements in the Oranga Tamariki Act 1989. For example section 11 requires that, when decisions are made that significantly affect a child or young person, they must be provided with support where they have difficulties expressing views or being understood. Recent changes to section 11 will require that children and young people be provided with reasonable assistance to understand the proceeding or process. Section 9 requires that, in relation to proceedings under the Act, interpreters are provided to a child or young person and/or their parent or guardian if they are unable, by reason of a physical disability, to understand English.

## Publicity

- 99 Any specific public announcements relating to care standards will be co-ordinated by the Office of the Minister for Children.

## Recommendations

The Minister for Children recommends that the Committee:

- 1 **note** that the Oranga Tamariki Act 1989 (the Act), as amended by the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017, requires the responsible



Minister to recommend the making of care standards regulations within 12 months of the commencement of the legislative amendment (this means they will need to be recommended by 13 July 2018)

- 2 **note** that the Act requires the regulations to prescribe the actions or steps that must be taken by the chief executive (and delegates) or organisations approved under section 396 of the Act to help ensure children and young people in care or custody under Part 2 or 4 of the Act, which deal with care and protection and youth justice respectively, receive an appropriate standard of care that is consistent with the principles of the Act
- 3 **note** that the regulations will confirm a set of expectations, rights and entitlements that set out what children and young people can expect when they are in the care or custody of the chief executive (or in a small number of cases, an organisation approved under section 396 of the Act)
- 4 **note** that the development of the proposals for inclusion in the regulations has been guided by consultation with key stakeholders, including with children and young people, caregivers, care providers, iwi providers, and government agencies
- 5 **note** that, for ease of reference, when the proposals outlined in recommendations 6 to 84 refer to an obligation being placed on the chief executive, this should be taken to mean the chief executive, the chief executive's delegates and organisations approved under section 396, unless otherwise specified

### **Assessment, planning and monitoring to support children and young people in care**

#### *Needs assessment and developing a plan for the child or young person*

- 6 **note** that aside from legal requirements for family group conference (FGC) plans and Court plans, assessment, planning and visits to monitor the child's or young person's well-being are not required by the Act
- 7 **agree** that, when a child or young person enters the care or custody of the chief executive, the chief executive must undertake an assessment to identify the child's or young person's immediate and long-term needs and what is required to meet those needs, and the assessment must be recorded
- 8 **agree** that the chief executive must develop a plan for the child or young person to ensure their needs identified through the assessment are met, the plan must:
  - 8.1 set out how the assessed needs of the child or young person will be addressed and what support is required
  - 8.2 record the actions other parties, such as the child's or young person's caregiver and professionals involved with the child or young person, have agreed to undertake
  - 8.3 be informed by the findings of the assessment of the child's or young person's needs
- 9 **note**, that the plan cannot be inconsistent with any FGC or Court plan the child or young person may have under Part 2 or 4 the Act, any protection orders made under the Domestic Violence Act 1995 or orders under the Care of Children Act 2004
- 10 **agree** that the assessment be undertaken and plan prepared as soon as reasonably practicable after the child or young person enters the care or custody of the chief executive



- 11 **agree** that the child or young person be kept informed of the progress and timeframes for undertaking the assessment and preparing their plan
- 12 **agree** that the following are identified as part of the assessment and inform the development of the child's or young person's plan:
  - 12.1 the child's or young person's wishes or aspirations
  - 12.2 the child's or young person's strengths and how those strengths can be fostered
- 13 **agree** that the assessment must include identification of, in no particular order, the following needs:
  - 13.1 emotional care
  - 13.2 behavioural needs
  - 13.3 whānau connections
  - 13.4 culture, belonging and identity
  - 13.5 play, recreation and community
  - 13.6 safety
  - 13.7 health (this will include mental health and any disability needs)
  - 13.8 education or training

*Visits to monitor the ongoing safety and well-being of the child or young person*

- 14 **agree** that the chief executive must monitor the ongoing safety and well-being of the child or young person, including:
  - 14.1 regular visits to the child or young person, including face-to-face contact, to understand any concerns they may have, to understand matters that are important to them, and to identify if their needs have changed
  - 14.2 engaging with the child's or young person's caregiver, other professionals who are party to the plan and people of significance to the child or young person
- 15 **agree** that the frequency of visits to the child or young person to monitor their ongoing safety and well-being must be determined as part of the assessment of the child's or young person's needs and set out in their plan, including reasons for the timeframe, and that consideration must be given to a range of matters such as significant events or changes in the child's or young person's circumstances
- 16 **agree** that determining the frequency of visits to the child or young person must be done in consultation with the child or young person and their caregiver, and the child or young person and their caregiver must also be informed of the timeframe
- 17 **agree** that if, as a result of a visit, it is identified that the safety or well-being of the child or young person is not adequately being protected and supported, the chief executive must review the child's or young person's plan in accordance with the review requirements

*Maintaining and reviewing the child's or young person's plan*



- 18 **agree** that the chief executive must keep the child's or young person's plan up-to-date and under review to ensure the plan is meeting the needs of the child or young person and reflects any changes in their circumstances
- 19 **agree** that the review should be informed by a number of different information sources, including the findings of any reassessment of the child's or young person's needs, and information obtained from the child or young person, their caregiver and other professionals involved with the child or young person as identified in recommendation 14
- 20 **agree** that the results of the review, including decisions or arrangements to implement those, must be recorded and the plan updated
- 21 **agree** that the child's or young person's plan must be reviewed no less than 6 weeks after they have entered the care or custody of the chief executive, and reviewed no less than once every 6 months thereafter

### **Support to address children's and young people's needs**

- 22 **agree** that the chief executive must ensure that appropriate support (including financial support or specialist services) is available to children and young people to address their assessed needs and must provide support or assistance to access this support
- 23 **agree** that the chief executive must ensure that caregivers are provided with information to help them understand their role in helping to meet the needs of the child or young person in their care

### *Whānau connections*

- 24 **agree** that the chief executive must provide support to enable the child or young person to maintain connections with their family, whānau, hapū and iwi, this includes:
  - 24.1 providing children and young people with support (including financial) necessary to ensure they are able to establish, maintain and strengthen relationships with their family, whānau, hapū and iwi where it is in the best interests of the child or young person
  - 24.2 providing caregivers with support to understand the importance for the child or young person to establish, maintain and strengthen connections with family, whānau, hapū and iwi, and manage any contact arrangements
  - 24.3 identifying members of the child's or young person's family, whānau, hapū, or iwi that should be kept informed of their progress and development, and requiring those identified people be kept informed

### *Culture, belonging and identity*

- 25 **agree** that to support a child's or young person's culture and identity needs, the chief executive must:
  - 25.1 provide support (including financial) to meet the culture and identity needs of the child or young person and to enable them to maintain meaningful connections with, and participate in, their culture, language, religion or spirituality and develop a sense of identity and culture



- 25.2 provide caregivers with support necessary to enable them to promote the identity and culture of the child or young person in their care and understand and respect their personal choices with respect to their identity and culture

*Play, recreation and community*

- 26 **agree** that to support a child's or young person's play, recreation and community needs, the chief executive must provide:
- 26.1 children and young people with support (including financial) to enable them to participate in appropriate play, recreation and community activities
- 26.2 caregivers with information on the steps they could take to facilitate meeting the play, recreation and community needs of the child or young person

*Health*

- 27 **agree** that the chief executive must ensure children and young people are provided with services and supports necessary to promote good health and address their individual health needs, this includes:
- 27.1 maintaining a record of the child's or young person's health history
- 27.2 ensuring the child or young person is enrolled with a Primary Health Organisation
- 27.3 ensuring the child or young person has an annual general health check
- 27.4 for children aged 2 and over, ensuring they have an annual dental check
- 27.5 providing health information to the child or young person and their caregiver on a range of health matters, for example, physical development and growth and sexual matters, and relevant health services that can be accessed
- 27.6 supporting and assisting the child or young person to access publicly-funded health services to address their health needs, including seeking parent or guardian consent where required and advocating for the child's or young person's best interests
- 27.7 providing access to any other services to address their health needs if existing publicly-funded services to address their health needs are not available in a timely manner
- 27.8 taking a coordinated approach to the child's or young person's health care with other agencies

*Education or training*

- 28 **agree** that, to ensure a child or young person is enrolled in an appropriate licenced or certificated early learning service or other service, school or training or education programme or institution, the chief executive must:
- 28.1 ensure that children aged 1 to 4 inclusive are enrolled by their parent or guardian in a licensed or certificated early learning service unless it is not in their best interests, for a time that is based on the needs of the child; this decision must be regularly reviewed
- 28.2 consider, if a child aged 5 is not enrolled in a school, whether the child should be enrolled by their parent or guardian at school; if not, they must be enrolled in a licensed



or certificated early learning service as for children aged 1 to 4; if the child is not enrolled at school, this decision must be reviewed regularly

28.3 for children aged 6 to 15 years inclusive, take all reasonable steps with the child or young person's parent or guardian to enrol that child or young person in an appropriate educational institution, this includes consideration of court action to resolve a dispute with a guardian as to enrolment, if considered appropriate

28.4 for young people aged 16 or over, who are not enrolled in an educational or training institution or programme, they must be assisted to do so or to obtain employment

29 **agree** that the chief executive must take steps to facilitate attendance of a child or young person at their licenced or certificated early learning service or other service, school or training or education programme or institution, this includes providing caregivers with information to understand the importance of attendance by the child or young person and obtaining updates, at least once a term, on the child's or young person's attendance and having in place alternative educational arrangements where a child or young person has been excluded from school

30 **agree** that the chief executive must provide services and supports necessary to support the child's or young person's assessed educational development and goals, this includes for example, the provision of equipment and items not funded by the school, including stationery, paying school-related costs such as donations or fees for early learning services, and promoting a coordinated approach to the child's or young person's educational needs with other agencies

31 **agree** that the chief executive must ensure caregivers are provided with assistance necessary to enable them to assist the child or young person to succeed in education

32 **agree** that the chief executive must monitor the child's or young person's educational progress and ensure regular contact is maintained with the child's or young person's school or education provider

### **Caregiver and care placement assessment and support**

#### *Caregiver approval*

33 **note** that, under the empowering provisions in the Act, the regulations cannot impose obligations on caregivers

34 **agree** that the chief executive must provide information covering a range of matters to prospective caregivers, including information covering the assessment and approval process, the impact caregiving may have on their family life, the support and training available, and managing day to day care

35 **agree** that caregivers and the caregiving household are assessed to ensure they are suitable to provide the standards of care expected under the Act, including their ability to provide a safe, stable and loving home, this would include:

35.1 safety checks of prospective caregivers and consent sought to undertake safety checks of other adult members of the caregiving household, consistent where appropriate with those applied to the core children's workforce under the Vulnerable Children Act 2014 and the Vulnerable Children (Requirements for Safety Checks of Children's Workers) Regulations 2015



35.2 assessment of a range of matters for example, the prospective caregiver's experience, skills and abilities in providing care, and the safety and appropriateness of the physical caregiving environment

36 **agree** that a caregiver's approval would be reviewed periodically

37 **agree** that a review of a caregiver's approval would also be required in cases where a critical incident has taken place, such as an allegation of abuse or neglect against a caregiver, or where there is a significant change in circumstances of the caregiving household

38 **agree** that there may be situations where a child or young person needs to be urgently placed and provisional approval of a caregiver may be necessary

39 **agree** that in the case of an urgent placement and where a caregiver has not completed the full approval process, some minimum requirements will apply, including:

39.1 Police and record checks of the prospective caregiver, and for other adult members of the caregiving household, the chief executive must seek consent to undertake these checks

39.2 interview with the prospective caregiver

39.3 visit to the prospective caregiver's home

39.4 any other actions necessary to be satisfied the prospective caregiver could provide the required level of safety

40 **agree** that the full assessment of the caregiver must be completed as soon as possible and the caregiver's provision approval must be regularly reviewed until full approval is granted, if there are concerns that full approval would not be granted, the placement decision must be immediately reviewed

#### *Caregiver support plan*

41 **agree** that the chief executive must ensure caregivers have a support plan, based on their assessment, that sets out a range of matters including:

41.1 the support that will be provided to assist the caregiver and caregiving household to meet the needs of the child or young person

41.2 the training that will be provided to the caregiver to help build their capability to meet the needs of the child or young person

41.3 how regularly the caregiver's approval status, their ability to meet the needs of the child or young person who is in their care, and their support and capability-building needs will be reviewed

42 **agree** that the caregiver support plan must be reviewed at a frequency based on the assessed needs of the caregiving household and the timeframe, and reasons for it, must be set out in the plan

#### *Caregiver support and capability-building*

43 **agree** that, to support caregivers to meet the needs of a child or young person, including to provide a safe, stable and loving home, the chief executive must:



43.1 provide caregivers with support or assistance to access support, including where a caregiver requests this

43.2 ensure training is available to caregivers that helps to build their capability as a caregiver, this includes support and assistance to access training and any training attended must be recorded in the plan

44 **agree** that support may include financial assistance

45 **agree** that caregivers must have access to a support person who can help them understand their role as a caregiver and what will be expected of them

## **Supporting children and young people to have a greater voice in their care experience**

### *Enabling children and young people to make informed decisions*

46 **note** that recent changes to the Act have significantly strengthened obligations on decision-makers to encourage and assist children and young people to participate in decisions that affect them

47 **note** that these proposals are focused on providing children and young people with a strong foundation of knowledge to enable them to participate meaningfully in decisions being made about them

48 **agree** that, when a child or young person enters care and whenever their plan is reviewed, the chief executive must explain a range of matters to the child or young person, including by providing information, that will help them to understand what they can expect in care; these matters would include why they are in care, their right to privacy and confidentiality, and how they can provide feedback and make complaints

49 **agree** that these matters must be explained in a manner and language that can be understood by the child or young person

### *Providing feedback and making complaints*

50 **agree** children and young people must be supported to make a complaint; this includes assisting them with understanding the process, making a complaint and addressing the impacts of a complaint

### *Responding to concerns of abuse or neglect*

51 **agree** that the chief executive must respond to any information disclosed that raises concerns in relation to a risk of harm caused by abuse or neglect of a child or young person in care

52 **agree** that the chief executive must:

52.1 respond in a timely manner

52.2 record and report this information in a consistent manner

52.3 inform the child or young person of the outcome



52.4 take appropriate steps with parties to the allegation, for example, having regard to the impact on the ongoing relationship between the child or young person and their caregiver

53 **agree** that the chief executive must provide information to the independent monitor on reports of abuse or neglect it has received under recommendation 51 and how those cases were handled

*Ensuring children and young people have their own belongings*

54 **agree** that the chief executive must ensure that children and young people are able to have their own personal belongings, this includes clothing, a bag and bedding and somewhere to store their belongings

*Maintaining records of important life events for children and young people while they are in care*

55 **agree** the chief executive must, in consultation with the child or young person, collect and maintain records relating to important events and achievements in the child's or young person's life, for example, photos, art work and school reports

56 **agree** that care leavers must be provided with a copy of the records relating to important events and achievements in their life when they leave care, and know where they can access these records in the future

**Supporting children and young people during care transitions**

57 **agree** that a care transition can include when a child or young person comes into care, shifts placements or is able to return home

*Placement decisions*

58 **agree** that, when the chief executive is making a decision to place a child or young person in a care placement, the chief executive must consider the ability of the care placement to meet the assessed needs of that child or young person and have a plan for providing the support required if the care placement is not able to fully meet the needs of the child or young person without support

59 **agree** that the chief executive must ensure the caregiver or care placement is provided with information about the child or young person being placed there, in order to ensure they understand that child's or young person's needs

*Assessment, planning and monitoring during transition phases*

60 **agree** that as soon as the chief executive knows that a child or young person is to have a care transition, the chief executive must undertake an assessment of the necessary steps required for the child or young person to experience a positive care transition and this must be reflected in a plan

61 **agree** that the plan must be developed in consultation with the previous and intended caregiver and record the steps they will be required to take

62 **agree** that the chief executive must ensure there is sufficient monitoring and support during phases of care transition based on the needs of the child or young person



- 63 **agree** that, to support a care transition, the chief executive must ensure the child or young person is provided with services and supports necessary to assist them to experience a positive care transition, for example by explaining to the child or young person why a care transition is happening, providing them with information in advance about the intended placement, providing them with the opportunity to visit the new care environment, ensuring they are able to take their belongings with them, and assisting with the maintenance or re-establishment of an ongoing relationship with their previous caregiver if it is in the best interests of the child or young person

*Support to prepare young people for moving to independence*

- 64 **note** that recent amendments to the Act cover supporting young people to move to independence, and the regulatory proposals focus on the actions that need to take place before a young person leaves care in order to prepare them to move toward independence
- 65 **agree** that the chief executive must undertake an assessment and develop a plan to identify what life skills a young person already has and those they may need to help them to move toward independence, for example, personal care and health, managing money and maintaining safe and positive relationships
- 66 **agree** that, in accordance with section 386A, this proposal would apply to young people who, after the age of 14 years and 9 months, are or have been, at any time for a continuous period of at least 3 months, in the care or custody of the chief executive and are still in the care or custody of the chief executive
- 67 **agree** that, before a young person reaches the age of 18, the chief executive must assist them to obtain official documentation, for example photo identification, a certified copy of their birth certificate, an IRD number, a bank account, verifying their identity online to enable them to access key government services, and make them aware of their legal requirement to enrol on the electoral roll
- 68 **agree** that young people moving to independence be provided with support before they reach 18 to enable them to understand how to access key services and assistance after they leave care, for example relating to education and housing, and are supported to access these

**Monitoring and reporting on compliance with the regulations**

- 69 **note** that the Act requires the Minister to appoint an independent agency or body to monitor and report on compliance with the regulations
- 70 **note** that Ministry of Social Development is currently undertaking a review of the independent oversight required for the vulnerable children system which focuses on independent monitoring, advocacy, complaints review and investigations, and this work includes consideration of the future role of the Office of the Children's Commissioner and takes account of the Commissioner's broader responsibilities in relation to children generally
- 71 **note** that depending on the choices Ministers make arising from the review described in recommendation 70, final decisions may not have been implemented by the time the Minister for Children is required to recommend the making of the care standards regulations
- 72 **note** that the Minister for Children intends to make a decision on an interim independent monitoring body in consultation with the Prime Minister closer to the date when the regulations are presented to Cabinet Legislation Committee for approval



- 73 **note** that the Act sets out that the regulations may include the manner in which the care standards are monitored and reported on, both internally and by the independent body or organisation appointed by the Minister to monitor compliance with the regulations
- 74 **note** that it is desirable for the independent monitor to have a degree of flexibility to develop an appropriate monitoring and reporting regime to ensure it is rigorous and fit for purpose

*Manner in which the regulations are monitored and reported on by the independent monitor*

- 75 **agree** that the regulations are to contain some minimum requirements with respect to the manner in which the regulations are monitored and reported on by the independent monitor, including that:
- 75.1 the independent monitoring body must establish an assessment framework for monitoring and reporting on compliance with the regulations
  - 75.2 the framework must provide clarity as to how compliance will be assessed and include detail of the sources of information and key indicators of performance that will be used to assess compliance, and consideration must be given to how the framework aligns with the systems in place for internal self-review and continuous improvement as set out in recommendation 83 below
  - 75.3 the framework must be developed in consultation with the chief executive and any approved organisation under section 396 of the Act having the custody of children and young people under the Act
- 76 **agree** that the assessment framework may identify particular priorities based on areas of focus for performance improvement, such as by regulation subject, locality or by reference to particular groups of children and young people
- 77 **agree** that the independent monitor must use multiple information sources to assess compliance; this must include information obtained directly from children and young people to whom the regulations will apply about their experience of care in the areas covered by the regulations and must also include other information sources such as:
- 77.1 reviews of providers' policies, documents, reports and service feedback
  - 77.2 site assessments
  - 77.3 feedback, interviews and participation from children, young people, their families, staff and caregivers
  - 77.4 stakeholder feedback, including from advocacy services
  - 77.5 the providers' self-assessment
  - 77.6 data collected by providers or through other mechanisms
  - 77.7 information from complaints and reviews
- 78 **agree** that the manner of assessment and reporting must:
- 78.1 support the achievement of the purposes of the Oranga Tamariki Act 1989 with particular regard to sections 4(1)(a)(ii) and (e), and must include analysis of the nature and degree of compliance found and its associated impacts on the fulfilment of those purposes



- 78.2 contribute to the overall knowledge base with respect to the performance of the care system and have regard to the measures and indicators of performance developed by the Ministry or other children's agencies to assess the performance of the care system
- 78.3 support the Ministry and other approved organisations under section 396 having custody of children and young people under the Act to work towards continuous service improvement, both through identification and follow up in areas where there are compliance concerns but also where there are opportunities for further improvement beyond minimum compliance
- 79 **agree** that the chief executive and approved organisations under section 396 the Act with custody must provide any information requested by the monitoring agency that is reasonably required for the purposes of assessing compliance
- 80 **agree** that the independent monitor must report every three years to the Minister on compliance with the regulations in order to provide an overall assessment of the state of the care system, this report must also include:
- 80.1 numbers of children and young people in care and the length of time spent in care
  - 80.2 a profile of the characteristics of children and young people in care, including ethnicity, age, disability and health need
  - 80.3 information on the number of placement changes experienced by children and young people in care
  - 80.4 complaints and incidents of abuse and neglect in care and procedures followed in resolving these matters, including information provided by the chief executive on reports of abuse or neglect as set out in recommendation 51 and how those cases were handled, and those escalated to any independent review mechanism
  - 80.5 identification of areas of good practice as well as areas recommended as a focus for improvement
  - 80.6 the particular situation for Māori children and young people in terms of the levels of compliance with the regulations
  - 80.7 an assessment of the state of the systems in place for self-monitoring and continuous improvement operated by chief executive and other organisations with the custody of children and young people
- 81 **agree** that the independent monitor may provide the Minister with supplementary reports at its own initiative or at the Minister's request and, unlike the three yearly report in recommendation 80 which must contain a comprehensive assessment of the state of care, these reports may focus on specific areas of interest
- 82 **agree** that the independent monitor be required to report any issue of non-compliance that places a child or young person at immediate risk as a matter of urgency to the organisation having care, and that organisation would then be required to report to the Minister on the outcome as soon as practicable thereafter

*Internal monitoring and reporting requirements*

- 83 **agree** that the chief executive and other approved organisations under section 396 of the Act with the custody of children and young people be required to:



- 83.1 self-monitor compliance using a system for self-monitoring designed to ensure the collection of information which will support the independent monitor to fulfil its monitoring role
- 83.2 have systems in place for continuous improvement that must identify and address areas of practice requiring improvement
- 84 **agree** that the chief executive and other approved organisations under section 396 of the Act with the custody of children and young people be required to:
  - 84.1 provide an annual report to the Minister and the independent monitor with the findings of their self-monitoring and on the identification of and progress in advancing areas for service improvement
  - 84.2 include in its annual reports or otherwise report to the Minister on areas of non-compliance, along with its response to the findings and with a plan setting out the actions to be taken to address the non-compliance

**Application of the regulations to children and young people in short-term placements or under orders under a different Act**

- 85 **note** that the regulations will cover children and young people who are in the care or custody of the chief executive for a limited time, however, it will not always be practicable or desirable for the full care standards regulations to apply to these children or young people
- 86 **note** that there are some cases where a child or young person will be subject to another order requiring their detention in a facility run by another agency, for example, under the Mental Health (Compulsory Assessment and Treatment) Act 1992
- 87 **agree** that the regulations should only apply to the extent reasonable for the situations set out in recommendations 85 and 86
- 88 **authorise** the Minister for Children to finalise policy decisions relating to the applicability of the care standards regulations to children or young people who are subject to other Acts

**Interaction of the care standards regulations with the Oranga Tamariki (Residential Care) Regulations 1996**

- 89 **note** that on 7 September 2016, Cabinet agreed to revoke the Oranga Tamariki (Residential Care) Regulations 1996 once the care standards regulations are made [SOC-16-MIN-0114; CAB-16-MIN-0460 refer]
- 90 **note** that while the care standards regulations are intended to cover the spectrum of care, including residential care, they will not provide the level of specificity or prescription required in more controlled residential care settings
- 91 **note** that a full assessment of the Oranga Tamariki (Residential Care) Regulations 1996 is underway to assess whether they are fit for purpose under the new operating model, which will not be completed until after the care standards regulations are made
- 92 **rescind** the decision referred to in recommendation 89; and instead
- 93 **agree** that the Oranga Tamariki (Residential Care) Regulations 1996 will need to be retained in the short-term until further work is completed and will apply concurrently with care standards regulations in a residential environment to the extent this is practicable in the circumstances



- 94 **authorise** the Minister for Children to make decisions on any minor and consequential amendments to the Oranga Tamariki (Residential Care) Regulations 1996 to ensure both sets of regulations can be applied in a workable manner until the longer-term assessment is completed

#### **Commencement of the care standards regulations**

- 95 **note** that the proposals have been developed with recent changes and amendments to the Oranga Tamariki Act 1989 in mind, including the new and amended purposes and principles and new provisions to support young people to move to independence, which will come into force on a date appointed by Order in Council or by 1 July 2019
- 96 **agree** that to align with the recent changes to the Oranga Tamariki Act 1989 and to allow time for detailed implementation planning, the regulations will also come into force on 1 July 2019

#### **Financial implications**

- 97 **note** that the indicative cost estimate for the proposals is \$49 - \$75 million per annum which would be required from Budget 19 onwards
- 98 **note** that there will also be additional costs to meet the proposed monitoring requirements – both the internal monitoring and interim independent monitoring arrangements; the indicative cost estimate is \$1.5 million - \$3 million in establishment funding in Budget 19, and \$1.3 - \$3.5 million to provide ongoing monitoring functions
- 99 **note** that the proposals are intended to be enabling rather than prescriptive and that the fiscal costs can be scaled depending on the preferred approach for meeting the proposed requirements
- 100 **note** that detailed design and implementation planning will identify options to meet the proposed requirements and will provide a clearer indication of different funding options for Budget 19 and beyond

#### **Consultation on draft regulations**

- 101 **agree** that consultation outside of the Crown may be undertaken during the drafting of the regulations, including on possible exposure drafts
- 102 **agree** that consultation be confined to those who will be involved in implementing the regulations and those who have expertise and knowledge in applying regulations
- 103 **note** that any consultation on the draft regulations with persons and organisations outside of the Crown will be worked through with the Chief Legal Adviser of the Ministry in accordance with the Attorney-General's protocol for release of draft Government legislation outside the Crown (CO (14) 4)

#### **Next steps**

- 104 **invite** the Minister for Children to issue drafting instructions to the Parliamentary Counsel Office to draft regulations, to give effect to Cabinet decisions on the recommendations in this paper
- 105 **authorise** the Minister for Children to make any minor or technical policy changes that are not inconsistent with the policies agreed in this paper, in order to finalise the drafting of the regulations.

Authorised for lodgement

Hon Tracey Martin

Minister for Children

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT  
DRAFT - NOT GOVERNMENT POLICY



## Appendix 1: Details of recommendations for assessment, planning and monitoring to support children and young people in care

### Needs assessment and developing a plan for the child or young person

Component	The action or step I recommend the chief executive must take
<b>Needs assessment</b>	When a child or young person enters the care or custody of the chief executive, the chief executive must undertake an assessment to identify a child's or young person's immediate and long-term needs and what is required to meet those needs (including what support is required).
	The chief executive must record the assessment.
<b>Taking a holistic approach to understand the child's or young person's needs</b>	When undertaking the assessment, the chief executive must identify the child's or young person's wishes or aspirations as well as their strengths and how those strengths can be fostered. These aspects must inform the development of their plan.
	<p>The assessment must include, in no particular order, the following needs:</p> <ul style="list-style-type: none"> <li>• emotional care</li> <li>• behavioural needs</li> <li>• whānau connections</li> <li>• culture, belonging and identity</li> <li>• play, recreation and community</li> <li>• safety</li> <li>• health (this will include mental health and any disability needs)</li> <li>• education or training.<sup>30</sup></li> </ul>
<b>Preparing a plan</b>	The chief executive must develop a plan to ensure the child's or young person's needs are met.
	The plan must set out how the assessed needs of the child or young person will be addressed, including the actions other parties, such as their caregiver and professionals involved with the child or young person, have agreed they will undertake.
	The plan must be informed by the findings of the assessment.
	This plan cannot be inconsistent with any FGC plan or Court plan the child or young person may have under Part 2 or 4 of the Oranga Tamariki Act 1989, any protection orders made under the Domestic Violence Act 1995 or orders under the Care of Children Act 2004.
<b>Timeframe for the assessment and plan</b>	The chief executive must undertake the assessment and prepare the plan as soon as reasonably practicable after the child or young person enters the care or custody of the chief executive.
	The chief executive must keep the child or young person informed of the progress and timeframes for undertaking the assessment and preparing the plan.

<sup>30</sup> In practice, a Gateway assessment would be one of the tools used for assessing the child's or young person's health and education needs.



### Visits to monitor the ongoing safety and well-being of the child or young person

Component	The action or step I recommend the chief executive must take
<b>Purpose of visits</b>	<p>The chief executive must monitor the ongoing safety and well-being of the child or young person. This will involve regular visits to the child or young person, including face-to-face contact, to understand any concerns they may have, to understand matters that are important to them, and to identify if their needs have changed.</p> <p>If, as a result of a visit, it is identified that the safety or well-being of the child or young person is not adequately being protected and supported, this would trigger a review of the child's or young person's plan.</p>
<b>Other information sources</b>	Understanding the ongoing safety and well-being of the child or young person will also include engaging with their caregiver, other professionals who are party to the plan and people of significance to that child or young person (for example, a member of that child's or young person's family, whānau, hapū or iwi).
<b>Timeframe for visits</b>	<p>To ensure the frequency of visits aligns with the individual needs of children and young people, the frequency must be determined as part of the assessment of the child's or young person's needs and regard must be had to a range of matters, such as significant events or changes in circumstances.</p> <p>Determining the appropriate frequency should be done in consultation with the child or young person and their caregiver.</p> <p>The timeframe, including reasons for it, must be set out in the plan.</p> <p>To provide clarity, the child or young person and their caregiver must be informed of the timeframe for visits.</p>

### Maintaining and reviewing the child's or young person's plan

Component	The action or step I recommend the chief executive must take
<b>Purpose of review</b>	The chief executive must keep the child's or young person's plan up-to-date and under review to ensure the plan is meeting the needs of the child or young person and reflects any changes in their circumstances.
<b>Information sources</b>	The review should be informed by different information sources, including for example the findings of any reassessment of the child's or young person's needs, and information obtained from the child or young person, their caregiver and other professionals involved with the child or young person.
<b>Updating the plan</b>	The results of a review of the plan, including decisions or arrangements to implement those, must be recorded and the plan must be updated.
<b>Timeframe for review of the plan</b>	The child's or young person's plan must be reviewed no less than 6 weeks after the child or young person enters the care or custody of the chief executive, with subsequent reviews taking place no less than once every 6 months.



## Appendix 2: Details of recommendations for support to address children's and young people's needs

Component	The action or step I recommend the chief executive must take
<b>General provision of support to address children's and young people's assessed needs</b>	The chief executive must ensure that appropriate support (including financial support or specialist services) is available for children and young people to address their assessed needs and the chief executive must provide support or assistance to access this support.
	The chief executive must provide caregivers with information to understand their role in helping to meet the needs of the child or young person in their care.
<b>Whānau connections</b>	The chief executive must provide children and young people with support (including financial) necessary to ensure they are able to establish, maintain and strengthen relationships with their family, whānau, hapū and iwi, where it is in the best interests of the child or young person.
	The chief executive must provide caregivers with support to understand the importance for the child to establish, maintain and strengthen connections with family, whānau, hapū and iwi, and manage any contact arrangements.
	The chief executive must identify members of the child's or young person's family, whānau, hapū, or iwi that should be kept informed of their progress and development and be required to keep those identified people informed.
<b>Culture, belonging and identity</b>	The chief executive must provide support (including financial) to meet the culture and identity needs of the child or young person and to enable them to maintain meaningful connections with, and participate in, their culture, language, religion or spirituality and develop a sense of identity and culture
	The chief executive must provide caregivers with support necessary to enable them to promote the identity and culture of the child or young person in their care and to understand and respect the personal choices of the child or young person with respect to their identity and culture.
<b>Play, recreation and community</b>	The chief executive must provide children and young people with support (including financial) to enable them to participate in appropriate play, recreation and community activities.
	The chief executive must provide caregivers with information about their role to facilitate meeting the child's or young person's play, recreation and community needs.
<b>Health</b>	<p>The chief executive must ensure children and young people are provided with services and supports necessary to promote good health and address their individual health needs. This includes:</p> <ul style="list-style-type: none"> <li>• maintaining a record of the child's or young person's health history</li> <li>• ensuring the child or young person is enrolled with a Primary Health Organisation</li> <li>• ensuring a child or young person has an annual health check</li> <li>• for children aged 2 and over, ensuring they have an annual dental check</li> <li>• providing health information to the child or young person, and their caregivers, on a range of matters, for example, physical development and growth and sexual matters, and relevant health services that can be accessed</li> </ul>



Component	The action or step I recommend the chief executive must take
	<ul style="list-style-type: none"> <li>supporting and assisting the child or young person to access publicly-funded health services to address their health needs (for example, immunisation or specialist health services). This should include seeking parent or guardian consent where required and advocating for the child's or young person's interests</li> <li>providing access to any other services to address their health needs if existing publicly-funded services to address their health needs are not available in a timely manner</li> <li>taking a coordinated approach to the child's or young person's health care with other agencies.</li> </ul>
<b>Education or training</b>	<p>To ensure children and young people are enrolled in an appropriate licenced or certificated early learning service or other service, school or training or education programme or institution, the chief executive must take the following actions:</p> <ul style="list-style-type: none"> <li>Ensure children aged 1 to 4 inclusive are enrolled by their parent or guardian in a licensed or certificated early learning service, unless it is not in their best interests.<sup>31</sup> Enrolment must be for a time that is based on the needs of the child. This decision must be regularly reviewed.</li> <li>If a child aged 5 is not enrolled in a school, consideration should be given to whether the child should be enrolled by their parent or guardian at school.<sup>32</sup> If not, they must be enrolled in a licensed or certificated early learning service as for children aged 1-4. If the child is not enrolled at school, this decision must be reviewed regularly.</li> <li>For children aged 6 to 15 years inclusive, the chief executive must take all reasonable steps with the child's or young person's parent or guardian to enrol that child or young person in an appropriate educational institution.<sup>33</sup> This includes consideration of court action to resolve a dispute with a guardian as to enrolment, if considered necessary.</li> <li>For young people aged 16 or over who are not enrolled in an educational or training institution or programme, they must be assisted to do so or to obtain employment.</li> </ul> <p>To facilitate attendance of a child or young person at their licenced or certificated early learning service or other service, school or training or education programme or institution, the chief executive must:</p> <ul style="list-style-type: none"> <li>provide caregivers with information to understand the importance of attendance by the child or young person</li> <li>obtain updates, at least once a term, on the child's or young person's attendance</li> <li>have in place alternative educational arrangements where a child or young person has been excluded from school.</li> </ul>

<sup>31</sup> Children between the ages of 0 to 6 are able to enrol in early childhood education. Licensed services include education and care services, kindergartens, kōhanga reo, and playcentres. Certificated services can include playgroups. Early learning services can be teacher-led, parent-led or whānau-led. The interpretation of different services types is set out in section 309 of the Education Act 1989.

<sup>32</sup> Under section 20(1) of the Education Act 1989, a child is required to be enrolled at school by their sixth birthday. Enrolling a child aged 5 at school aligns with best practice.

<sup>33</sup> Six to 15 years inclusive is consistent with section 20(1) of the Education Act 1989 which requires every person who is not an international student to be enrolled at a registered school at all times during the period beginning on the person's sixth birthday and ending on the person's 16th birthday.



Component	The action or step I recommend the chief executive must take
	<p>To ensure children and young people have the supports they need to be successful in their journey of education or training, services and supports must be provided to address their assessed educational development and goals. This would include, the provision of equipment and items not funded by the school, including stationery, school bag and school uniform, and paying school related costs such as donations or fees for early learning services. This also includes promoting a coordinated approach to the child's or young person's educational needs with other agencies.</p> <hr/> <p>The chief executive must ensure caregivers are provided with the assistance necessary to enable them to assist the child or young person to succeed in education. This would include providing information about things they should do to encourage and support the child's or young person's educational activities and progress and providing additional resources to enable them to support the child's or young person's learning through the home environment and other informal learning.</p> <hr/> <p>The child's or young person's educational progress must be monitored and regular contact is maintained with the child's or young person's school or education provider. This would include, for example, where updates on the child's or young person's educational progress raises any concerns with that child's or young person's progress or their educational goals are at risk, that the chief executive must be satisfied that there are steps in place to address these concerns.</p>



## Appendix 3: Details of recommendations for caregiver and care placement assessment and support

### Caregiver approval

Component	The action or step I recommend the chief executive must take
Information to be provided	The chief executive must provide prospective caregivers with information covering a range of matters. This includes information covering the assessment and approval process, the level of care expected and consequences if this is not met, the impact caregiving may have on their family life, and the support, training and resources that will be available to them both within and outside the Ministry. It would also include information on managing day to day care arrangements, appropriate behaviour management and discipline and managing contact with guardians and family members.
Assessment of caregivers and caregiving household	<p>The chief executive must assess prospective caregivers and the caregiving household to ensure they are suitable to provide the standard of care expected under the Oranga Tamariki Act 1989. The purpose of the assessment would be to assess the ability of the prospective caregiver and caregiving household to meet the needs of a child or young person who comes into their care and provide a safe, stable and loving home.</p> <p>The chief executive must undertake safety checks on prospective caregivers, consistent where appropriate with those applied to the core children's workforce under the Vulnerable Children Act 2014 and the Vulnerable Children (Requirements for Safety Checks of Children's Workers) Regulations 2015 (for example, requiring identity confirmation and Police vetting). The chief executive must also seek consent to undertake safety checks on other adult members of the caregiving household.</p> <p>This assessment would also include consideration of:</p> <ul style="list-style-type: none"> <li>• the prospective caregivers' capability, motivation and experience in providing care</li> <li>• the skills, abilities and attributes of the caregivers that would enable them to meet both the day to day needs and any particular needs of a child or young person, including cultural competency</li> <li>• the safety and appropriateness of the physical caregiving environment, including the standard of accommodation and whether adjustments would need to be made or special equipment provided in order for the environment to be suitable</li> <li>• the needs, strengths and circumstances of the prospective caregivers and caregiving household and how those may affect the care they provide, including any physical or mental health needs</li> <li>• the support and capability needs of the caregivers and the caregiving household and what would need to be provided to assist them to meet the needs of a child or young person</li> <li>• the identity and makeup of the caregiving household, including frequent visitors to the household, and the possible impact of other household members on a child or young person placed there, as well as any needs or circumstances which would cause the placement of a child or young person to have a negative impact on other household members.</li> </ul> <p>The chief executive must review caregivers' approval periodically.</p>



Component	The action or step I recommend the chief executive must take
<b>Timeframe for review</b>	A review would be triggered if a critical incident has taken place, such as an allegation of abuse or neglect against a caregiver, or where there is a significant change in circumstances to the caregiving household.
<b>Provisional approval in situations of urgent placements</b>	<p>There may be situations where a child or young person needs to be urgently placed and provisional approval of a caregiver may be necessary. In these situations, and where a caregiver has not completed the full approval process, the following minimum requirements would apply:</p> <ul style="list-style-type: none"> <li>• Police and record checks of the prospective caregivers, and for other adult members of the caregiving household, the chief executive must seek consent to undertake these checks</li> <li>• interview with the prospective caregivers</li> <li>• visit to the prospective caregivers' home</li> <li>• any other actions necessary to be satisfied the prospective caregivers could provide the required level of safety.</li> </ul> <p>The full assessment of the caregiver must be completed as soon as possible, and the caregiver's provision approval must be regularly reviewed until full approval is granted. If there are concerns that full approval would not be granted, the placement decision must be immediately reviewed.</p>

### Caregiver support plan

Component	The action or step I recommend the chief executive must take
<b>Caregiver support plan</b>	<p>The chief executive must ensure caregivers have a support plan based on their assessment that includes:</p> <ul style="list-style-type: none"> <li>• the support that will be provided to assist the caregivers and caregiving household to meet the needs of a child or young person, both their day to day needs as well as any particular needs</li> <li>• the training that will be provided to the caregivers to help build their capability to meet the needs of a child or young person</li> <li>• how regularly the caregivers' approval status, their ability to meet the needs of the child or young person who is in their care, and their support and capability-building needs will be reviewed.</li> </ul>
<b>Timeframe for review</b>	To ensure the caregiving household continues to be able to meet the needs of the child or young person who is in their care and to identify if any additional support is required, the caregiver support plan must be reviewed at a frequency based on the assessed needs of the caregiving household and the timeframe, and the reasons for it, must be set out in the plan.

### Caregiver support and capability-building

Component	The action or step I recommend the chief executive must take
<b>Support and assistance</b>	The chief executive must provide caregivers and care placements with support or assistance to access support, including where a caregiver requests this. This support should be reflective of the needs of the child or young person, including to provide a safe, stable and loving home.



<b>Training</b>	<p>The chief executive must ensure that training is available that is directed to ensuring the caregiver is able to meet the needs of a child or young person and to build their capability as a caregiver. This includes support and assistance to access training, financial support.</p> <p>Any training a caregiver has participated in must be recorded in their plan.</p>
<b>Access to support person</b>	<p>Caregivers need to feel that they have someone they can talk to, who is able to provide practical, emotional and advocacy support. To help address this, caregivers must have access to a support person who can help them understand their role as a caregiver and what will be expected of them.</p>

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## Appendix 4: Details of recommendations for supporting children and young people to have a greater voice in their care experience

Component	The action or step I recommend the chief executive must take
<b>Enabling children and young people to make informed decisions</b>	<p>When a child or young person enters care and whenever their plan is reviewed, the chief executive must explain a range of matters to them (including by providing information) that will help children and young people to understand what they can expect in care. These matters would include, for example:</p> <ul style="list-style-type: none"> <li>• why they are in care</li> <li>• what they can expect when they are in care from both the Ministry and their caregivers</li> <li>• how their whānau, hapū, iwi, and family group will be involved in their care</li> <li>• their right to privacy and confidentiality</li> <li>• how they can provide feedback and make complaints</li> <li>• independent services that are available to them.</li> </ul> <p>These matters must be explained in a manner and language that can be understood by the child or young person.</p>
<b>Providing feedback and making complaints</b>	<p>Children and young people must be supported to make complaints. This could be, for example, supporting them to make a complaint through the Ministry's complaints mechanism. This may include assisting them with understanding the process, making a complaint and addressing the impacts of a complaint.</p>
<b>Responding to concerns of abuse or neglect</b>	<p>The chief executive must respond to any information that raises concerns in relation to a risk of harm caused by abuse or neglect of a child or young person in care. The response must be made in a timely manner.</p> <p>This information must be consistently recorded and reported.</p> <p>The chief executive must also inform the child or young person of the outcome of any concerns raised.</p> <p>Appropriate steps are to be taken with parties to the allegation; this would include having regard to the impact on the ongoing relationship between the child or young person and their caregiver.</p> <p>The chief executive must provide information to the independent monitor on reports of abuse or neglect it has received under this proposal and how those cases were handled.</p>
<b>Ensuring children and young people have their own belongings</b>	<p>The chief executive must ensure that children and young people are able to have their own personal belongings. This includes clothing, a bag and bedding, and somewhere to store their belongings.</p>
<b>Maintaining records of important life events for children and young people while they are in care</b>	<p>The chief executive must collect and maintain records relating to important events and achievements in the child's or young person's life. This could include, for example, photos, artwork and school reports.</p> <p>This must be done in consultation with the child or young person and have regard to their culture, age and other circumstances such as disability.</p>



Care leavers must be provided with a copy of these records when they leave care and know where they can access these records in the future.

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## Appendix 5: Details of recommendations for supporting children and young people during care transitions

### Placement decisions

Component	The action or step I recommend the chief executive must take
<b>Matters to be consider and assess when placing a child or young person</b>	<p>When making a decision to place a child or young person in a care placement, the chief executive must:</p> <ul style="list-style-type: none"> <li>consider and assess the extent to which the care placement is able to meet the needs of the child or young person</li> <li>have a plan for providing the support required if the care placement is not able to fully meet the needs of the child or young person without support.</li> </ul>
<b>Providing information about the child or young person</b>	<p>To support the caregiver or care placement to be prepared for a child or young person coming into their care, information about that child or young person must be provided before the child or young person arrives, in order to ensure they understand the child's or young person's needs and what level of care will be required to meet those needs.</p>

### Assessment, planning and monitoring during transition phases

Component	The action or step I recommend the chief executive must take
<b>Assessment and planning</b>	<p>As soon as the chief executive knows that a child or young person is to have a care transition, the chief executive must undertake an assessment of the necessary steps required for the child or young person to experience a positive care transition and this must be reflected in a plan.</p> <p>The plan must be developed in consultation with the previous and intended caregiver and record the steps they are expected to take.</p>
<b>Monitoring</b>	<p>The chief executive must ensure there is sufficient monitoring and support during these phases, based on the needs of that child or young person.</p>
<b>Services and supports</b>	<p>It is important that children and young people are provided with services and supports necessary to assist them to experience a positive care transition. This should include:</p> <ul style="list-style-type: none"> <li>explaining to the child or young person why a care transition is happening</li> <li>providing information in advance to the child or young person and the previous and intended caregivers</li> <li>providing the opportunity to visit the new care environment and meet the new caregiver before the transition</li> <li>ensuring the child or young person is able to take their personal belongings with them</li> <li>assisting the maintenance/re-establishment of an ongoing relationship with the previous caregiver if it is in the best interests of the child or young person.</li> </ul>



## Support to prepare young people for moving to independence

Component	The action or step I recommend the chief executive must take
<b>Assessment and planning to identify life skills</b>	<p>As part of the assessment and provision of advice and assistance that a young person may need to move toward independence after leaving care required under section 386A of the Act, an assessment and plan must be undertaken to identify what life skills that young person already has and those they may need to help them move toward independence. Life skills could include for example, personal care and health, managing money, and maintaining safe and positive relationships.</p> <p>In accordance with section 386A this proposal would apply to young people who, after the age of 14 years and 9 months, are or have been, at any time for a continuous period of at least 3 months, in the care or custody of the chief executive, and are still in the care or custody of the chief executive.</p>
<b>Obtaining official documentation</b>	<p>Young people, before they reach the age of 18, must be assisted to obtain official documentation. This may include photo identification, a certified copy of their birth certificate, an IRD number, a bank account, and verifying a young person's identity online to enable them to access key government services.<sup>34</sup> They should also be made aware about their legal requirement to enrol on the electoral roll.</p>
<b>Support to access services</b>	<p>Young people moving to independence must be provided with support before they reach 18 to enable them to understand how to access key services and assistance after they leave care (for example relating to health, education, housing and employment) and be provided with any assistance to do so.</p>

<sup>34</sup> In practice this would involve assisting the young person to have a RealMe account.



## Appendix 6: Details of recommendations for monitoring and reporting on compliance with the regulations

### Manner in which the regulations are monitored and reported on by the independent monitor

Component	The action or step I recommend be included in the regulations
<b>Assessment framework</b>	The independent monitoring body must establish a framework for the monitoring and reporting on compliance with the regulations by the chief executive (and delegates) or any body or organisation approved under section 396 that has the legal custody of a child or young person under Parts 2 or 4 of the Act.
	The framework must provide clarity as to how compliance will be assessed and include detail of the sources of information and key indicators of performance that will be used to assess compliance. Consideration must be given to how the framework aligns with the systems in place for internal self-review and continuous improvement.
	The framework must be developed in consultation with the chief executive and any approved organisation under section 396 having the custody of children and young people under the Act.
	The assessment framework may identify particular priorities based on areas of focus for performance improvement such as by regulation subject, locality or by reference to particular groups of children and young people.
<b>Sources of information</b>	<p>Multiple sources of information must be used to assess compliance. It must include information obtained directly from children and young people in care about their experience of care in areas covered by the regulations. It may also include, but is not limited to:</p> <ul style="list-style-type: none"> <li>• reviews of the provider's policies, documents, reports and service feedback</li> <li>• site assessments</li> <li>• feedback, interviews and participation from children, young people, their families, staff and caregivers</li> <li>• stakeholder feedback, including from advocacy services</li> <li>• the provider's self-assessment</li> <li>• data collected by the provider or through other mechanisms</li> <li>• information from complaints and reviews.</li> </ul>
<b>Assessment and subsequent reporting</b>	<p>The manner of assessment and subsequent reporting must:</p> <ul style="list-style-type: none"> <li>• support the achievement of the purposes of the Oranga Tamariki Act 1989 with particular regard to sections 4(1)(a)(ii) and (e),<sup>35</sup> and must include analysis of the nature and degree of compliance found and its associated impacts on the fulfilment of those purposes.</li> <li>• contribute to the overall knowledge base with respect to the performance of the care system and have regard to the measures and indicators of performance developed by the Ministry or other children's agencies to assess the performance of the care system.</li> </ul>

<sup>35</sup> Section 4 sets out the purposes of the Act. Section 4(1)(a)(ii) refers to establishing, promoting or co-ordinating services that advice positive long-term health, educational, social, economic, or other outcomes for children and young person. Section 4(1)(e) refers to ensuring that, where children and young persons require care under the Act they have a safe, stable and loving home from the earliest opportunity and have support to address their needs.



Component	The action or step I recommend be included in the regulations
	<ul style="list-style-type: none"> <li>support the Ministry and other approved organisations under section 396 having custody of children and young people under the Act to work towards continuous service improvement, both through identification and follow up in areas where there are compliance concerns but also where there are opportunities for further improvement beyond minimum compliance.</li> </ul>
<b>Requests for information</b>	The chief executive and approved organisations under section 396 of the Act with custody must provide any information requested by the monitoring agency that is reasonably required for the purposes of assessing compliance.
<b>Reporting requirements</b>	<p>The independent monitor be required to report every three years to the Minister on compliance with the regulations in order to provide an overall assessment of the state of the care system.</p> <p>This report must also include:</p> <ul style="list-style-type: none"> <li>numbers of children and young people in care and the length of time spent in care</li> <li>a profile of the characteristics of children and young people in care, including ethnicity, age, disability and health need</li> <li>information on the number of placement changes experienced by children and young people in care</li> <li>complaints and incidents of abuse and neglect in care and procedures followed in resolving these matters, including information provided by the chief executive on reports of abuse or neglect and how those cases were handled, and those escalated to any independent review mechanism</li> <li>identification of areas of good practice as well as areas recommended as a focus for improvement</li> <li>the particular situation for Māori children and young people in terms of the levels of compliance with the regulations</li> <li>an assessment of the state of the systems in place for self-monitoring and continuous improvement operated by chief executive and other organisations with the custody of children and young people.</li> </ul>
<b>Supplementary reports</b>	Aside from the required three yearly report, the independent monitor may provide the Minister with supplementary reports at its own initiative or at the Minister's request. Unlike the three yearly report which must contain a comprehensive assessment of the state of care, these reports may focus on specific areas of interest.
<b>Reports of non-compliance</b>	The independent monitor must report any issue of non-compliance that places a child or young person at immediate risk as a matter of urgency to the organisation having care. That organisation would then be required to report to the Minister on the outcome as soon as practicable thereafter.



## Internal monitoring and reporting requirements

Component	The action or step I recommend be included in the regulations
<b>Monitoring compliance</b>	<p>The chief executive and other approved organisations under section 396 of the Act with the custody of children and young people must:</p> <ul style="list-style-type: none"> <li>• self-monitor compliance. The system for self-monitoring must be designed to ensure the collection of information which will support the independent monitor to fulfil its monitoring role</li> <li>• have systems in place for continuous improvement. The continuous improvement system must identify and address areas of practice requiring improvement.</li> </ul>
<b>Reporting requirements</b>	<p>The chief executive and other approved organisations under section 396 of the Act with the custody of children and young people must:</p> <ul style="list-style-type: none"> <li>• provide an annual report to the Minister and the independent monitor with the findings of their self-monitoring and on the identification of and progress in advancing areas for service improvement</li> <li>• include in its annual reports or otherwise report to the Minister on areas of non-compliance along with its response to the findings and with a plan setting out the actions to be taken to address the non-compliance.</li> </ul>



# Aide-mémoire



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

## Meeting

**Date:** 15 February 2018 **Security Level:** IN CONFIDENCE

**For:** Hon Carmel Sepuloni, Minister for Social Development

**File Reference:** REP/18/2/219

### **Aide-memoire: Strategy Discussion - Independent oversight of children's issues and Oranga Tamariki system**

<b>Meeting details</b>	Monday 19 February 2018 from 10.30am – 11.30am														
<b>Expected attendees</b>	<table><tr><td>Brendan Boyle</td><td>Chief Executive</td></tr><tr><td>Simon MacPherson</td><td>DCE Policy</td></tr><tr><td>Nic Blakeley</td><td>DCE Insights and Investment</td></tr><tr><td>Stephen Crombie</td><td>DCE Corporate Solutions</td></tr><tr><td>Nadine Kilmister</td><td>Office of the CE</td></tr><tr><td>Justine Cornwall</td><td>GM Seniors and International Policy</td></tr><tr><td>Kimberly McCay</td><td>Principal Analyst, Community &amp; Families Policy</td></tr></table>	Brendan Boyle	Chief Executive	Simon MacPherson	DCE Policy	Nic Blakeley	DCE Insights and Investment	Stephen Crombie	DCE Corporate Solutions	Nadine Kilmister	Office of the CE	Justine Cornwall	GM Seniors and International Policy	Kimberly McCay	Principal Analyst, Community & Families Policy
Brendan Boyle	Chief Executive														
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Stephen Crombie	DCE Corporate Solutions														
Nadine Kilmister	Office of the CE														
Justine Cornwall	GM Seniors and International Policy														
Kimberly McCay	Principal Analyst, Community & Families Policy														
<b>Purpose of meeting</b>	To have an in depth discussion with you on approaches to strengthen independent oversight of children's issues and the Oranga Tamariki system. Two A3's are attached to support these discussions.														
<b>Background</b>	A summary of the work (including timelines) is set out in Appendix 1.														
<b>Issues for discussion</b>	<p>We want to discuss with you the key issues and themes that have emerged from our preliminary work and consultation to date.</p> <p><b>Four key functions are required</b> in an effective independent oversight system: Advocacy, regular monitoring and assessment, investigation functions and complaints mechanisms.</p> <ul style="list-style-type: none"><li>• Currently there are a number of agencies undertaking these activities with some overlaps and gaps apparent.</li><li>• The Children's Commissioner (OCC) is a key part of the current oversight system and has a broad statutory remit.</li></ul>														



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### **There is a case for change**

- There is consensus around the need to strengthen and invest further in current oversight mechanisms for the children's system.

### **There are two key tensions in current oversight arrangements**

- How to balance a broad remit to advocate for the rights and interests for all children at a national level alongside the focus required for very vulnerable children and young people in the Oranga Tamariki system.
- A perception that an advocacy role does not fit appropriately alongside a monitoring or a complaints review function and can detract from the credibility and validity of recommendations arising from monitoring and investigation activity.

Other key issues identified are:

#### **Advocacy**

- The broader advocacy role for *all* children within the Office of the OCC is seen as a strength but there is an opportunity to consider if there is benefit in having a more explicit external focus on government's actions to measure and address child poverty and in implementing a child wellbeing strategy at the national level
- There is a potential overlap in advocacy for children in the care and protection and youth justice systems between the new VOYCE - Whakarongo Mai agency and the OCC.

#### **Complaints and investigations**

- There is a need for robust investigation systems that are adequately resourced. This is at both the broader level for all children (eg issues with suspension and stand-downs in schools) and for those children in the care and protection and youth justice systems.
- Current independent complaints processes for children in the care and protection and youth justice systems are insufficiently child-centred and children do not use them.

#### **Monitoring**

- There is a need for timely monitoring so that issues for children in the care and protection and youth justice systems are caught quickly to prevent further harm, and so that the lessons learned can be applied to the system as a whole, as well as benefit individuals.
- There are some reservations about how useful the OCC's current form of monitoring is to staff on the ground and in driving service improvements within Oranga Tamariki more generally.
- The OCC's current monitoring framework is very wide ranging in terms of the areas it covers and key indicators against which performance is measured are not always clear. It was noted that the capability and skills of the OCC need to shift further to effectively deliver the type of oversight required by the new system.



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### **The Office of the Children's Commissioner**

- There are issues with continuity and certainty in oversight approaches in the current sole Commissioner model. Each Commissioner is able to focus on particular areas of interest to him or her.
- The Children's Commissioner has indicated that he does not have all the powers needed to monitor effectively.

### **Two broad approaches that could strengthen the system further include:**

#### **1) Retain all functions within one agency:**

- retain all of the functions together in the OCC but strengthen the structures and systems to address perceived conflicts of interest and to ensure stable governance and continuity in delivery and focus.
- These changes would need to also support the OCC to balance a focus on all children with a focus on the particular needs of children and young people in the care and protection and youth justice systems.

#### **2) Separate functions that have a specific focus such as having:**

- one agency that focuses on systemic advocacy for all children, including measuring government progress in reducing poverty and improving the wellbeing of all children, and
- another agency that focuses on independent monitoring, investigations and complaints review for children and young people in the Oranga Tamariki system.

There will be a range of views on these approaches. Subject to cabinet agreement we need to test further with a wider group of stakeholders.

### **The Children's Commissioner**

We have provided the Commissioner and his management team with a verbal overview of these themes and that we are looking to get agreement to consult further. He has been engaged on potential approaches.

The Commissioner favours retaining all functions within the OCC and believes that important synergies come from one agency overseeing both groups of children.

The Commissioner also believes that it is important to have systemic advocacy across all of the oversight functions so that an oversight agency can identify patterns of issues, undertake thematic reviews, and then advocate for change.

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Author: Kimberly McCay, Principal Analyst, Seniors and International Policy

Responsible manager: Justine Cornwall, General Manager, Seniors and International Policy

## Appendix 1: Further information on the project

### Background

- Following on from separate discussions with you and the Minister for Children on 12 December 2017, we provided you with further information on some possible approaches to strengthen independent oversight [REP/17/12/1340 refers].
- The briefing was forwarded to the Minister for Children and the Minister of State Services (as we are working jointly with the State Services Commissioner on this project).
- To date, consultation on the work has been mostly limited to other Government agencies and oversight agencies (including the Ombudsman, the Human Rights Commission and the Children's Commissioner).
- You agreed that further targeted consultation is required (with priority being given to children and young people, including those with disabilities, and with iwi and Māori). You also agreed to seek Cabinet Committee approval of the proposed consultation approach [REP/17/12/1340 refers].
- We have prepared a draft Cabinet paper. It is currently out for agency consultation, with comments due back by Monday 19 February 2018.
- In case final policy decisions require legislative change, the Independent Oversight (Children's Issues and Oranga Tamariki System) Bill has been proposed for inclusion in the 2018 Legislation Programme with a category 5 priority [REP/18/1/075 refers]. The key dates for this Bill are:

Date for final policy approvals from Cabinet	May 2018
Date on which final drafting instructions were or will be sent to the Parliamentary Counsel Office or other drafter.	August 2018
Date by which the Bill will be ready for an assessment of consistency with the NZ Bill of Rights Act 1990.	October 2018
Dates on which the Bill will be before LEG and Cabinet for approval for introduction.	November 2018
Date requested for introduction of the Bill.	November 2018
Date of report back from select committee.	June 2019
Date of enactment.	August 2019
Date of commencement.	September 2019

### Proposed stakeholders for wider consultation

- The current draft of the Cabinet paper seeks agreement to test our case for change, and the proposed approaches, through targeted consultation with a wider group of stakeholders.



- Two priority groups are proposed:
  - Children and young people, including those with disabilities – The independent oversight system is for their benefit, and it is important that their voices, particularly those who are care experienced, are heard. Engaging with them will support the creation of oversight mechanisms that work for them and with them. Including their voices will mean they can better access independent complaints mechanisms, participate in investigations of their concerns, and be listened to during monitoring.
  - Iwi and Māori – Improving outcomes for Māori, who are over-represented in the vulnerable children's system, is a significant focus of the reforms. Recent legislation places strong emphasis on partnerships with Māori, and effective ways of delivering improved outcomes for Māori children, young people and their whānau. A number of established Māori advisory groups, including the Iwi Chairs Forum, and the Oranga Tamariki Māori Design Group could be consulted on these options.
- Others that it is proposed officials engage with include:
  - the Principal Judges in the Youth Court and Family Court
  - other key individuals with particular expertise in the area, eg previous Children's Commissioners, academics and international experts
  - families, whānau, hapū
  - groups and associations representing children, social workers, caregivers and others involved with the care and protection and youth justice system, such as VOYCE – Whakarongo Mai, the Social Workers Registration Board, Fostering Kids, YouthLaw Aotearoa.
  - non-government organisations involved in delivering services to children and young people in care and youth justice, or who advocate for children's rights and wellbeing, including those with a focus on disabled children and young people.
- It is also proposed that officials continue to engage with the Office of the Children's Commissioner, Human Rights Commissioners, the Health and Disability Commissioner, the Privacy Commissioner, the Independent Police Conduct Authority, and the Ombudsmen.

### **Scope and timing of consultation with stakeholders**

- The current draft of the Cabinet paper proposes targeted consultation during March-April 2018 (possibly until May 2018).
- We are not recommending general public consultation, as this will be resource-intensive and will considerably lengthen timeframes for establishing independent oversight mechanisms, resulting in delays in strengthening the system. We consider that the targeted approach outlined above will provide sufficient depth and diversity of views to contribute to policy development and implementation. If final policy decisions involve legislative change, there will be opportunities for wide public consultation during the Select Committee phase.
- The Children's Commissioner is in favour of a more public approach to consultation over a longer timeframe. We anticipate that some other government agencies will provide us with similar feedback.
- To allow more time for consultation, we could adjust the timeframes prepared for possible amendments to legislation and seek final policy decisions in June/July 2018 rather than May 2018.
- Information about the work could also be put on the Ministry of Social Development's website to enable wider input.

### Next steps

- Following the current round of agency consultation, we intend to provide you with a draft of the Cabinet paper on Friday, 23 February 2018 for approval to send out for Ministerial consultation.
- Subject to your feedback on that draft of the Cabinet paper, the proposed timeline from then is as follows.

Draft paper out for Ministerial consultation	Monday 26 February – Friday 9 March 2018  (a two week period has been allowed for Ministerial consultation as the House is in recess for the first two weeks in March)
Feedback incorporated and final paper to you for approval to lodge on CabNet	Wednesday 14 March 2018
Paper lodged on CabNet	Thursday 15 March 2018 (by 10.00 am)
Paper considered by Cabinet Social Wellbeing Committee	Wednesday 21 March 2018

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OFFICIAL INFORMATION ACT



Current independent oversight of children’s issues and the Oranga Tamariki system (Oranga Tamariki, Education, Police, Justice, Corrections, Social Development) **DRAFT**



Monitoring		CC monitors practice at (a select on of) OT sites.	CC monitors care and protection and youth justice res dences (inc OPCAT). The Ombudsman can also do this.	IPCA monitors standards in police cells under OPCAT.
CC leads the group monitoring progress in implementing the Un ted Nations Convention on the Rights of the Child.				
Government departments monitor contracts for contracted providers.				
Social Services Accreditation Team accred ts some contracted providers.		Social Services Accreditation Team accredits s 396 providers.	District Inspectors must regularly visit hosp tals or services where someone is being assessed or treated under the MH (CA&T) Act.	CC will have responsibil ty for monitoring transitional serv ces.
CC can monitor s 396 providers. It is currently running a trial with one prov der.				
ERO monitors educat onal performance of schools and early childhood facilities.		ERO monitors residential schools		
Mortality Review Committees review certain categories of death.				

Complaints	MoH accredits audit agencies to aud t res dental disability services for children.	The Ombudsman monitors standards in prisons (including youth wings) & health and disability places of detention under OPCAT.
CC receives complaints about services for children. Children in care and protection and youth justice residences who are dissatisfied with the outcome of a review by a Grievance panel can request the CC to investigate.		
Government departments receive complaints about services they fund (including schools).		
The Chief Executive’s Advisory Panel considers complaints that are unresolved at lower levels.		
HRC receives complaints about human rights violations. It has processes for mediated resolut on of complaints of unlawful discriminat on. Complainants who choose to go to the HRRT can apply for free legal representation and some cases are taken to the HRRT by the Director of Human Rights Proceedings.		
HDC receives complaints about health and disability services. It has processes for mediated resolut on, or for the Commissioner to issue a ruling following an investigation. In rare instances cases are referred to the HRRT wh ch can assess remedies.		
The Privacy Commissioner receives complaints about privacy breaches. It has processes for referral to the HRRT.		
The Ombudsman receives complaints about government agencies’ conduct. Children in care and protect on and youth justice residences who are dissatisfied with the outcome of a review by a Grievance panel can request the Ombudsman to investigate.		
Professional bodies receive complaints about the conduct of individual professionals. Examples include the Social Workers Registration Board and the Education Council. Each health profession has a profess onal body.		
Almost no complaints are from children, suggesting the process is inaccessible to children. Caregivers will be able to make complaints in the future system.	Grievance panels in care and protection and youth justice residences promote engagement with the grievance process, and review decisions regarding grievances.	Inspectors of Prisons respond to complaints about prisons.

Investigations	
CC may investigate any act done or omitted in respect of any child, and inquire generally into any matter relating to children's welfare.	
HRC can inquire generally into any matter if it appears that the matter involves, or may involve, the infringement of human rights. This is usually not exercised in relation to individual complaints.	
The <b>Ombudsman</b> can investigate administrative acts and decisions of government agencies either on complaint or on their own initiative.	
HDC can investigate, on complaint, or on the Commissioner's own initiative, any action that is or appears to be in breach of the Code of Health and Disability Services Consumers' Rights.	
The <b>Privacy Commissioner</b> can inquire generally into any matter, or any technical development, if it appears that the privacy of the individual is being, or may be infringed.	
<b>District Inspectors</b> may inquire on their own initiative or at the direction of the Director of Mental Health into breaches of the MH (CA&T) Act, regulations, breaches of duty, or other matters.	<b>IPCA</b> can investigate (on its own initiative) incidents involving death or serious bodily harm caused or appearing to have been caused by any Police employee acting in the execution of their duty.

Advocacy	VOYCE – Whakarongo Mai will provide online, phone and face-to-face advocacy serv ces for children in care and the care-experienced.
CC undertakes public-facing and government-facing systemic advocacy to promote the realisation of all children’s interests, rights and welfare, and provides advice to indiv duals with questions about children’s interests, rights and welfare.	
HRC undertakes public-facing and government-facing advocacy to promote the realisation of human rights. It provides neutral mediation serv ces rather than advocates.	
HDC undertakes public-facing and government-facing advocacy to promote the realisat on of health consumer rights. Advocates provide advice to indiv duals, and support complainants through the complaints process.	
Non-government organisations promote changes to policies and may support individual children.	

Key

CC

System

Other independent body

Comment

Courts must appoint a lawyer to represent a child in certain proceedings under the OT Act.

District Inspectors may, having regard to a patient’s view, appear before a court to be heard on an appl cat on for a compulsory treatment order.

The Youth Court must appoint a Youth Advocate to represent a child charged with an offence.

OT residences have independent advocates who visit regularly.

CC encourages the development within OT of pol cies and services designed to promote children’s welfare.

## Notes

### Abbreviations:

- *CC* – Children’s Commissioner
- *ERO* – Education Review Office
- *HDC* – Health and Disability Commissioner
- *HRC* – Human Rights Commission
- *IPCA* – Independent Police Complaints Authority
- *MH (CA&T) Act* – The Mental Health (Compulsory Assessment and Treatment) Act 1992
- *MoH* – Ministry of Health
- *OT* – Oranga Tamariki, Ministry for Children
- *OPCAT* – The Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The CC, the IPCA and the Ombudsman are each designated to be a ‘National Preventive Mechanism’ for the purposes of OPCAT under the Crimes of Torture Act 1989. Some joint visits are undertaken, for example the Ombudsman and the CC jointly visit Mothers with Babies Units in Prison. The HRC coordinates the various National Preventive Mechanisms.
- *OT Act* – the Oranga Tamariki Act 1989

### Other terms:

- *Advocacy* – Advocates can work at an individual level (ie to support a particular child or young person). Advocates can also work at a systemic level. The A3 has examples of both types of advocacy. The A3 notes that the Youth Court must appoint a Youth Advocate to represent a child or young person charged with an offence. There are other points in the youth justice system where an independent advocate can become involved. For example, the OT Act provides that a child or young person who wishes to do so can consult with a lawyer or other nominated person before making or giving a statement to Police
- *Children* - The word ‘children’ is used to describe both children and young people
- *District Inspectors* – Persons appointed by the Minister of Health to have oversight of mental health services under the MH (CA&T) Act in an area.
- *Mortality Review Committees* – There are currently four on-going committees dedicated to reviewing the deaths of children and young people, the deaths of babies and mothers where death is caused by pregnancy or childbirth, deaths resulting from family violence, and deaths associated with surgery. There is also one temporary committee established to ascertain the feasibility of suicide mortality review. These statutory committees are administered by the Health Quality and Safety Commission
- *s 396 providers* – Section 396 of the Oranga Tamariki Act enables OT’s Chief Executive to approve bodies or organisations that meet certain requirements as an iwi social service, a cultural support social service or a child and family support service
- *Social services accreditation team* – This team is located in the Ministry for Social Development and is mandated to accredit providers for social sector agencies such as OT, Ministry of Justice and the Department of Corrections
- *The Chief Executive’s Advisory Panel* - This Panel provides advice to OT’s Chief Executive who then makes the final decision. The Panel is made up of three people who do not work for OT and have not been involved in the case

### Other forms of oversight

- To keep the A3 to one page, the A3 does not reference the oversight provided by the court system. However, it should be noted that:
  - dissatisfied complainants can use the High Court’s judicial review process to challenge a decision
  - the complaint process regarding Court decisions (eg Family Court decisions on the custody arrangements for children) is through the appeal processes of the Court
  - A Coroner can also investigate the deaths of children and young people
  - The Judicial Conduct Commissioner considers complaints about the conduct of a Judge.
- The A3 does not reference oversight activity for the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), which is of relevance to children with disabilities. A group of national Disabled People’s Organisations (DPOs), the Human Rights Commission, and the Ombudsman work together to monitor and report on implementation of UNCRPD, including reporting to the United Nations, and advocate concerning specific issues and policies. New Zealand is also a party to an Optional Protocol on a Communications procedure for UNCRPD. This allows people to bring petitions to the United Nations Committee on the Rights of Persons with Disabilities claiming breaches of their rights if they have exhausted all domestic remedies. This Committee may also inquire into grave and systemic violations of UNCRPD.
- The A3 also does not reference the oversight provided by the Office of the Auditor-General, the parliamentary process (eg Members of Parliament and Select Committees), or the media.



# Independent oversight of children's issues and of Oranga Tamariki system **DRAFT – NOT GOVERNMENT POLICY**

## Current oversight

### Recent changes create an opportunity to strengthen oversight to improve outcomes

New Zealand has about 1.12 million children under 18

The children and young people Oranga Tamariki works with include those in care. There are about 5,000 [TBC] children and young people in the care of Oranga Tamariki. This includes children and young people with whānau caregivers, non-kin caregivers, in other settings (like residences or group homes) and those supported to live at home or independently. Nearly 70% of them identify as Māori (including those who listed Māori as one of multiple ethnicities, or as their sole or primary ethnicity).

The needs of these 5,000 [TBC] children are generally higher and more complex than those of other children in the wider population, and they have a higher likelihood of experiencing poor long-term outcomes, such as low educational achievement, unemployment and/or involvement in the adult corrections system.

Recent reforms of the Oranga Tamariki system and new Government priorities (including the reduction of poverty and the child well-being strategy) provide an opportunity to also transform independent oversight to align with these reforms and priorities.

Currently a number of different entities provide independent oversight, including the Children's Commissioner.

- Under the Children's Commissioner Act 2003, the Commissioner has general statutory responsibilities for all children under 18, including to advocate for the rights of all children and, in that regard, to advance and monitor the application of the United Nations Convention on the Rights of the Child (UNCROC). As a designated 'National Preventive Mechanism', the Commissioner also examines and monitors the treatment of children and young people detained in care and protection and youth justice residences for the purposes of OPCAT. Government's focus on improving child well-being and reducing the impact of child poverty will also likely have ramifications for the Commissioner's work.
- The Children's Commissioner also has some specific functions to provide oversight of Oranga Tamariki. These include monitoring the policies and practices of Oranga Tamariki and undertaking investigations of decisions, recommendations, and acts or omissions under the Oranga Tamariki in respect of any child or young person.

The Office of the Children's Commissioner (OCC) is not currently set up to deliver the full range of oversight requirements of the new Oranga Tamariki system.

## Four functions are required for strong oversight

Oranga Tamariki is implementing its own internal oversight processes. These need to be supplemented by these four independent oversight functions:

- 1 Independent Monitoring:** This assures children and young people with assurance that the services they receive are focused on improving their well-being and keeping them safe. A regular, consistent, transparent assessment of the same key elements validates and complements the internal monitoring processes of Oranga Tamariki. New accountabilities for the Chief Executive of Oranga Tamariki and additional reporting requirements mean that the independent monitoring needs to be more targeted. It should focus on the monitoring of provisions in Oranga Tamariki legislation (including the care standards regulations, in recognition of the new legislative requirement for the Minister to appoint an independent body to monitor compliance with Care Standards regulations); the Optional Protocol to the Convention against Torture (OPCAT) relating to, for example, young people in secure residences; and relevant international conventions (including UNCROC) affecting all children and young people. Such monitoring provides Oranga Tamariki with access to a 'critical friend', supports a continuous learning culture in Oranga Tamariki and its contracted providers, prevents/reduces harm, and improves services to achieve better outcomes for children and young people.
- 2 Independent Complaints review:** Children and young people need an independent complaints review function that is safe, timely, visible, accessible and responsive. They need to know they can use it, be listened to, and be able to trust it. This function sits alongside the internal complaints processes in Oranga Tamariki, and provides an independent avenue for review and follow up. It reflects the legislative requirement that enables regulations to be made for independent review of the Chief Executive's complaints mechanisms.
- 3 Independent Investigations:** Children and young people need assurance that when they make a complaint, it will be investigated in a fair and timely manner, action will be taken, and necessary improvements to services will be made. As well as investigating complaints, this function also supports investigation and remediation of recurring or emerging issues.
- 4 Independent Advocacy:** This supports children's voices to be heard, and enables them to influence decisions about them and the system that supports them. There is a distinction between advocacy for individual children and young people and advocacy at a systemic level. The new NGO, VOYCE-Whakarongo Mai, will primarily focus on providing independent individual and collective advocacy for children in care, and it may also advocate at a systemic level. The focus of independent advocacy for children and young people in care identified in the options that follow is at the systemic level. This independent advocacy needs to ensure that the voices of these children are heard, and that their rights, interests and wellbeing are met in decisions about them. Independent systemic advocacy for all children and young people is also required.

## Options for the future independent oversight functions

When considering ways to strengthen independent oversight, a key question is how to cluster these functions to best support the new System.

There are two main approaches:

**Keep all four functions together** in the OCC (as they are now) but clarify and strengthen aspects of the OCC model (two possible options have been identified so far here – 1A, 1B)

**Separate the functions** with some functions in OCC and other functions elsewhere (two possible options have been identified so far here – 2A, 2B)





# Options to strengthen independent oversight of children's issues and of Oranga Tamariki system (1/3)

## Common factors across options

All of the options presented here assume the independent oversight functions will need:

- to reflect new Government priorities (eg reducing the impact of child poverty and a child wellbeing strategy) to address gaps in oversight at the national level such as the resources to support investigations as required
- to be child-focused and youth-focused, accessible to children and young people, including to Māori, and to children and young people with disabilities, and enable their voices to be heard
- to ensure opportunities for partnerships with Māori
- to demonstrate high levels of cultural capability – including capability to engage with tamariki Māori, their whānau, hapū and iwi
- additional investment to reflect increased workload from the Oranga Tamariki Act reforms (eg extending the age range of children in care and youth justice, supporting those transitioning from care, introducing care standards regulations, increasing partnerships with whānau, hapū and iwi) and new Government priorities; and additional investment in the right capability and capacity to undertake the different levels of independent oversight (including recruiting skilled personnel to lead and undertake any new oversight functions, including the skills required to implement a child friendly complaints review mechanism).

## Common assumptions across options

All of the options (except option 1A) assume that there will be some level of change to the Children's Commissioner Act to:

- balance the degree of oversight required for different groups of children
- strengthen the organisational structure of the OCC (eg through the appointment of additional Commissioners\* for specific functions, or through a Chief Executive/board model)
- clarify and enhance the functions of the Commissioner/s (including creating the appropriate degree of separation between the systemic advocacy function and the other functions)
- clarify and enhance the powers of the Commissioner/s
- align cultural components of the Children's Commissioner Act with the purposes and principles in the Oranga Tamariki Act.

It is also assumed that:

- the independent monitoring, complaints review and investigations functions will have parallel internal processes in Oranga Tamariki
- the body or bodies undertaking the four independent functions will be able to access relevant documents and data from Oranga Tamariki so they can perform their roles as expected
- the appropriation arrangements for the oversight functions and for new Government priorities relating to all children and young people will be such that Ministers gain confidence that each area is resourced
- oversight functions will be undertaken by those with appropriate skills and knowledge of the complexity, scale and practices of the Oranga Tamariki system
- oversight functions will be carried out in a timely way, recognising children and young people's sense of time.

\* The term 'Commissioner' is used here for ease of reference but there could also be other options, such as a structure with a chief executive and managers for particular functions





# Options to strengthen independent oversight of children's issues and of Oranga Tamariki system (2/3)

## Approach 1: Retain all oversight functions in the OCC

1A	
Keep current arrangements, and provide additional investment only	
Description	This option keeps existing legislative settings in the Children's Commissioner Act. However, there is additional investment to reflect increased workload from the Oranga Tamariki reforms, new Government priorities; and in the right capability and capacity (including recruiting skilled personnel to lead and undertake the new oversight functions).
Implications	<ul style="list-style-type: none"> <li>Keeps all four oversight functions of the Oranga Tamariki system, and advocacy for all children, in one organisation recognised as being dedicated to children.</li> <li>Maintains the current focus and structure of the OCC – more resource to do their functions would require some re-gearing to adequately address the needs of the new Oranga Tamariki system.</li> <li>Reduces opportunities to change the oversight system, as new requirements are added to a pre-existing system.</li> <li>No change to powers.</li> </ul>
Risks	<ul style="list-style-type: none"> <li>Relies on current functions to measure government progress in reducing poverty and improving the wellbeing of all children</li> <li>General functions relating to all children, and specific ones relating to children in care, place large demands on a single Commissioner.</li> <li>Opportunities missed to reshape parts of OCC to fully meet needs of the new system.</li> <li>Priorities remain at the discretion of a single Commissioner.</li> <li>Including the advocacy role may hinder the effectiveness of the OCC as it contributes to a perception of a lack of objectivity in monitoring and in complaints review and investigations.</li> <li>Difficulty recruiting for capability and diversity of skills required to cover each oversight function, and/or a perceived conflict between monitoring the efficacy of the system and a complaints review function.</li> </ul>

1B	
Make changes to the Children's Commissioner Act	
Description	<p>This option makes legislative changes to the Children's Commissioner Act. Changes could include:</p> <ul style="list-style-type: none"> <li>revisions to reflect new Government priorities (eg reducing the impact of child poverty and developing the child wellbeing strategy).</li> <li>revising functions to reflect oversight of children's issues and of the new system. Eg: <ul style="list-style-type: none"> <li>identifying monitoring scope by specifying what is to be monitored, such as provisions in the Oranga Tamariki legislation (including the new care standards regulations), and relevant international conventions (including UNCROC) affecting all children and young people</li> <li>detailed independent complaints review function, the investigations function</li> <li>involving additional people in exercising powers by having more than one Commissioner and/or a Board. to support the OCC to better focus on and respond to the different groups of children <ul style="list-style-type: none"> <li>a separate Commissioner for complaints and investigations, and formal internal separation of other functions where there may be a conflict of interest and/or</li> <li>a separate Commissioner for monitoring</li> <li>a Commissioner for Māori children and young people to specifically focused on their needs</li> <li>a board. The Children's Commissioner is currently a Commissioner sole role. Other oversight agencies have boards with more than one person</li> <li>enhancing the Commissioner's powers, eg to call and examine witnesses, require agencies to respond to recommendations, and escalate concerns</li> </ul> </li> </ul> </li> <li>aligning cultural components of the Children's Commissioner's Act with those in the Oranga Tamariki Act</li> </ul>
Implications	<p>Depending on the choices made, implications may include:</p> <ul style="list-style-type: none"> <li>children and young children benefit from OCC having more consistent coverage of the range of issues affecting children and young people, which gives more assurance of improved outcomes for them</li> <li>formal, internal separation for functions where there may be conflicts of interest (though this may not fully address perception risks)</li> <li>Māori children and young people have a Commissioner focused on their needs</li> <li>a board could provide participation opportunities for a diverse range of voices, including care experienced people and Māori</li> <li>appointing more Commissioners, making organisational changes and establishing new governance roles increases resourcing required.</li> </ul> <p>There is a longer implementation time than for proposals in Option 1A because legislative change is required.</p>
Risks	Risks identified for option 1A (left) can be mitigated depending on the choices made within this option.





# Options to strengthen independent oversight of children's issues and the Oranga Tamariki System (3/3)

## Approach 2: Separate out oversight functions to ensure clear focus on particular functions, with some functions in OCC and other functions elsewhere

### 2A

Separate functions so that systemic advocacy and monitoring are together in OCC, and create a new organisation for complaints review and investigations

Description	<p>This option makes legislative change to:</p> <ul style="list-style-type: none"> <li>focus OCC on independent systemic advocacy for all children and young people, as well as a stronger focus on independent monitoring with a particular focus on Oranga Tamariki legislation, including care standards regulations, relevant international conventions, and new Government priorities (eg reducing the impact of child poverty, the child wellbeing strategy)</li> <li>set up a separate new organisation for independent complaints review and investigations, as well as 'own motion' investigations (with a quasi-judicial focus and appropriate powers) for children and young people in the Oranga Tamariki system (eg like the Independent Police Conduct Authority).</li> </ul> <p>This presents opportunities to:</p> <ul style="list-style-type: none"> <li>design a bespoke oversight system (including a specific complaints review and investigation function), to reflect the new approach to services provided by Oranga Tamariki doing so in partnership with children, young people and Māori, and ensuring it is visible and accessible to them</li> <li>include some of the legislative changes noted in Option 1B (eg to strengthen structure).</li> </ul>
Implications	<ul style="list-style-type: none"> <li>Focuses OCC monitoring on those components that make the greatest difference to improving outcomes for children and young people in care, and on new Government priorities for all children and young people</li> <li>Enables OCC to attract the specialist capabilities required to undertake a new approach to monitoring</li> <li>Provides children, young people and the public with assurance there is a clearly identifiable, independent, child-friendly, accessible and timely body for complaints review and investigations</li> <li>Children and young people benefit from Oranga Tamariki being provided with independent advice to address common issues arising through complaints and investigations</li> <li>Demonstrates the Government's recognition of the need to provide strong independent complaints and investigations mechanisms for children in care, in order to reduce the likelihood of abuse claims arising later</li> <li>Requires new investment to cover two separate organisations.</li> <li>Requires legislative change, and will take longer to implement than proposals in Option 1.</li> </ul>
Risks	<ul style="list-style-type: none"> <li>Some reduction in synergies resulting from the focus on children and young people being spread across two organisations, rather than one.</li> <li>Does not fully address perception risk associated with having advocacy and monitoring functions in same agency</li> </ul>

### 2B

Separate functions so that systemic advocacy for all children is in OCC, and create a new organisation for monitoring, complaints review and investigation

Description	<p>This option makes legislative change to:</p> <ul style="list-style-type: none"> <li>focus the OCC solely on independent systemic advocacy for all children, including those in the Oranga Tamariki system. Alternatively, the function could relocate and sit with a new Children's Commissioner within the Human Rights Commission (for example)</li> <li>reflect Government priorities for all children and young people (eg reducing the impact of child poverty, the child well-being strategy)</li> <li>create a new oversight body to undertake the other three oversight functions – independent monitoring, complaints review and investigations for children and young people in Oranga Tamariki system. Or, these functions could be incorporated into an existing agency (eg the Ombudsman)</li> </ul> <p>This presents opportunities to:</p> <ul style="list-style-type: none"> <li>enable a clear focus on systemic advocacy for all children, and to drive change for all children including reducing child poverty, improving child well-being and compliance with UNCROC and to measure government progress in these areas.</li> <li>design a bespoke system for monitoring, complaints review and investigations reflecting the new approach to services provided by Oranga Tamariki, doing so in partnership with children, young people and Māori, and ensuring it is visible and accessible to them</li> <li>include some of the legislative changes noted in Option 1B (eg to strengthen structure).</li> </ul>
Implications	<ul style="list-style-type: none"> <li>Reflects different specialist skills required for advocacy, and the more analytical skills required for monitoring, complaints review and investigations.</li> <li>Separating advocacy provides greater public assurance that monitoring, complaints review and investigations are objective, based on robust analysis, and focused on improving outcomes for children and young people in the Oranga Tamariki system.</li> <li>Reduces current overlaps in independent advocacy functions resulting from the recent establishment of VOYCE – Whakaronga Mai, which advocates for children in care, and the work of other organisations that advocate for all children and young people.</li> <li>Requires additional investment to cover organisational changes.</li> <li>Requires legislative change, and will take longer to implement than proposals in Option 1.</li> </ul>
Risks	<ul style="list-style-type: none"> <li>Some reduction in synergies resulting from the focus on children and young people being spread across two organisations, rather than one.</li> </ul>







# Report

**Date:** 23 February 2018

**Security Level:** CABINET-SENSITIVE

**To:** Hon Carmel Sepuloni, Minister for Social Development

## Further information: Independent oversight (children's issues and Oranga Tamariki system)

### Purpose of the report

- 1 This report provides you with a draft Cabinet paper to support your discussions with the Prime Minister and the Minister for Children regarding: the possible options for independent oversight of children's issues and the Oranga Tamariki system; and the proposed approach to consultation with key stakeholders.

### Recommended actions

It is recommended that you:

- 1 **note** the attached draft Cabinet paper, *Consultation on options to strengthen independent oversight (children's issues and Oranga Tamariki system)* which sets out the proposed approach to consultation with key stakeholders on possible options for independent oversight of children's issues and the Oranga Tamariki system
  - 2 **note** that on 13 February 2018, an initial draft paper was circulated to relevant agencies for comment by 19 February 2018
  - 3 **note** that the key concerns raised about the paper during departmental consultation related to consultation scope and timeframes
  - 4 **note** the draft paper has been amended following agency feedback
  - 5 **agree** to forward the draft paper to the Prime Minister and the Minister for Children to support discussions regarding the possible options and proposed approach to consultation
- ☒ Agree / ☐ Disagree
- 6 **note** that, depending on the outcome of these discussions, you could **either**
    - 6.1 approve the attached draft of the paper for wider Ministerial consultation with interested Ministers **or**
    - 6.2 require officials to revise the attached draft for your approval prior to it being taken out for Ministerial consultation

- 7 **note** that on current proposed timeframes the final Cabinet paper is due to be lodged by 10am on 15 March 2018, for consideration at Cabinet Social Wellbeing Committee on 21 March 2018.

*Justine Cornwall*

Justine Cornwall  
General Manager  
Seniors and International Policy

*23 February 2018*

Date

*Carmel Sepuloni*

Hon Carmel Sepuloni  
Minister for Social Development

*25/02/2018*

Date

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT



## **The attached draft Cabinet paper on independent oversight incorporates comments from departmental consultation**

*The draft paper sets out the proposed approach for consultation with stakeholders outside government agencies and selected oversight agencies*

- 2 You agreed to seek Cabinet Committee approval of proposed targeted consultation on possible options to strengthen independent oversight of children's issues and the Oranga Tamariki system [REP/17/12/1340 refers].
- 3 The attached draft Cabinet paper:
  - outlines preliminary work on options to strengthen independent oversight of children's issues and the Oranga Tamariki system
  - as part of the policy development process, seeks agreement to undertake targeted consultation with key stakeholders outside government departments and selected oversight agencies.
- 4 Following discussions with you on 19 February 2018 [REP/18/2/219 refers], you indicated that you would like to discuss potential options and the proposed approach to consultation set out in the draft Cabinet paper with the Prime Minister and the Minister for Children.

### **Key concern raised during departmental consultation related to consultation scope and timeframes**

- 5 On 13 February 2018, an initial draft of the Cabinet paper was circulated to the State Services Commission, Oranga Tamariki - Ministry for Children, the Ministry of Education, the Education Review Office, the Ministry of Justice, the Ministry of Health, the Ministry for Pacific Peoples, the Ministry for Women, Te Puni Kōkiri, the Department of Corrections, the New Zealand Police, the Treasury, and the Department of the Prime Minister and Cabinet.
- 6 The most substantial feedback covered four main themes. This is summarised below, together with how we have dealt with the issues raised:

Theme	Issues	Response
Consultation scope and timeframes	Police and the Ministry of Health noted that wider public consultation is required to reflect general public interest in these issues, and that oversight functions apply to all children as well as to those in the Oranga Tamariki system. The Education Review Office supported more focused consultation.	We continue to recommend targeted, face-to-face consultation with key groups, but have noted that an option could be to place details of this work on MSD's website.
	Te Puni Kōkiri noted that the proposed targeted consultation may be too narrow to address concerns of Māori.	We have added other pan-Māori bodies to the list of those who will be included in consultation, and have accepted Te Puni Kōkiri's offer of support with consultation.
	The Ministry for Pacific Peoples recommended that the Oranga Tamariki Pacific Panel be included in consultation, noted the possibility of Pacific Peoples' engagement fatigue, and offered to work with us to coordinate engagement.	We have specifically mentioned the Oranga Tamariki Pacific Panel as amongst those that will be consulted, and have accepted the Ministry for Pacific Peoples' offer of support to reduce engagement fatigue.

Theme	Issues	Response
	Police and the Ministry of Health questioned the rationale for the consultation and implementation timeframes, noting that these are very tight.	We have retained the original timeframes to reflect your preferred approach.
Implications for Māori	Te Puni Kōkiri recommended the inclusion of a section on "implications for Māori".	We have not included a specific section on implications for Māori, as this is not part of the standard Cabinet paper template. We have noted, however, that Māori are over-represented in the Oranga Tamariki system, that the new oversight system will need to ensure opportunities for partnership with Māori, and that consultation with Māori is important.
The 'Oranga Tamariki system'	Police, the Education Review Office and Oranga Tamariki noted that this needs to be clarified to include agencies, children and young people beyond those in statutory care and protection.	We have included a definition of 'Oranga Tamariki system' to clarify this.
References to child poverty	The child poverty team in the Ministry of Social Development made several comments to better align references in the paper to those used in the cross-government poverty work.	We have amended the paper to support this alignment.

- 7 In addition, we received a number of minor technical changes that have been incorporated into the paper.

### *Engagement with the Children's Commissioner*

- 8 You met with the Children's Commissioner on 21 February 2018. We are preparing a follow-up letter for you to send to the Commissioner. We propose that this letter confirms that:
- the Commissioner will be part of the proposed targeted consultation
  - MSD will engage with the Commissioner regarding those stakeholders he considers should be consulted
  - while there will not necessarily be a public announcement, we can be open about the work once Cabinet decisions are made regarding the consultation approach (likely by late March)
  - MSD will continue to engage with the Commissioner and his Office on the work.

### **Next steps**

- 8 We recommend that you forward the draft Cabinet paper to the Prime Minister and the Minister for Children to support discussions with them regarding the possible options for independent oversight of children's issues and Oranga Tamariki system and the proposed approach to consultation with key stakeholders. Officials are available to support you in these discussions.



9 Depending on the outcome of these discussions, you could *either*:

- approve the attached draft of the Cabinet paper for wider Ministerial consultation with interested Ministers *or*
- require officials to revise the attached draft for your approval prior to it being taken out for Ministerial consultation.

10 An indicative timeline for the Cabinet paper is set out in the following table. This timeline is subject to when discussions with the Prime Minister and the Minister for Children are able to take place.

Stage	Date
Draft Cabinet paper forwarded to the Prime Minister and the Minister for Children to support your discussions with them	Monday, 26 February 2018
Depending on the outcome of discussions with the Prime Minister and the Minister for Children:	
Attached draft Cabinet Paper approved by you for wider Ministerial consultation or	By Tuesday, 27 February 2018
Attached draft Cabinet paper revised by officials to reflect discussions with the Prime Minister and the Minister for Children and provided to you for approval for Ministerial consultation	By Wednesday, 28 February 2018
Assuming the draft paper is approved for Ministerial consultation by Friday, 2 March 2018:	
Feedback from Ministerial consultation passed to MSD	Monday, 12 March 2018
Final version of Cabinet paper sent to you for agreement	Wednesday, 14 March 2018
Paper lodged on CabNet	Thursday, 15 February 2018 (by 10am)
Paper considered by Cabinet Social Wellbeing Committee	Wednesday, 21 March 2018
Paper considered by Cabinet	Monday, 26 March 2018

File ref: A10278351

Author: Kimberly McCay, Principal Analyst, Seniors and International Policy

Responsible manager: Justine Cornwall, General Manager, Seniors and International Policy

# **Independent oversight of children's issues and of the Oranga Tamariki system**

**Proposed consultation material**





RELEASED UNDER THE  
OFFICIAL INFORMATION ACT  
DRAFT – NOT GOVERNMENT POLICY

# Recent changes create an opportunity to improve outcomes by strengthening oversight of children's issues and of the Oranga Tamariki system

**New Zealand has about 1.12 million children under 18**

**The children and young people Oranga Tamariki works with include those in care. There are about 6,300 children and young people in the care of Oranga Tamariki.**

This includes children and young people with whānau caregivers, non-kin caregivers, in other settings (like residences or group homes) and those supported to live at home or independently. Sixty-eight percent of them identify as Māori.

The needs of these 6,300 children are generally higher and more complex than those of other children in the wider population, and they have a higher likelihood of experiencing poor long-term outcomes, such as low educational achievement, unemployment and/or involvement in the adult corrections system.

Approximately 6,700 children are also being actively managed by Oranga Tamariki.

Recent reforms of the Oranga Tamariki system and new Government priorities (including the reduction of poverty and the child wellbeing strategy) provide an opportunity to also make changes to independent oversight to align with these reforms and priorities.

Current independent oversight of children's issues for all children at the national level and for children and young people in the Oranga Tamariki system is undertaken by a number of organisations, including the Children's Commissioner.

- Under the Children's Commissioner Act 2003, the Commissioner has general statutory responsibilities for all children under 18, including to advocate for the rights of all children and, in that regard, to advance and monitor the application of the United Nations Convention on the Rights of the Child (UNCRC). As a designated 'National Preventive Mechanism', the Commissioner also examines and monitors the treatment of children and young people detained in care and protection and youth justice residences for the purposes of OPCAT. Government's focus on improving child wellbeing and reducing child poverty will also have ramifications for the Commissioner's work .
- The Children's Commissioner also has some specific functions to provide oversight of Oranga Tamariki. These include monitoring the policies and practices of Oranga Tamariki and undertaking investigations of decisions, recommendations, and acts or omissions under the Oranga Tamariki in respect of any child or young person.

The Office of the Children's Commissioner (OCC) is not currently set up or resourced to deliver the full range of oversight requirements for the new Oranga Tamariki system.





# Four functions are required for strong oversight

Oranga Tamariki is implementing its own internal oversight processes. These need to be supplemented by four independent oversight functions:

- 1 Independent Monitoring:** This provides children and young people with assurance that the services they receive are focused on improving their wellbeing and keeping them safe. A regular, consistent, transparent assessment of the same key elements validates and complements the internal monitoring processes of Oranga Tamariki. New accountabilities for the Chief Executive of Oranga Tamariki and additional reporting requirements mean that the independent monitoring needs to be more targeted.  
  
Independent monitoring should focus on the provisions in Oranga Tamariki legislation (including the care standards regulations, in recognition of the new legislative requirement for the Minister to appoint an independent body to monitor compliance with care standards regulations); the Optional Protocol to the Convention against Torture (OPCAT) relating to, for example, young people in secure residences; and relevant international conventions (including UNCRC) affecting all children and young people. Such monitoring provides Oranga Tamariki with access to a 'critical friend', supports a continuous learning culture in Oranga Tamariki and its contracted providers, prevents/reduces harm, and improves services to achieve better outcomes for children and young people.
- 2 Independent Complaints review:** Children and young people need an independent complaints review function that is safe, timely, visible, accessible and responsive. They need to know they can use it, be listened to, and be able to trust it. This function sits alongside the internal complaints processes in Oranga Tamariki, and provides an independent avenue for review and follow up. It reflects the legislative requirement that enables regulations to be made for independent review of the Chief Executive's complaints mechanisms.
- 3 Independent Investigations:** Children and young people need assurance that when they make a complaint, it will be investigated in a fair and timely manner, action will be taken, and necessary improvements to services will be made. As well as investigating complaints, this function also supports investigation and remediation of recurring or emerging issues.
- 4 Independent Advocacy:** This supports children's voices to be heard, and enables them to influence decisions about them and the system that supports them. There is a distinction between advocacy for individual children and young people and advocacy at a systemic level. The new NGO, VOYCE-Whakarongo Mai, will primarily focus on providing independent individual and collective advocacy for children in care, and it may also advocate at a systemic level. The focus of independent advocacy for children and young people in care identified in the options that follow is at the systemic level. This independent advocacy needs to ensure that the voices of these children are heard, and that their rights, interests and wellbeing are addressed in decisions about them. Independent systemic advocacy for all children and young people is also required.





# Possible options for the future independent oversight functions

When considering ways to strengthen independent oversight, a key question is how to cluster these functions to best support the new system.

There are two main options:

**Keep all four functions together** in the OCC (as they are now) but clarify and strengthen aspects of the OCC model (two possible options have been identified so far here – 1A, 1B)

**Separate the functions** with some functions in OCC and other functions elsewhere (two possible options have been identified so far here – 2A, 2B)

## Common factors across options

All of the options presented here assume the independent oversight functions will need:

- to be child-focused and youth-focused, accessible to children and young people, particularly Māori, and to children and young people with disabilities, and enable their voices to be heard
- to reflect new Government priorities (eg reducing child poverty and a child wellbeing strategy)
- to address gaps in oversight at the national level for all children (such as the resources to support investigations as required)
- to ensure opportunities for partnerships with Māori
- to demonstrate high levels of cultural capability – including capability to engage with tamariki Māori, their whānau, hapū and iwi
- additional investment:
  - to reflect workload from the Oranga Tamariki Act reforms (eg extending the age range of children in care and youth justice, supporting those transitioning from care, introducing care standards regulations, increasing partnerships with whānau, hapū and iwi) and new Government priorities
  - in the right capability and capacity to undertake the different levels of independent oversight including recruiting skilled personnel to lead and undertake oversight functions (including the skills required to implement a child friendly complaints review mechanism and to manage investment activities).





## Common assumptions across options

All of the options (except option 1A) assume that there will be some level of change to the Children's Commissioner Act to:

- balance the degree of oversight required for different groups of children
- strengthen the organisational structure of the OCC (eg through the appointment of additional Commissioners\* for specific functions, or through a Chief Executive/board model)
- clarify and enhance the functions of the Commissioner/s (including creating the appropriate degree of separation between the systemic advocacy function and the other functions)
- clarify and enhance the powers of the Commissioner/s
- align cultural components of the Children's Commissioner Act with the purposes and principles in the Oranga Tamariki Act.

It is also assumed that:

- the independent monitoring, complaints review and investigations functions will have parallel internal processes in Oranga Tamariki
- the body or bodies undertaking the four independent functions will be able to access relevant documents and data from Oranga Tamariki so they can perform their roles as expected
- the appropriation arrangements for the oversight functions and for new Government priorities relating to all children and young people will be such that Ministers gain confidence that each area is resourced
- oversight functions will be undertaken by those with appropriate skills and knowledge, including of the complexity, scale and practices of the Oranga Tamariki system
- oversight functions will be carried out in a timely way, recognising children and young people's sense of time

*\* The term 'Commissioner' is used here for ease of reference but there could also be other options, such as a structure with a chief executive and managers for particular functions*



# Option 1: Retain all oversight functions in the OCC

1A	
Keep current arrangements, and provide additional investment only	
Description	<p>This option keeps existing legislative settings in the Children's Commissioner Act. However, there is additional investment to reflect increased workload from the Oranga Tamariki reforms, new Government priorities; and in the right capability and capacity (including recruiting skilled personnel to lead and undertake the new oversight functions).</p>
Implications	<ul style="list-style-type: none"><li>• Keeps all four oversight functions of the Oranga Tamariki system, and advocacy for all children, in one organisation recognised as being dedicated to children.</li><li>• Maintains the current focus and structure of the OCC – more resource to do their functions would require some re-gearing to adequately address the needs of the new Oranga Tamariki system.</li><li>• Reduces opportunities to change the oversight system, as new requirements are added to a pre-existing system.</li><li>• No change to powers.</li></ul>
Risks	<ul style="list-style-type: none"><li>• Relies on current functions in the Children's Commissioner Act to assess government policies to reduce child poverty and to improve the wellbeing of all children.</li><li>• General functions relating to all children, and specific ones relating to children and young people in the Oranga Tamariki system, place large demands on a single Commissioner.</li><li>• Opportunities are missed to reshape parts of OCC to fully meet needs of the new Oranga Tamariki system (including to fully develop a child-focused complaints review mechanism).</li><li>• Priorities remain at the discretion of a single Commissioner.</li><li>• Including the advocacy role may hinder the effectiveness of the OCC as it contributes to a perception of a lack of objectivity in monitoring and in complaints review and investigations.</li><li>• Difficulty recruiting for capability and diversity of skills required to cover each oversight function.</li><li>• Perception risk to objectivity and validity associated with having systemic advocacy and the monitoring, complaints review and investigation functions in the same agency.</li></ul>





## 1B

### Make changes to the Children's Commissioner Act

Description	<p>This option makes legislative changes to the Children's Commissioner Act. Changes could include:</p> <ul style="list-style-type: none"> <li>revisions to reflect new Government priorities (eg reducing child poverty and the child wellbeing strategy)</li> <li>revising functions to reflect oversight of children's issues and of the new system. Eg: <ul style="list-style-type: none"> <li>identifying monitoring scope by specifying what is to be monitored, such as provisions in the Oranga Tamariki legislation (including the new care standards regulations), and relevant international conventions (including UNCRC) affecting all children and young people</li> <li>detailing independent complaints review function, and/or the investigations function</li> </ul> </li> <li>involving additional people in exercising powers by having more than one Commissioner and/or a Board. to support the OCC to better focus on and respond to the different groups of children and young people <ul style="list-style-type: none"> <li>a separate Commissioner for complaints and investigations, and formal internal separation of other functions where there may be a conflict of interest and/or</li> <li>a separate Commissioner for monitoring</li> <li>a board. The Children's Commissioner is currently a Commissioner sole role. Other oversight agencies have boards with more than one person</li> <li>enhancing the Commissioner's powers, eg to call and examine witnesses, require agencies to respond to recommendations, and escalate concerns</li> </ul> </li> <li>aligning cultural components of the Children's Commissioner's Act with those in the Oranga Tamariki Act.</li> </ul>
Implications	<p>Depending on the choices made, implications may include:</p> <ul style="list-style-type: none"> <li>children and young children benefit from OCC having more consistent coverage of the range of issues affecting children and young people, which gives more assurance of improved outcomes for them</li> <li>formal, internal separation for functions where there may be conflicts of interest (though this may not fully address perception risks)</li> <li>a board could provide participation opportunities for a diverse range of voices, including care experienced people and Māori</li> <li>appointing more Commissioners, making organisational changes and establishing new governance roles increases resourcing required.</li> </ul> <p>There is a longer implementation time than for proposals in Option 1A because legislative change is required.</p>
Risks	<p>Risks identified for option 1A can be mitigated depending on the choices made within this option.</p>



# Option 2: Separate the oversight functions to ensure clear focus on particular functions, with some functions in OCC and other functions elsewhere

2A	
Separate functions so that systemic advocacy and monitoring are together in OCC, and create a new organisation for complaints review and investigations	
Description	<p>This option makes legislative change to:</p> <ul style="list-style-type: none"> <li>• focus OCC on independent systemic advocacy for all children and young people, as well as a stronger focus on independent monitoring with a particular focus on Oranga Tamariki legislation, including care standards regulations, relevant international conventions, and new Government priorities (eg reducing child poverty, the child wellbeing strategy)</li> <li>• set up a separate new organisation for independent complaints review and investigations, as well as ‘own motion’ investigations (with a quasi-judicial focus and appropriate powers) for children and young people in the Oranga Tamariki system (eg like the Independent Police Conduct Authority).</li> </ul> <p>This presents opportunities to:</p> <ul style="list-style-type: none"> <li>• design a bespoke oversight system (including a specific complaints review and investigation function), to reflect the new approach to services Oranga Tamariki provides, doing so in partnership with children, young people and Māori, and ensuring it is visible and accessible to them, and trusted by them</li> <li>• include some of the legislative changes noted in Option 1B (eg to strengthen structure).</li> </ul>
Implications	<ul style="list-style-type: none"> <li>• Focuses OCC monitoring on those components that make the greatest difference to improving outcomes for children and young people in the Oranga Tamariki system, and on new Government priorities for all children and young people.</li> <li>• Enables OCC to attract the specialist capabilities required to undertake a new approach to monitoring.</li> <li>• Provides children, young people and the public with assurance there is a clearly identifiable, independent, child-friendly, accessible and timely body for complaints review and investigations.</li> <li>• Children and young people benefit from Oranga Tamariki being provided with independent advice to address common issues arising though complaints and investigations.</li> <li>• Demonstrates the Government’s recognition of the need to provide strong independent complaints and investigations mechanisms for children and young people in the Oranga Tamariki system, in order to reduce the likelihood of abuse claims arising later.</li> <li>• Requires new investment to cover two separate organisations.</li> <li>• Requires legislative change, and will take longer to implement than proposals in Option 1.</li> </ul>
Risks	<ul style="list-style-type: none"> <li>• Some reduction in synergies resulting from the focus on children and young people being spread across two organisations, rather than one.</li> <li>• Does not fully address the perception risk associated with having the systemic advocacy function and the monitoring function in same agency.</li> </ul>





## 2B

### Separate functions so that systemic advocacy for all children is in OCC, and create a new organisation for monitoring, complaints review and investigations

Description	<p>This option makes legislative change to:</p> <ul style="list-style-type: none"> <li>• focus the OCC solely on independent systemic advocacy for all children, including those in the Oranga Tamariki system. Alternatively, the function could relocate and sit with a new Children's Commissioner within the Human Rights Commission (for example)</li> <li>• reflect Government priorities for all children and young people (eg reducing child poverty, the child wellbeing strategy)</li> <li>• create a new oversight body to undertake the other three oversight functions – independent monitoring, complaints review and investigations for children and young people in Oranga Tamariki system. Or, these functions could be incorporated into an existing agency (eg the Ombudsman).</li> </ul> <p>This presents opportunities to:</p> <ul style="list-style-type: none"> <li>• enable a clear focus on systemic advocacy for all children, and to drive change for all children including reducing child poverty, improving child wellbeing and compliance with UNCRC and to assess government progress in these areas.</li> <li>• enable a clear and sustained focus on children and young people subject to the coercive powers of the State and to design a bespoke system for monitoring, complaints review and investigations reflecting the new approach to services Oranga Tamariki provides, doing so in partnership with children, young people and Māori, and ensuring it is visible and accessible to them</li> <li>• include some of the legislative changes noted in Option 1B (eg to strengthen structure).</li> </ul>
Implications	<ul style="list-style-type: none"> <li>• Reflects different specialist skills required for advocacy, and the more analytical skills required for monitoring, complaints review and investigations.</li> <li>• Separating advocacy provides greater public assurance that monitoring, complaints review and investigations are objective, based on robust analysis, and focused on improving outcomes for children and young people in the Oranga Tamariki system.</li> <li>• Reduces current overlaps in independent advocacy functions resulting from the recent establishment of VOYCE – Whakarongo Mai, which advocates for children in care, and the work of other organisations that advocate for all children and young people.</li> <li>• Requires additional investment to cover organisational changes.</li> </ul>
Risks	<ul style="list-style-type: none"> <li>• Some reduction in synergies resulting from the focus on children and young people being spread across two organisations, rather than one.</li> </ul>



# We would like to hear what you think

## Conversation starters

How can independent oversight help children and young people particularly those in statutory care, but also others in the Oranga Tamariki system?

What do you think are the most critical things oversight needs to achieve?

What level of independent oversight is needed for:

- all children and young people under the age of 18 years?
- those children and young people in the Oranga Tamariki system but who are not in statutory care?
- those children and young people who are in statutory care?

So far four independent oversight functions have been identified (monitoring, complaints and investigations, and systemic advocacy)

Have we identified the right ones?

Do you see all oversight functions as being equally important? Do they naturally cluster together?

So far we've thought about some options for how independent oversight functions could be organised

What do you think of those proposals? Is there any option you prefer over another?

How can these or other options be developed to be relevant and responsive to the needs of children and young people who are Māori?

Do you see other options for strengthening oversight arrangements?

Taking each of the independent oversight functions in turn (ie monitoring, complaints and investigations and systemic advocacy)

Which of these functions fit best together?

What's important to how a particular function is carried out?

How can each of these functions be best organised so that they are seen as trustworthy and accessible to children and young people (including those with disabilities)?





# Aide-mémoire



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

## Cabinet paper

**Date:** 23 March 2018

**Security Level:** Cabinet Sensitive

**For:** Hon Carmel Sepuloni, Minister for Social Development

**File Reference:** REP/18/3/423

### **CONSULTATION ON OPTIONS TO STRENGTHEN INDEPENDENT OVERSIGHT (CHILDREN'S ISSUES AND ORANGA TAMARIKI SYSTEM)**

<b>Cabinet Committee</b>	Social Wellbeing
<b>Date of meeting</b>	28 March 2018
<b>Minister</b>	Hon Carmel Sepuloni, Minister for Social Development
<b>Proposal</b>	This paper outlines preliminary work on options to strengthen independent oversight of children's issues and the Oranga Tamariki system and, as part of the policy development process, seeks agreement to undertake targeted consultation with key stakeholders outside government departments and selected oversight agencies.
<b>Key issues</b>	<p>The paper presents findings from analysis and consultations undertaken to date, and reflects discussions that you and the Minister for Children have had with each other and with officials.</p> <p>The paper focuses on independent monitoring, advocacy, complaints review and investigations in relation to all children and young people as well as those in the Oranga Tamariki system. It outlines how these functions are currently carried out, including the current role of the Children's Commissioner and other oversight agencies.</p> <p>The paper notes the importance of independent oversight for all children and young people, and particularly for those in the Oranga Tamariki system, where the State can exercise intrusive and coercive powers. It also notes recent legislative amendments to the Oranga Tamariki Act, that:</p> <ul style="list-style-type: none"><li>• require the Minister for Children to appoint an independent agency or body to monitor and report on compliance with the care standards</li><li>• provide for the appointment, by the Minister for Children, of a person or organisation (independent of Oranga Tamariki) to review the outcomes of the internal</li></ul>

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complaints mechanism(s) implemented by Oranga Tamariki.

The paper notes gaps in the current arrangements for independent oversight that have emerged from analysis and consultation to date. Gaps include a consistent approach to independent monitoring and reporting, and the availability of a strong independent complaints and investigations system that children and young people are willing to use. Overlaps include system advocacy for children and young people.

Two broad options are presented. The first option proposes that the four oversight functions are located within the Office of the Children's Commissioner (OCC). The second option proposes a separation of functions, with some in the OCC and others in a new body.

The paper notes the nature of consultation undertaken so far, including with the Children's Commissioner, and seeks agreement to undertaking further, targeted consultation.

Indicative timeframes for consultation and obtaining final Cabinet agreement to policy proposals are included.

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#### **Our advice**

You may wish to note:

An earlier version of the Cabinet paper was circulated for Ministerial consultation on 13 March 2018.

We received written comment from the Minister for Children who:

- noted a typographical error in paragraph 18 " ... issues for all children at both the national level and ....". The 'at' was missing. This mistake has been fixed.
- queried whether the reference in paragraph 18 to 'Ombudsmen' (ie more than one Ombudsman was correct). The use of the plural here is intentional. There is a Chief Ombudsman and another Ombudsman. There are also Assistant Ombudsmen.

Other technical changes have also been made to correct minor inconsistencies and formatting.

When presenting this paper, you may wish to highlight the following points:

*We have an opportunity to develop a purpose-built oversight system to reflect the new environment*

- Government has a strong commitment to improving outcomes for all children, including those in the Oranga Tamariki system. We have an opportunity to design and implement an independent oversight system that reflects the transformative changes that are being implemented



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in Oranga Tamariki, as well as priorities that Government has signalled for all children and young people.

*Independent monitoring will help Government know how the reforms to the Oranga Tamariki system are working*

- Cabinet has recently agreed to the promulgation of Care Standards Regulations. These set out the expectations, rights and entitlements that a child or young person can expect when they are in the care of the State. Care Standards provide a framework for future independent monitoring of what make the greatest difference to improving outcomes for children and young people. As well as benefiting those in state care, independent monitoring also enables Government to ensure the reforms are working in intended ways.

*A strong independent complaints and investigations system will help ensure children and young people's voices are heard, and that their concerns are addressed*

- There have been many calls over recent years for a complaints and investigation mechanism for children and young people that is independent of agencies delivering services. The proposals in this paper respond to those calls. Proposals can be aligned with findings from the Royal Commission of Inquiry into Historical Abuse in State Care, as these emerge.

*Consultation will test the options developed so far and provide stakeholders with opportunities to suggest other options*

- Consultation to date has been undertaken with relevant government departments, Crown entities who have oversight responsibilities, and the Ombudsman. I propose that targeted consultation is now undertaken with other key groups, with priority given to consultation with children and young people, and with Māori. This will provide these key groups with opportunities to input, prior to Cabinet being asked to confirm policy proposals.

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Author: Barbara Collins, Principal Analyst, Seniors and International Policy

Responsible manager: Justine Cornwall, General Manager, Seniors and International Policy

File reference: A10350452



# Report

**Date:** 12 April 2018

**Security Level:** IN CONFIDENCE

**To:** Hon Carmel Sepuloni, Minister for Social Development

## Future direction briefing from the Children's Commissioner

### Purpose of the report

- 1 This paper outlines:
  - advice on the Children's Commissioner's paper *What should the Children's Commissioner look like in New Zealand now and in the future? And his request to meet to discuss the paper*
  - the connections with other MSD activities (including the independent oversight review) and provides an indicative timeline for key actions across the relevant work streams.

### Recommended actions

It is recommended that you:

- 1 **note** our advice on the Commissioner's future direction briefing and Out of scope  
Out of scope
- 2 **note** that:
  - 2.1 Cabinet agreed to targeted consultation on options for independent oversight of children's issues and the Oranga Tamariki system and authorised you, in consultation with the Minister for Children, to take final decisions on the consultation materials for release [SWC-18-MIN-0025]
  - 2.2 a separate briefing on the proposed consultation plan and materials for release will be provided to you for approval on 20 April 2018
- 3 **note** that:
  - 3.1 as part of the targeted consultation process, a proactive release of the independent oversight Cabinet paper (on MSD's website) is proposed
  - 3.2 a risk assessment regarding this proposed release and a copy of the final Cabinet paper marked up to show the proposed redactions has been provided to your office and we will seek your agreement to release the Cabinet paper at a time agreed with your office



- 4 **agree** that MSD's Deputy Chief Executive Policy and the General Manager, Senior and International Policy meet with the Commissioner to give him an update on the review and an advance embargoed copy of the independent oversight Cabinet paper (prior to its release on MSD's website)

Agree/Disagree

- 5 **agree** that we will also provide an advance embargoed copy of the independent oversight Cabinet paper to the other oversight agencies

Agree/Disagree

- 6 **note** that in addition to the independent oversight review and the Commissioner's future direction briefing, there are other related MSD activities (including a potential nomination to the United Nations Committee on the Rights of the Child); and we have provided an indicative timeline showing the intersection of these activities.

  
\_\_\_\_\_  
Justine Cornwall  
General Manager  
Seniors and International Policy

12 April 2018

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Hon Carmel Sepuloni  
Minister for Social Development

15/04/2018

\_\_\_\_\_  
Date

## Background

- 2 You have received a paper from the Children's Commissioner. The paper is called *What should the Children's Commissioner look like in New Zealand now and in the future?*, and is dated 3 April 2018. This paper was also sent to the Prime Minister and the Minister for Children.
- 3 The Commissioner would like to meet with you to discuss the contents of the paper.

## Summary of the briefing from the Children's Commissioner

- 4 In the cover briefing attached to the Commissioner's paper, the Commissioner notes his belief that:
  - a wider role for the Children's Commissioner could improve system accountability and embed the transformational change for children you seek across poverty, care and protection and child wellbeing
  - the office of the Children's Commissioner has been historically and chronically underfunded and that has restricted the office's ability to truly fulfil its mandate to date.
- 5 The Commissioner's paper sets out the history of the Children's Commissioner's role, describes the Commissioner's current activities, and concludes that the Commissioner could play a bigger role in transformative change for children and young people. The Commissioner lists some changes in the environment to consider. Examples include:
  - changes in the wider care and protection and youth justice systems, and demand for more independent oversight of some aspects
  - the Royal Commission of Inquiry into Historical Abuse in State Care
  - changes resulting from increased understanding and commitment to doing better for tamariki and rangatahi Māori, eg from a strong commitment in the Oranga Tamariki Act 1989
  - proposed legislation and reporting obligations on child poverty measures and targets are resulting in calls for independent oversight of the foreshadowed targets and strategy
  - possible oversight of the delivery of the child wellbeing strategy.
- 6 The Commissioner's paper notes that the current review of independent oversight<sup>1</sup> provides an opportunity to consider changes to the Children's Commissioner Act 2003. The issues raised in the Commissioner's paper have been considered as part of the review work to date, and a number of these have been explicitly canvassed in the recent Cabinet paper on independent oversight [SWC-18-MIN-0025].
- 7 We will actively engage with the Commissioner on his paper and the ideas outlined in it as part of the next phase of targeted consultation on the review. More information about the timing of the consultation process and the other key review activities is set out in the table on pages 4-5 of this briefing.

8

Out of scope

## The Review

- 9 Cabinet authorised you, in consultation with the Minister for Children, to take final decisions on the consultation materials for release [SWC-18-MIN-0025]. We will provide you with the proposed consultation plan and consultation materials for approval on 20 April 2018. Subject to your agreement we are aiming to have the

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<sup>1</sup> The Commissioner uses the previous iteration of the review's name: *Review of independent monitoring, complaints review, investigations and advocacy for the new Vulnerable Children's System, including the role of the Children's Commissioner*.



consultation materials on the website in the first week of May with the consultation with stakeholders commencing the following week.

- 10 As part of the consultation phase of the review, we are proposing that the independent oversight Cabinet paper be proactively released on MSD's website along with the other consultation materials.
- 11 We have provided your office with a risk assessment for this proactive release of the Cabinet paper, along with a copy of the Cabinet paper highlighted to show the proposed redactions. This risk assessment notes that we propose to give the Children's Commissioner and the other oversight agencies we undertook preliminary consultation with (eg the Ombudsman and the Human Rights Commissioner) a copy of the paper in advance of this proposed public release. We will seek your agreement to the release of the Cabinet paper as part of the package of materials on consultation we provide to you on 20 April 2018.
- 12 We recommend that MSD's Deputy Chief Executive Policy (Simon MacPherson) and the General Manager, Senior and International Policy (Justine Cornwall) meet with the Commissioner ahead of the release of the consultation materials and Cabinet paper on our website to give him an update on the review and an advance embargoed copy of the Cabinet paper.

### Other related activities

Out of scope

### Proposed timeframes for the Review work and the other activities involving the Commissioner

- 17 The table below sets out the proposed timeframes for the various work streams.

Piece of work	Action	Date
Review	MSD provides you with the consultation plan and materials for approval	20 April
Out of scope		
Response to Commissioner	Your office reports back to MSD on decisions made regarding this paper and the separate paper you received on 20 April on the consultation plan and materials	24 April

Piece of work	Action	Date
Review		
Review	There is consultation with the Minister for Children on the proposed consultation materials, and your office reports back on the outcomes of these discussions to MSD and the consultation materials are readied for uploading on MSD's website	By 30 April
Review	MSD meets with the Children's Commissioner and (subject to your agreement) provides him with an advance copy of the Cabinet paper  Subject to your agreement, an advance copy of the Cabinet paper is also provided to the other oversight agencies as soon as possible after the Commissioner receives his copy	Early May, at date agreed with your office
Response to Commissioner	You meet with the Commissioner, to discuss the review and his paper and provide him with a copy of your written response to his briefing	Early May
Review	Proactive release of Cabinet paper on MSD's website along with the other consultation materials  *We propose that the Commissioner and the other agencies be given at least two working days to consider their advance copies of the paper. You may prefer that the proactive release not occur until after you have met the Commissioner	Early May*
Review	MSD undertakes targeted consultation with key stakeholders on the options for independent oversight	From date Cabinet paper is proactively released in early May – June
Out of scope		
Review	Final policy decisions on independent oversight are sought from Cabinet	June-July
Review	Final drafting instructions to PCO for the Independent Oversight Bill	August
Review	BORA vet of Bill	October
Review	LEG/CAB approval of Bill for introduction	November

## Next steps

- 18 In the context of the independent oversight review, we will provide you with a briefing on the proposed consultation plan (including a more detailed consultation timeframe associated with the consultation process) and the proposed consultation materials on 20 April 2018.



File ref: A10393161

Author: Kimberly McCay, Principal Analyst, Seniors and International Policy

Responsible manager: Justine Cornwall, General Manager, Seniors and International Policy

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# Report

**Date:** 20 April 2018

**Security Level:** IN CONFIDENCE

**To:** Hon Carmel Sepuloni, Minister for Social Development

## Update on consultation processes for the independent oversight review

### Purpose of the report

- 1 This report seeks your approval of the proposed plan and consultation materials for targeted consultation on options for independent oversight of children's issues and the Oranga Tamariki system and seeks your agreement to forward these materials to the Minister for Children and the Minister for Child Poverty Reduction.

### Recommended actions

It is recommended that you:

- 1 **note** that Cabinet agreed to targeted consultation on options for independent oversight of children's issues and the Oranga Tamariki system and authorised you, in consultation with the Minister for Children, to take final decisions on the consultation materials for release [SWC-18-MIN-0025]
- 2 **agree** to the approach to consultation set out in paragraphs 4-6 of this paper  
**Agree/Disagree**
- 3 **agree** that, subject to MSD incorporating any feedback (in consultation with your office), the attached consultation materials be readied for release: on MSD's website; and to support engagement with particular stakeholders  
**Agree/Disagree**
- 4 **agree** to forward this paper (including the proposed consultation materials) to the Minister for Children and Minister for Child Poverty Reduction  
**Agree/Disagree**
- 5 **note** that, as part of the consultation process, a proactive release of the independent oversight Cabinet paper (on MSD's website) is proposed and an assessment regarding this proposed release and a copy of the final Cabinet paper marked up to show the proposed redactions has been provided to your office [REP/18/5/531]
- 6 **agree** that the independent oversight Cabinet paper is proactively released on MSD's website in the first week of May 2018 (with those redactions and at a date agreed with your office)  
**Agree/Disagree**

7 **note** that:

7.1 as previously agreed, MSD's Deputy Chief Executive Policy and the General Manager, Senior and International Policy will meet with the Children's Commissioner to give him an update on the review and an advance embargoed copy of the independent oversight Cabinet paper (prior to its release on MSD's website) [REP/18/5/531]

7.2 this meeting will take place in the first week of May 2018 (at a date agreed with your office)

8 **note** that, as previously agreed, MSD will also provide an advance embargoed copy of the independent oversight Cabinet paper to the other oversight agencies who we undertook preliminary consultation with (including the Human Rights Commission and the Ombudsman) [REP/18/5/531]

9 **agree**, subject to your approval of the consultation plan and consultation materials, that MSD commence consultation with stakeholders the second week in May 2018.

**Agree/Disagree**

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Justine Cornwall  
General Manager  
Seniors and International Policy

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Date

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Hon Carmel Sepuloni  
Minister for Social Development

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Date



## Background

- 2 In the context of decisions on consultation on options to strengthen independent oversight of children's issues and the Oranga Tamariki system, Cabinet authorised you, in consultation with the Minister for Children, to take final decisions on the consultation materials for release [SWC-18-MIN-0025].
- 3 As noted in our report to you last week [REP/18/5/531], subject to your agreement, we are aiming to have the consultation materials on MSD's website in the first week of May 2018 with the consultation with stakeholders commencing the following week.

## Plan for consultation

- 4 Cabinet agreed that, as part of policy development, targeted consultation include engagement with:
  - children and young people, including those with disabilities
  - iwi and Māori, including the Oranga Tamariki Māori Design Group (for example)
  - Crown entities and Officers of Parliament (including the Office of the Children's Commissioner, Human Rights Commissioners, the Health and Disability Commissioner, the Privacy Commissioner, the Independent Police Conduct Authority, and the Ombudsman)
  - the Principal Judges in the Youth Court and Family Court
  - other key individuals with particular expertise in the area
  - Pacific peoples representatives, including the Oranga Tamariki Pacific Panel
  - groups and associations representing children, social workers, caregivers and others involved with the Oranga Tamariki system, such as VOYCE – Whakarongo Mai, the Social Workers Registration Board, Fostering Kids, YouthLaw Aotearoa
  - non-government organisations involved in delivering services to children and young people in the Oranga Tamariki system, or who advocate for children's rights and wellbeing, including those with a focus on disabled children and young people [SWC-18-MIN-0025].
- 5 Our proposed engagement plan is to:
  - engage with each of the stakeholder groups identified above. We have an 'active' stakeholder list which includes those stakeholders identified by the Children's Commissioner and we will continue to engage with the Commissioner and his office during this consultation phase of the review. As noted below, we are proposing to meet with the Commissioner soon to update him on the work
  - leverage off the existing stakeholder networks of other government agencies. For example, Te Puni Kokiri is closely supporting us to access their regional networks and we intend to present at the next scheduled meetings of the Oranga Tamariki Māori Design Group, the Oranga Tamariki Pacific Panel and the Ministry of Education's Advisory Group of education peak bodies
  - use different types of engagement ranging from face to face meetings with stakeholders (particularly with children and young people and iwi and Māori) to making contact with stakeholders (by email or telephone) and inviting comment. There will also be a dedicated page and email address on MSD's website for others who may not have been approached but wish to comment
  - adjust the engagement approach as needed to ensure we get the best coverage of stakeholders within the timeframes for consultation (being May-June 2018).
- 6 We will also continue to engage with those government agencies with an interest in work as broader consultation is undertaken.
- 7 There is a full communications plan to support this engagement.

## Consultation materials

- 8 Cabinet also agreed that the consultation materials be based on a summary of the preliminary work done so far and the information attached in the Appendices to the Cabinet paper. Appendix 2 included proposed consultation material [SWC-18-MIN-0025].
- 9 Attached are the consultation materials proposed for release. These are:
  - the consultation document
  - the key messages
  - 'Questions and Answers'
  - the media holding statement
  - website copy.
- 10 Changes during the development of the attached consultation document include:
  - reformatting
  - the addition of more factors that are important to successful independent oversight
  - the addition of more questions for stakeholders to consider including ones on the level of oversight required (at an individual level or a system level)
- 11 We recommend (subject to MSD incorporating any feedback in consultation with your office), that the attached consultation materials be readied for release: on MSD's website; and to support engagement with particular stakeholders.

## Proactive release of the Cabinet paper with advance copies to the Children's Commissioner and other oversight agencies

- 12 As part of the consultation phase of the review, we are proposing that the independent oversight Cabinet paper be proactively released on MSD's website along with the other consultation materials [REP/18/5/531 refers].
- 13 We have provided your office with an assessment for this proactive release of the Cabinet paper, along with a copy of the Cabinet paper highlighted to show the proposed redactions. This risk assessment notes that we propose to give the Children's Commissioner and the other oversight agencies we undertook preliminary consultation with (e.g. the Ombudsman and the Human Rights Commission) a copy of the paper in advance of this proposed public release.
- 14 We recommend that the independent oversight Cabinet paper is proactively released on MSD's website in the first week of May 2018 at a date agreed with your office.
- 15 We also recommend that:
  - MSD's Deputy Chief Executive Policy (Simon MacPherson) and the General Manager, Senior and International Policy (Justine Cornwall) meet with the Commissioner ahead of the release of the consultation materials and Cabinet paper on our website to give him an update on the review and an advance embargoed copy of the Cabinet paper
  - as soon as possible after this meeting with the Children's Commissioner, MSD also provide an advance embargoed copy of the independent oversight Cabinet paper to the other oversight agencies who have been involved in the review so far (including the Human Rights Commission and the Ombudsman).

## Next steps

- 16 We propose that you forward this report to the Minister for Children and the Minister for Poverty Reduction.



- 17 Subject to your approval of the consultation plan and consultation materials, we propose that MSD commence consultation with stakeholders the second week in May 2018. We will keep you updated as consultation progresses.
- 18 Engagement with children and young people is a priority. However, to do this in a meaningful way we need to focus first on understanding the feedback that comes through from other stakeholders on the oversight system components. For example, while we know that one of the key points of engagement with children and young people will be on what is needed for a child-friendly complaints mechanism, there may be other areas. We will work with Oranga Tamariki and the Office of the Children's Commissioner to refine how, and on what, we engage children and young people. We will also seek advice from VOYCE – Whakarongo Mai.
- 19 The proposed sequencing of actions for the next few weeks is set out in the table below.

Action	Date
There is consultation with the Minister for Children on the proposed consultation materials, and your office reports back on the outcomes of these discussions to MSD and the consultation materials are readied for uploading on MSD's website	By 30 April
MSD meets with the Children's Commissioner and (subject to your agreement) provides him with an advance copy of the Cabinet paper  Subject to your agreement, an advance copy of the Cabinet paper is also provided to the other oversight agencies as soon as possible after the Commissioner receives his copy	Early in the first week of May, at date agreed with your office
Proactive release of Cabinet paper on MSD's website along with the other consultation materials  *We propose that the Commissioner and the other agencies be given at least two working days to consider their advance copies of the paper. You may prefer that the proactive release not occur until after you have met the Commissioner	Late in the first week of May*
Subject to your agreement, MSD undertakes targeted consultation with key stakeholders on the options for independent oversight	Assuming consultation materials are put up on MSD's website in the first week of May, consultation takes place from 2 <sup>nd</sup> week in May – June

- 20 Consultation will provide further insights on what new requirements could be created by legislative change and system and policy reforms. We expect that it will clarify the core functions of the independent oversight body (or bodies), and what principles and features are critical to success. We also expect that consultation will expose the range of views on form and organisational design, reflecting on the current state and what is needed for the future. Importantly (as noted above) consultations with children and young people will need to deep dive on an effective complaints review mechanism in particular.
- 21 After consultation there is significant policy work to do that includes:
  - the legislation change programme
  - clarification of the principles for the function and design of a child centric complaints review mechanism
  - scoping capability and capacity requirements, organisational design, and implementation and comparing what is required with the current state of the Children's Commissioner. This is an important step in the review as it will

confront the practicalities of implementation and organisational readiness and risks

- a business case for investment to close the gap in resourcing in preparation for Budget 2019.

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