



2 December 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 two** in response to your request:

- REP/18/8/1145 – Report – *Strengthening Independent oversight of Oranga Tamariki and children's issues – post consultation report by the independent lead reviewer*, dated 10 August 2018
- REP/18/11/1560 – Report – *Structural options for independent oversight of the Oranga Tamariki system and children's issues*, dated 23 November 2018
- REP/18/12/1684 – Report – *Structural options for the monitoring of the Oranga Tamariki system*, dated 17 December 2018

- REP/18/12/1685 – Report – *Funding to commence work to establish independent oversight of Oranga Tamariki and children's issues*, dated 18 December 2018
- REP/19/1/019 – Report – *Draft Cabinet paper for feedback: Strengthening Independent Oversight of the Oranga Tamariki System and Children's issues*, dated 29 January 2019
- REP/19/1/020 – Report – *Early changes to the National Care Standards Regulations relating to the independent monitor*, dated 28 January 2019

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.

Some information is withheld under section 9(2)(g)(i) of the Act to protect the effective conduct of public affairs through the free and frank expression of opinions. I believe the greater public interest is in the ability of individuals to express opinions in the course of their duty.

Some information is withheld under section 9(2)(h) of the Act in order to maintain legal professional privilege. The greater public interest is in ensuring that government agencies can continue to obtain confidential legal advice.

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.

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 or 0800 802 602.

Ngā mihi nui

A handwritten signature in blue ink that reads "Christian Opetiaia".

Christian Opetiaia
Policy Manager
Child and Youth Policy



Report

Date: 10 August 2018

Security Level: IN CONFIDENCE

To: Hon Carmel Sepuloni, Minister for Social Development

Strengthening independent oversight of Oranga Tamariki and children's issues – post consultation report by the independent lead reviewer

Purpose of the report

1 This paper:

- provides the post consultation report prepared by the independent lead reviewer for strengthening oversight of the Oranga Tamariki system and children's issues, and our advice on that report
- gives you an update on timelines and key steps for this work, including how it fits with other activities such as the (re)appointment of the Children's Commissioner by 1 April 2019, and appointing an independent monitor for National Care Standards
- proposes we meet with you to discuss next steps and future direction of the work to strengthen independent oversight.

Recommended actions

It is recommended that you:

- 1 **note** that from May 2018 to July 2018, the independent lead reviewer (with support from the Ministry of Social Development and the State Services Commission) led a targeted consultation process to test the preliminary work on options to strengthen independent oversight of the Oranga Tamariki system and wider children's issues
- 2 **note** that the attached independent lead reviewer's post consultation report (the Report):
 - provides a summary of what was learnt from the targeted consultation
 - provides the independent lead reviewer's preliminary view on the case for strengthening oversight and what is required to do so
 - identifies where more detailed analysis is required
- 3 **note** that the report provides preliminary advice on the independent lead reviewer's overall direction on:
 - functions of the future independent oversight system for children
 - the form of the independent oversight body/bodies, but note that more detailed analysis is required in the next phase of work

- 4 **agree** that officials from the Ministry of Social Development and the State Services Commission meet with you in August 2018 to discuss the Report and next steps with the Review process

Agree / Disagree

- 5 **agree** that, following your consideration of the Report, officials from the Ministry of Social Development meet with the Children's Commissioner and the Ombudsman to give them a copy of the Report (and this cover report) and provide them with an update on the further work required for the next stage of the Review

Agree / Disagree

- 6 **agree** that, in consultation with you on the timing, we proactively release the Report on the Ministry of Social Development website

Agree / Disagree

- 7 **note** that, by the end of August 2018, the Ministry of Social Development, the State Services Commission and Oranga Tamariki will provide the Minister for Children as the Minister responsible for the National Care Standards (and the Minister of State Services and you) with joint advice on how decisions on the appointment of a monitor (including an interim monitor if required) for the National Care Standards fit with the timeframes of the Review

- 8 **note** that subject to your direction, we aim to seek final policy decisions from the Social Wellbeing Committee on 7 November 2018:

Action	Date
Further analysis	Aug – Sept 2018
Draft Cabinet Paper to Ministers for review	Late Sept 2018
Draft Cabinet Paper out for consultation	Early Oct 2018
Final Cabinet Paper to Minister	26 Oct 2018
Consideration of Cabinet Paper at Social Wellbeing Committee	7 Nov 2018
Budget bid for strengthened independent oversight	Dec 2018

- 9 **agree** to forward this report to the Minister for Child Poverty Reduction, Minister for Children and the Minister of State Services to support ministerial discussions on the direction of the Review.

Agree / Disagree

Simon MacPherson
Deputy Chief Executive
Policy

13.8.18

Date

Hon Carmel Sepuloni
Minister for Social Development

21/8/18

Date

Background

- 2 The recent reforms of the Oranga Tamariki system and new government priorities provide an opportunity to review the current independent oversight arrangements for the Oranga Tamariki system and children's issues (the Review).
- 3 On 9 August 2017, the Cabinet Social Policy Committee agreed that the Review be led by the Ministry of Social Development (MSD) using an independent lead reviewer, with support from the State Services Commission (SSC) [SOC-17-MIN-0115 refers]. The use of an independent lead reviewer is considered important to ensure that the review process is seen to be sufficiently independent. MSD appointed Sandi Beatie QSO as the independent lead reviewer. Ms Beatie has a high level of policy experience, independence and credibility with the Children's Commissioner and the sector.
- 4 The first phase of the Review, during 2017, identified overlaps and gaps in current arrangements, and potential options to strengthen the independent oversight model to improve outcomes for children and young people. As part of this phase, we engaged with relevant government departments, Crown Entities (the Children's Commissioner, Human Rights Commissioners, the Health and Disability Commissioner, the Privacy Commissioner, and the Independent Police Conduct Authority) and the Ombudsman.
- 5 On 28 March 2018, the Cabinet Social Wellbeing Committee agreed that we undertake a second phase of work and carry out targeted consultation with a wider group of stakeholders to test the preliminary work done before final policy decisions are made [SWC-18-MIN-0025 refers].

From May 2018 to July 2018, the independent reviewer led a targeted consultation process

- 6 The consultation sought views on the core functions required for strong oversight, critical features for success including skill and knowledge requirements, whether and how functions best sit together, and how the respective functions could be organised.
- 7 From May 2018 to July 2018, the independent reviewer (with support from MSD) led the engagement with a range of stakeholder groups, including with:
 - iwi and Māori, including a hui with Māori providers
 - Crown entities and Officers of Parliament
 - 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, caregivers and others involved with the Oranga Tamariki system, such as VOYCE – Whakarongo Mai, Fostering Kids, YouthLaw Aotearoa
 - non-government organisations (NGOs) involved in delivering services to children and young people in the Oranga Tamariki system, such as Dingwall Trust and Barnados and NGOs that advocate for children's rights, such as Save the Children and UNICEF.
- 8 In May 2018, the independent oversight Cabinet paper was proactively released on MSD's website along with other consultation materials to initiate engagement with stakeholders.
- 9 The consultation materials were emailed to around 140 groups and individuals, both internal and external to government, inviting them to participate in the consultation

process by submitting written feedback or meeting with the independent lead reviewer.

- 10 The independent lead reviewer (or in some cases MSD on behalf of the independent lead reviewer) consulted with 35 individuals or representative groups either face to face or by telephone, and we received a total of 33 written submissions. We can provide you a full list of submitters and those we met with at your request.
- 11 Incorporating the voice of children and young people is a priority for the Review. Based on advice from Oranga Tamariki and the Office of the Children's Commissioner (OCC), the independent lead reviewer drew on existing insights (particularly from care experienced children) gathered by the OCC, Oranga Tamariki and the Expert Advisory Panel for the Child, Youth and Family Review and VOYCE Whakorongo Mai. To supplement this, MSD has engaged specialist expertise to undertake focus groups with children and young people who are vulnerable but not care experienced. We will receive findings from these focus groups by the end of August 2018 (along with a composite report on relevant insights from children). The findings will feed into the detailed analysis stage of the Review before final policy decisions on independent oversight are sought from Cabinet.

The independent lead reviewer's report summarises the outcome of the consultation process and her views on the direction required for the future independent oversight

- 12 In August 2018, the independent lead reviewer provided a post consultation report (the Report) to inform the Review. A copy is **attached**.
- 13 The independent lead reviewer sets out the proposed purpose and role of each function and recommends that more focused functions of monitoring, complaints review and investigation are established. The Report also highlights the continuing need for strong systemic advocacy, including on poverty reduction, children's wellbeing and rights.
- 14 There was general consensus from submitters on the need to strengthen independent oversight, but a range of views on how the functions should be organised and who is best to deliver them. There was more support for keeping all the functions together than for separating functions into different bodies.
- 15 The key messages from those with experience of the care and protection system is that independent complaint avenues separate from Oranga Tamariki are needed for children and adults. They need to be accessible, trusted, timely, fair and safe. The complaints and investigation functions are currently inadequate in the oversight system. Under current arrangements, OCC does not provide oversight for *individual* complaints and does not have routine access to system information from Oranga Tamariki. The reviewer suggests new functionality that focuses on complaints made by or on behalf of individual children and their whānau is needed (whether directly or escalated from Oranga Tamariki). The reviewer identifies that the complaints review and investigation functions relating to the Oranga Tamariki system could potentially be incorporated in the OCC but notes that a very different skill set is required in the OCC to undertake these functions effectively.
- 16 Alternatively, the Report suggests that the complaints review and investigation functions could be located in a separate body such as the Office of the Ombudsman. This option has advantages given Ombudsmen's status as Officers of Parliament and the Office's established experience in complaints review and investigations processes and specialist capability. However, further investment is required to ensure a child and whānau friendly gateway and expertise in children's systems and services.
- 17 The Report supports broader systematic monitoring of the care and protection system as a whole, and of all arrangements for children and young people in care. It sets out that systematic monitoring must provide credible evidence based

assessments, be a respected source of independent advice and add value and underpin a learning system. It must also be a trusted source of independent reporting that provides assurance to Ministers, Parliament and to the public.

- 18 The Report recognises that the monitoring of National Care Standards (alone) would represent a significant increase in scale (less than 3% of care population is systemically monitored by OCC as part of its Optional Protocol to the Convention Against Torture [OPCAT] designations), is more regulatory in nature than current OCC activity, and would require investment in expertise. The Report suggests that OCC should be the monitor of Oranga Tamariki recognising the sector support for the retention of the Commissioner and its current functions. There are also other benefits such as avoiding time lags from the economies of scale of utilising an existing body. The Report, however, notes that changes would be required to OCC legislation, and that a significant build in organisational capability and capacity would be required.
- 19 To ensure the required focus and expertise, the Report recommends consideration of the creation of two statutory Commissioners – a Children’s Commissioner and an equal and distinct Commissioner for Care and Protection. The Commissioners could be supported by a Board, appointed by Government, incorporating an appropriate range of knowledge and skills, with the OCC being led and managed by a Chief Executive.

The Report identifies areas of further work for the next phase of the Review

- 20 The independent lead reviewer reinforces that her conclusions in the Report are subject to detailed analysis to be done in the next phase of the Review. Areas for further consideration include:
 - the feasibility and desirability of assigning the Office of the Ombudsman the complaints review and investigations functions, for example the:
 - capabilities required to ensure a child and whānau friendly gateway to access complaints
 - legislative changes needed to establish the independent complaints review and investigation functions
 - a system wide perspective on the extent of the OPCAT designations required and where these are best located for monitoring purposes
 - the skills, capabilities, leadership and structure to support the changes
 - wider changes to the legislation and adequate new funding to support the transition and future operations.

Preliminary advice on the overall direction proposed by the independent lead reviewer

- 21 Based on the feedback received during the consultation process and our preliminary analysis, our initial advice on the main proposals in the Report is set out in the following table.

Independent lead reviewer's recommendation	Our preliminary advice
Functions	
<p>The OCC to have responsibility for <i>systemic advocacy</i> and <i>monitoring</i> (with changes to its legislation and structure), including:</p> <ul style="list-style-type: none"> • NZ application of UNCROC • OPCAT monitoring • National Care Standards monitoring • Oranga Tamariki system monitoring 	<p>This recommendation relies on a significant build of OCC's processes, policies, systems, culture, capacity and capability (especially if OCC was appointed to monitor the new National Care Standards)</p> <p>Benefits:</p> <ul style="list-style-type: none"> • Delivers the desired focus on children and young people that are part of the Oranga Tamariki system • Preserves and builds on OCC's current strength and reputation in advocacy, UNCROC and current OPCAT activity • Leverages potential synergies of having the systemic advocacy function and monitoring function in the same agency <p>Risks and issues:</p> <ul style="list-style-type: none"> • The need for a significant capacity and capability build may undercut the advantages of utilising an existing body • Formal, internal separation of the advocacy and monitoring functions is required to address any perceived risk of having both functions in one body • OCC's current model of monitoring is not scalable, and the quality and value of their monitoring reports varies • New capabilities and a revised approach are needed to in the OCC to monitor at the scale required or to manage systemic monitoring that is more regulatory in nature – a revised approach is needed, and cultural change and capability build in the OCC will require time and investment • The focus on systemic monitoring of National Care Standards is required but there are other parts of Oranga Tamariki's operating model and target populations that should be considered, eg children at risk • Care will be required to balance oversight of all children vs children in Oranga Tamariki system appropriately
<p>And either incorporate <i>complaints and investigations</i> functions into OCC</p>	<p>The main issues with this option are the nature of the capabilities required and the perceived conflict between advocacy on behalf of children and even-handed complaints review and investigation functions</p> <p>Benefits:</p> <ul style="list-style-type: none"> • One body recognised as dedicated to children • Consultation indicated more support for keeping all functions together than for separating these <p>Risks and issues:</p> <ul style="list-style-type: none"> • Perceived conflict between advocacy on behalf of children and other functions that require an objective and even-handed approach – formal, internal separation could mitigate this risk to some extent • OCC does not currently undertake complaints functions at any scale and does very few investigations. They would need to significantly build capability and capacity to do this work at the level required.

	<ul style="list-style-type: none"> If OCC needed to develop a new complaints and investigations functions (as well as an enhanced monitoring function) the high level of change and build in the OCC will increase implementation risks
<p>Or incorporate <i>complaints</i> and <i>investigations</i> functions into a separate body (eg the Ombudsmen)</p>	<p>This option requires specific capabilities and resources to be built to ensure a child and whānau friendly gateway (eg by establishing a Children's Ombudsman), and resourcing the new functions to ensure timely responses</p> <p>Benefits:</p> <ul style="list-style-type: none"> The Office of the Ombudsman has established experience in complaints and investigation processes, systems, policies, culture and specialist capability Could be a faster build than in the OCC Spreads the overall change and build required across two entities The Ombudsmen's existing power and wide mandate make them well placed to deal in a 'child centric' way with complex matters that span agencies' boundaries Based regionally (wider than in Wellington) Removes an extra step for complaints (which can already be escalated to the Ombudsmen) The Ombudsman's Office has extensive powers as an Office of Parliament We understand that the Chief Ombudsman would be supportive (as indicated in his submission) <p>Risks and issues:</p> <ul style="list-style-type: none"> The Chief Ombudsman recognises the need for a more child and whānau friendly gateway and additional specialist skills Key principles (eg for being timely, mindful of the broader system, restorative, child and whānau centric) could be incorporated in the Ombudsman Act Some reduction in synergies resulting from the focus on children being spread across two bodies and potential confusion around who does what – an effective communication plan would be required Arrangements/protocols would be needed for the Office of the Ombudsman and the OCC to work together and with Oranga Tamariki
Form	
<p>Strengthen aspects of the OCC structure:</p> <ul style="list-style-type: none"> Two equal Commissioners with their own statutory functions – a Children's Commissioner and a Commissioner, Care and Protection A Board – two Commissioners being ex officio executive members and five to six independent non-executive members, 	<p>We see separation of roles and more than one Commissioner as essential to provide good coverage of the range of functions and continuity of direction</p> <p>Benefits:</p> <ul style="list-style-type: none"> Keeps the concept of a Children's Commissioner, which has strong recognition nationally and internationally Establishing a Commissioner for Care and Protection would deliver the focus on Oranga Tamariki that is needed Introducing a Commissioner Care and Protection and a CE could fill deficits in capability, and support the required transformation in culture change and organisation Two Commissioners would enable focus on both all children and children in the Oranga Tamariki system in one body – outcomes for care experienced

<p>including young people</p> <ul style="list-style-type: none"> • A Chief Executive (CE) to manage the staff – appointed by Board, employer of staff and supporting the work of the Commissioners 	<p>children can be aligned to and considered alongside outcomes for all children</p> <ul style="list-style-type: none"> • A Board could provide participation opportunities for a diverse range of voices, including children, care experienced people and Māori • A Board would also provide stability of focus for the body over time, particularly if OCC is appointed to monitor the National Care Standards which require consistent, stable ongoing regulatory assessments • Shifting to more than one Commissioner and a Board avoids priorities remaining at the discretion of a single Commissioner <p>Risks and issues:</p> <ul style="list-style-type: none"> • Recent events at the Human Rights Commission highlight the risk of having multiple commissioners combining governance and management roles – the risk could be mitigated with appropriate separation of roles between the Commissioners, Board and the CE • A Board would need to be adequately resourced to maximise effectiveness
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The next phase of the Review

We will undertake detailed analysis on the options and consult key stakeholders

- 22 On balance, we suggest that the next phase of the Review actively explores preserving and building on the existing systemic advocacy and monitoring functions in the OCC and the option of incorporating the complaints and investigation functions in the Ombudsman (note that individual complaints and investigation functions are not undertaken by the OCC at present and a very different skill set is required).
- 23 Subject to your direction, we will proceed with the next phase of the Review including detailed analysis of each function, capability and capacity requirements, and organisational design to enable policy development and legislative amendments.
- 24 As well as the further work identified by the independent lead reviewer, other issues identified that will need to be addressed in developing final proposals include:
 - a decision on who might chair the Board eg an independent person or one of the Commissioners
 - whether independent monitoring of child wellbeing is required and where it should be located
 - whether OCC also requires further investment in its advocacy work
 - how to ensure that the independent individual advocacy which is an important element of the care and protection system is delivered effectively (the role for which VOYCE Whakarongo Mai has been established)
 - rewriting the Children's Commissioner Act 2003, in consultation legal advisors and Crown Law if required to:
 - rebalance functions (and associated powers) depending on the direction decided
 - embed the commitment to the principles of the Treaty of Waitangi (consistent with the new provisions in the Oranga Tamariki Act) and potentially to ensure Maori representation in oversight arrangements
 - give joint and balanced attention to the internationally established rights of the child, child wellbeing and te aro Māori and Treaty of Waitangi obligations

- potentially to better recognise the role of family and whānau in caring for and protecting children
 - the need and mechanisms of (more) transparent reporting on performance of the Oranga Tamariki system and children's wellbeing
 - leveraging synergies between functions (and individual advocacy) to improve system performance and learning and outcomes for children
- 25 We anticipate amendments to the Children's Commissioner Act 2003, and possibly to other legislation eg the Oranga Tamariki Act 1989 and the Ombudsman Act 1975.
- 26 We seek your agreement that, following your consideration of the independent lead reviewer's report, officials from MSD meet with the Children's Commissioner (and the OCC) and the Ombudsman to give them a copy of the Report (and this cover report) and an update on the Review. We have already provided a confidential copy of the Report to the CE of Oranga Tamariki to check for factual accuracies.
- 27 We also seek your agreement that, in consultation with you on the timing, we proactively release the independent reviewers Report on the MSD website.

We will maintain connections with relevant activities

- 28 During the next phase of the Review we will continue to maintain connections with Oranga Tamariki on the work on the National Care Standards. The Oranga Tamariki Act requires the Minister for Children to appoint an independent agency or body to monitor and report on the Standards when the Oranga Tamariki (National Care Standards) Regulations come into force on 1 July 2019. The scope of the Review includes consideration of who this agency or body should be.
- 29 By the end of August 2018, MSD, SSC and Oranga Tamariki aim to provide the Minister for Children (and Minister State Services and you) with joint advice on how decisions on the appointment of an independent monitor fits with the rest of the process on the Review.
- 30 Depending on the timing of Cabinet decisions and subsequent implementation of the chosen option, an interim independent monitoring body for the National Care Standards may be needed. s9(2)(h)
- s9(2)(h)
- 31 Judge Becroft's term of appointment was due to end on 30 June 2018. He has agreed, however, to continue to serve until 31 March 2019. It is estimated that a process to appoint a new commissioner will take between four and six months.
- 32 The independent lead reviewer noted (during a follow up discussion) that a Commissioner on their own is unlikely to successfully manage the required transformation in the OCC and transitional appointments would need to be made to support the change process. Following final policy decisions by Cabinet on the Review, we will provide separate advice on the range of skills and experience needed for the Office to make the capability and culture shifts required to ensure:
- a significantly enhanced monitoring function
 - successful change leadership through a period of growth and development
 - the ability to work effectively with Government officials and as new/ enhanced functions are developed (and there are concurrent changes in Oranga Tamariki)
- 33 Consideration also needs to be given to the financial implications of the proposed changes to the OCC funding. We note that the OCC's current baseline is \$2.157

million per year. This was supplemented by an additional \$500,000 in 2017/2018, and agreement that the OCC would spend some of its cash reserves. For 2018/2019 a further \$1 million was set aside. This was primarily to allow the OCC to maintain current levels of monitoring.

- 34 Both of these payments were "one-off" decisions, pending the outcome of the Review and decisions on the OCC's long term funding requirements. Given the timeframes, this process is not likely to be completed until the policy and legislative process is substantively complete.
- 35 In the meantime, provision needs to be made for additional funding to maintain current levels of activity in 2019/2020, to maintain capability, and to cover the cost of any changes taken in advance of enactment of the new legislation. A preliminary analysis suggests that around \$1 million is required to cover off current levels of activity and new funding is required for new or enhanced functions as part of Budget 2019. This will be part of a wider budget bid which will be put forward to strengthen independent oversight.

Next steps

- 36 The table below sets out the indicative timeframes to seek final policy decisions from Cabinet by 7 November 2018:

Action	Date
Further analysis	Aug – Sept 2018
Draft Cabinet Paper to Ministers for review	Late Sept 2018
Draft Cabinet Paper out for consultation	Early Oct 2018
Final Cabinet Paper to Minister	26 Oct 2018
Consideration of Cabinet Paper at Social Wellbeing Committee	7 Nov 2018
Budget bid for strengthened independent oversight	Dec 2018

- 37 Following final policy decisions by Cabinet, a bill could be introduced in the House around March 2019. Once Cabinet has taken decisions on the nature of the functions and where they should sit, it should be possible to start implementation of the new functions and capabilities before the legislation is passed, subject to the agreement and cooperation of the Children's Commissioner (and, if applicable, other agencies).
- 38 Officials from MSD and SSC would like to meet with you in August 2018 to discuss the independent lead reviewer's report and the next steps with the Review process, including engagement with the Children's Commissioner and the Ombudsman, and the public release of the independent reviewer's Report. If you agree we also recommend that the Commissioner and Ombudsman receive a copy of this report. Subject to your direction, we may need to revise the timeframes.
- 39 We recommend that you forward this report to the Minister for Child Poverty Reduction, Minister for Children and the Minister of State Services to support ministerial discussions on the direction of the Review.

File ref: A10711784

Author: ^{s9(2)(a)} Policy Analyst, Seniors and International Policy

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



Report

Date: 23 November 2018

Security Level: BUDGET-SENSITIVE

To: Hon Carmel Sepuloni, Minister for Social Development

Structural options for independent oversight of the Oranga Tamariki system and children's issues

Purpose of the report

- 1 This report responds to your request for further advice on options for where an independent monitoring and assurance function for Oranga Tamariki should be located.

Executive summary

- 2 On 24 October 2018, you met with the Prime Minister and Minister for Children to discuss options for who should undertake the three core independent oversight functions for the Oranga Tamariki system and children's issues: (i) systemic advocacy, (ii) monitoring and assurance of Oranga Tamariki, and (iii) oversight of complaints.
- 3 Of these functions the Office of the Children's Commissioner (OCC) has the expertise to continue to lead systemic advocacy for all children in New Zealand. We were asked to progress discussions with the Office of the Ombudsman on their ability to deliver a complaints oversight function for the Oranga Tamariki system.
- 4 Ministers also asked for further advice on:
 - the implications of the monitoring and assurance function being assigned to either OCC (option a) or a separate entity (option b); and
 - whether existing agencies or bodies could be leveraged to carry out the independent monitoring function, if option (b) were to be adopted.
- 5 This report assesses options (a) and (b) based on the requirements of competence and impartiality, together with financial and legislative implications. It also provides an update on the development of advice on the assignment of the complaints oversight function with the Ombudsman.

Assessment of monitoring options

- 6 The depth and breadth of the independent monitoring and assurance we consider will be needed to support Oranga Tamariki's new operating model and its transformation will be a major undertaking. New resourcing would be required under either option (a) or (b). The Government will need to be very confident in the competence of an independent monitor to ensure the anticipated benefits of new investment in Oranga Tamariki are realised.
- 7 Assurance and accreditation specialists underscore the need for a monitor to have a culture of impartial, objective assessment to be effective. A further important consideration is whether monitoring and assurance could be carried out impartially by the designated body.

Option (a): OCC carrying out the monitoring function

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s9(2)(g)(i)

- 9 If the OCC was assigned as the monitor, it would take time to mature its existing capabilities. The impact of this would be to delay monitoring intelligence for the system. An assessment framework for the National Care Standards (NCS) must also be developed in 2019. We consider that an interim monitor with more mature abilities would need to be appointed to develop that framework.
- 10 The OCC's current approach entwines their monitoring activity with advocacy. A shift in culture may be required and arrangements to ensure the impartiality of the monitoring arm would also need to be put in place within OCC.
- 11 Under this option, changes to the Children's Commissioner Act 2003 would also be required to strengthen governance arrangements to provide focus for the monitoring role.
- 12 The OCC is not subject to direction on government policy except as specified in its own Act. As a parliamentary entity, it is not subject to Ministerial priority setting. This creates a sense of greater independence, however if the Minister for Children wanted to specify some priorities or ask the monitor to provide supplementary reports (in line with NCS regulation 82) or review particular matters then we may need to consider how to appropriately manage that within legislation.

Option (b): Separating out the monitoring and assurance function

- 13 We investigated which existing government agencies in related sectors with experience in monitoring and assurance could monitor Oranga Tamariki. We met with the Education Review Office (ERO), the Health Quality and Safety Commission and the Social Services Accreditation service within the Ministry of Social Development. We also met with the Ministry of Health to understand if its DHB-monitoring or certification functions could be leveraged to carry out the function. We did not consider market-based providers in this process, given the vulnerable population concerned and the state of change underway.
- 14 As detailed in the body of the paper and Appendix One, our assessment is that relative to these entities and to the OCC, ERO is currently best-placed to deliver the monitoring function. ERO has mature capability, an understanding of what is required in a regulatory environment, well-developed infrastructure including a regional presence, and experience in children-centric evaluation and assessment.
- 15 ERO are open to taking on the monitoring function, given sufficient resourcing. They envisage a branded business unit being established to ensure a dedicated focus to carry out the function and not detract from their role in the education sector.
- 16 ERO have highlighted they would need to develop their care and youth justice sector knowledge and invest further in specific capabilities to carry out the role. Even so, the build for ERO would also be faster than for OCC, with less implementation risk. They also have the expertise to develop the assessment framework for NCS next year.
- 17 ERO is a government department. As a result, it is subject to Ministerial instruction. Notwithstanding its organisational form, the practice of successive Ministers responsible for ERO has been to treat its assurance and monitoring work as independent.
- 18 Changes to legislation are likely to be required to assign ERO the monitoring function under option (b). Other changes would be likely to include expanding the designated functions of the agency, and assigning it certain powers, such as requiring the provision of information and/or the ability to enter a different range of premises.

- 19 If functions were separate, oversight bodies would need to have established working relationships. This could be made clear in legislation.
- 20 There would be the opportunity to build on the OCC's systemic advocacy function, using its existing strengths. This could, for example involve expanding the OCC's contribution to the Child Wellbeing Strategy, building greater issues-awareness across the public service, and an enhanced advocacy focus on the interests and needs of Māori children. They would still have the ability to comment as the system advocate for children on the Oranga Tamariki system. OCC is also well placed to regularly collect systematic feedback from children and young people. This would position the organisation to be more effective in its advocacy on children's issues.

Key next steps

- 21 To progress the development of the preferred ways forward, we propose that you discuss this paper with the Prime Minister in her capacity as Minister for Child Poverty Reduction, the Minister for State Services, the Minister for Children and the Speaker of the House.
- 22 To enable a funding bid for Budget 2019, a direction is required by 5 December 2018 on whether the OCC or another existing body such as ERO should be progressed in the bid as the monitor of Oranga Tamariki. We will then prepare detailed policy advice for final policy decisions by Cabinet in February 2019.

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OFFICIAL INFORMATION ACT

Recommended actions

It is recommended that you:

- 1 **note** the advice provided on two main options for the oversight functions for the Oranga Tamariki system and children's issues:
 - 1.1 systemic advocacy and monitoring of Oranga Tamariki being assigned to the Office of the Children's Commissioner (OCC), and the complaints oversight function being assigned to the Ombudsman; or
 - 1.2 advocacy being assigned to the OCC, complaints to the Ombudsman, and monitoring being assigned to another existing entity
- 2 **note** that on balance, officials consider that the Education Review Office is currently best-placed entity to assume the external monitoring function
- 3 **agree** to discuss this paper with the Prime Minister in her portfolio capacity as Minister for Child Poverty Reduction, the Minister for Children, and the Speaker of the House in order to agree the preferred entities to deliver the monitoring and complaints oversight functions
- 4 **note** that, as part of next steps, officials will:
 - 4.1 prepare communications on the preferred directions for oversight of the Oranga Tamariki system and children's issues
 - 4.2 provide you with further advice on Budget options by 27 November 2018
 - 4.3 update the Minister for Children on requirements and funding for the monitoring of the National Care Standards in early December 2018
- 5 **agree** to discuss options with the Prime Minister in her capacity as Minister for Child Poverty Reduction, the Minister of State Services and Minister for Children
- 6 **agree** to advise officials by 5 December 2018 on the preferred option for the delivery of the monitoring function to enable a Cabinet Paper and bid for Budget 2019 to be finalised within required timeframes
- 7 **note** that we will prepare detailed policy advice to Cabinet for final policy decisions in February 2019, including agreement on detailed arrangements for:
 - 7.1 the delivery of the monitoring and assurance function
 - 7.2 the assignment of the complaints oversight function to the Ombudsman
- 8 **agree** to meet with officials to discuss the contents of this report.

AGREE/DISAGREE

AGREE/DISAGREE

AGREE/DISAGREE

AGREE/DISAGREE

Simon MacPherson
Deputy Chief Executive
Policy

Date

Hon Carmel Sepuloni
Minister for Social Development

Date

Background

- 23 The Review of Independent Oversight of Oranga Tamariki and Children's Issues (the Review) is examining options to strengthen three core oversight functions:
- systemic advocacy for New Zealand children
 - independent monitoring and assurance of Oranga Tamariki
 - oversight and investigation of complaints, particularly relating to the operation of Oranga Tamariki.
- 24 On 24 October 2018, you met with the Prime Minister and Minister for Children to discuss who might undertake these three core oversight functions.
- 25 The Office of the Children's Commissioner (OCC) has the expertise to continue to lead systemic advocacy for all children in New Zealand. It has a proven track record in carrying out this function to date.
- 26 There is also a strong case for the Ombudsman to be assigned the complaints oversight function, given its capabilities and experience in complaints review and investigations. Ministers asked us to progress discussions with the Office of the Ombudsman on their ability to deliver a complaints oversight function.¹
- 27 Ministers also asked for further advice on the monitoring and assurance function, including:
- the implications of the external monitoring functioning being assigned to either the OCC (*option a*) or a separate, existing entity (*option b*); and
 - what existing agencies or bodies could be leveraged to carry out the external monitoring function, if option (b) were to be adopted.

The monitoring and assurance function will be a significant undertaking

- 28 Evidence-based assessments of public services provide assurance to Ministers, Parliament and the public. Robust monitoring and assurance should be a feature of all public services. Our work has identified that there has been under investment in assurance in the statutory care system in general. Timely and detailed information that comes from monitoring can help identify whether services are working as intended or not and where efforts to improve should be focused. In this way, monitoring and assurance can help the new system to calibrate itself faster, and can help ensure that the anticipated benefits of new, significant higher levels of investment are realised.
- 29 The Minister for Children must appoint an independent monitor to assess compliance with the new National Care Standards (NCS), which are to be phased in from 1 July 2019. We will recommend that the independent monitoring and assurance function cover not just NCS, but all the elements of Oranga Tamariki's operating model where intervention and decisions relating to the care and protection of children are

¹ We are discussing the scope of the complaints oversight function with the Ombudsman and his office. Our vision is that the complaints oversight body would:

- undertake second/third tier review of complaints not satisfactory resolved within Oranga Tamariki
- be notified of all serious complaints and incidents and depending on the circumstances and context, directly investigate and make recommendations for resolution or monitor actions by Oranga Tamariki
- provide a common doorway to begin to resolve complaints for an individual that span agencies
- oversee Oranga Tamariki's complaints processes, commenting on design and the operation of these; and if supported by decision makers do the same for other children's agencies

undertaken. There may also be a case for the appointed body to monitor the compliance of Oranga Tamariki's care and custody residences and youth justice residences' compliance with the Optional Protocol on the Convention against Torture (OPCAT) - this role currently carried out by the OCC. We would however need to further assess how this fit with United Nations requirements on the types of entities that can undertake this task.

- 30 The quality of practice in statutory care needs to become more consistent². Oranga Tamariki's internal quality assurance and reporting arrangements are being developed and will take time to mature. Public trust and confidence in this system also needs to be boosted. In view of this, external monitoring and assurance will need to be resourced sufficiently so that overall there is a fit-for-purpose 'assurance overlay'.
- 31 The scale of the monitoring function depends on available budget and decisions about the levels of assurance that should be invested in. A comparator is that ERO has 216 FTE for monitoring 2500 schools and 4000 early education service providers.
- 32 Objective, impartial and consistent focus on current settings will be required. The monitor must be able to:
 - critique management systems and how they are being applied in practice
 - assess conformance against regulations and standards
 - analyse data and make informed data requests
 - analyse information from Oranga Tamariki, the broader system and a range of other sources – including research-quality interviews with children, young people, their whānau and trusted advocates – and give an objective summary
 - undertake 'deep dive' reviews on particular themes or issues, calling on subject matter experts as required
 - provide information and recommendations that supports Oranga Tamariki's learning and quality improvement processes
 - deliver high quality public reports.
- 33 The monitor must also get off to a confident start and be quite agile in the short to medium term³. This speaks to the maturity required in the appointed monitoring and assurance body.

Option (a): Assigning the monitoring function to the OCC

OCC current scale and scope of monitoring and implications for an expanded role

- 34 OCC's scale and scope of monitoring to date has been restricted by the level of resourcing it has had for this function and powers. It currently has around 10 FTE staff in its monitoring team. There are some strengths - for example the recent development of the *Mana Mokopuna* lens for considering children experience of culture and identity, and the current Commissioner's commitment to boost its

² REF: Transforming Our Response To Children And Young People At Risk Of Harm- Paper Four: Care

³ Expectations are that initially monitoring would establish a baseline of service and quality, but would move to more of a risk based approach in the future. The initial intensity of focus may be on some parts of the operating model or features - say National Care Standards and whānau engagement - but will need to shift to other areas over time. As Oranga Tamariki's internal monitoring matures and insights that can be gleaned from other sources such as a well-established individual advocacy service, independent monitoring might decrease, shift focus or lift quality to higher levels.

expertise in Te Ao Maori. In general though, the OCC has a small-scale⁴ monitoring function and its systems and practices are not sophisticated.

35

s9(2)(g)(i)

- 36 In terms of infrastructure, a monitoring and assurance body would benefit from regional presence to ensure proximity and coverage, and to reduce travel and accommodation costs for field work, and OCC does not currently have this.
- 37 To build the monitoring function up to the scale and level of maturity that would be appropriate for the new regulatory settings would be challenging and take time. This will delay the level and quality of information about Oranga Tamariki's operation and quality on the ground.
- 38 Further, during 2019 an assessment framework for NCS must be developed. This will be a key monitoring framework. The Ministry of Business, Innovation and Employment's (MBIE) recent *Conformance Policy and Infrastructure Review*⁵ highlights how important it is to have competent assessors using robust assessment frameworks to make regulation effective.
- 39 We consider that if the OCC were to be assigned the ongoing monitoring function, an interim monitor with the required knowledge and competence would need to be appointed to develop the assessment framework for NCS in 2019.

Advocacy and monitoring may be more effective if they are separate

- 40 There is a tension between impartial monitoring and advocacy. The advocate's objective is to push for improvements to current system settings. It may or may not have regard to the policy objectives of the government of the day. It seeks to influence these. In contrast, for effective monitoring and assurance, impartiality, stability and an objective focus on current settings, is a key requirement.
- 41 The Children's Commissioner has been highly effective in the advocacy side of his statutory role. This strength however, may make it more difficult for Oranga Tamariki and other key stakeholders to perceive the OCC as an impartial and objective monitor if it were assigned that role. A counter view expressed in particular by the children's rights sector is that separating out monitoring from advocacy may somehow weaken the effectiveness of these functions.
- 42 It is important to consider how we can best ensure that the monitoring and assurance can drive and support a continuous learning culture. Objective, fair and considered assessments of performance against current settings and regulation can do this, and

⁴ OCC currently regularly monitors application of OPCAT provisions in children's care and custody settings where children and young people are detained. This activity only covers around three percent of children and young people in the care of the chief executive of Oranga Tamariki at present. OCC also undertakes a small number of theme based reviews and in-depth assessments across a selection of sites (for example for the first time, this year OCC assessed care provision through contracted service providers). OCC also reviews quarterly and annual reports for grievance panels for children and young people in residences and remand.

⁵ The MBIE review considered consider the health, performance and use of New Zealand's conformance infrastructure and assessments. Conformity assessments check that goods, services, personnel and systems meet standards or regulations. Regulators rely on the experience and skills of conformance experts to check that goods, services and practices are safe and sustainable.

ultimately ensure that children and young people within the system receive a better service and experience.

- 43 As the key advocate for children, the OCC would still have the ability to comment on the Oranga Tamariki system as part of the overall consideration of the rights and wellbeing for all children in NZ and in line with United Nations Convention on the Rights of the Child (UNCRC). We expect that as an advocate, the OCC would draw on the findings of the monitor to bolster arguments for change.
- 44 Additionally the OCC would be able to better focus on systemic advocacy for all children and push for changes in settings and in our aspirations for all children.

Legislative implications of option (a)

- 45 Regardless of which agency is assigned the monitoring function, we will recommend that the *Children's Commissioner Act 2003* be amended to update it and provide clearer provisions in relation to the responsible Minister, purpose, and functions, consistent with the outcomes of the Review. Much of the current Act (eg the purpose provisions) is historical and to some extent out-of-step with current operations.
- 46 As an Independent Crown Entity, the OCC is not subject to direction on government policy except as specified in its own Act. As a parliamentary entity it is not subject to Ministerial priority setting. This creates a sense of greater independence, however if the Minister for Children wanted to specify priorities or ask the monitor to provide supplementary reports (in line with NCS regulation 82) or review particular matters then we may need to consider how to appropriately manage that within legislation.
- 47 The independent reviewer's report also raised the possibility of strengthening the governance of the OCC if it were to be assigned the monitoring function. This would provide internal separation of and focus for the monitoring role and greater continuity in leadership. This could be done through either:
 - the creation of a second Commissioner to oversee statutory care/the monitoring and assurance function, in order to provide a dedicated focus for this role; and/or
 - the establishment of a Board, incorporating an appropriate range of knowledge and skills and to provide greater continuity in leadership.
- 48 If you elect to retain the monitoring function within the OCC we would provide you with advice on specific governance options and what would be required to support the office to build the capacity and capability required to get their function to scale. We would also reflect any governance changes into the OCC legislation.

Option (b): Assigning the monitoring and assurance function to a separate entity

- 49 Ministers indicated that if the function was to be shifted from the OCC then they would prefer to have this function delivered by an existing agency rather than to establish a new body given it is likely to require a more extensive and costly build process.
- 50 Any agency assigned the monitoring function would still require investment in its capacity to carry out this role, and capability build in some areas. However, it may be possible to derive efficiencies if the agency assigned the function has existing systems and infrastructure; and, an agency with more mature systems and experience in monitoring at scale will be more competent from the outset.

Possible existing entities to carry out the independent monitoring and assurance function

- 51 We examined whether the independent monitoring function could be reliably delivered by another agency, rather than OCC. We focused our assessment on government entities operating in similar environments in order to best align any new function with any existing role they currently hold.
- 52 We have not considered market based providers in this process. Given the vulnerable population, the state of change underway in Oranga Tamariki there is a question as to whether it would be beneficial for the State to outsource a monitoring and assurance function. In addition the statutory care systems operating, reporting and quality assurance expectations are developing, it would be challenging to convey to the market how conformance vs quality should be assured, to guarantee access to data and records, or to provide a baseline to monitor against. NCS make expectations for care clear, but for other parts of Oranga Tamariki's operating system expectations still need to be established. A government entity would be better able to work through these issues with Oranga Tamariki. Privacy implications would also need to be considered and we would still require a suitably qualified government agency to administer and manage any contract held with a private sector provider.
- 53 We identified four government entities potentially suited to carry out the monitoring function:
- **The Education Review Office (ERO):** ERO reviews and evaluates education sector institutions catering for children broadly in the same age range as covered by the care and protection sector.
 - **Ministry of Social Development (MSD):** If the role was allocated to MSD, we expect it would be undertaken or supported by the Social Sector Accreditation (SSA) team, a shared service hosted within MSD whose functions include accrediting non-government organisations providing care and protection services for Oranga Tamariki. SSA already has some of the capabilities required for the monitoring function.
 - **The Ministry of Health (MoH):** MoH currently carries out a range of monitoring and assurance activities in the health sector. This includes monitoring and driving the performance improvements of health sector Crown entities including district health boards (DHBs), and regulating health and disability service providers, including rest homes, DHBs, and residential disability services.
 - **The Health Quality and Safety Commission (HQSC):** HQSC's main objective is to drive quality and safety improvements. Its primary strength is in data analytics, adverse events reviews and learning (including children mortality reviews) and quality improvement systems.

Of these entities, ERO is best placed to provide the monitoring and assurance function

- 54 After we meet with each entity, we assessed each of the four options listed above against a common criteria, including each entity's:
- monitoring culture
 - experience in client-centric review and assessment
 - experience in conformance assessment
 - experience in quality improvement
 - knowledge and experience in the care and protection sector
 - cultural capabilities
 - regional presence
 - level of build required.
- 55 We assessed OCC using the same criteria. Based on this analysis, we consider ERO to be the best placed to provide the monitoring and assurance function. While the other

three agencies would all bring experience in aspects of monitoring, the shift that would be required for them to undertake the role would require a more extensive widening in scope and capabilities, and would be likely to require a longer build. Our assessment is detailed in **Appendix one**.

56 The particular advantages of appointing ERO would be that:

- it has well-established experience and expertise in compliance monitoring, and the capacity to train new staff in review and audit evaluation
- it already reviews and reports on the education side of care and protection residences, and is experienced in working in private homes and gathering information from children and whānau
- it has well-developed corporate and support functions, and a workforce distributed in regional offices across New Zealand
- it has established cultural capabilities – including in relation to engagement with Māori and Pacific children and their whānau and communities
- it specialises in child-centric monitoring
- it has experience in driving both conformance and quality alongside a Ministry
- it could competently develop the required assessment framework for the NCS – an interim monitor would not be required⁶

57 ERO are open to taking on the monitoring function, given sufficient resourcing. They envisage a branded business unit being established to ensure a dedicated focus to carry out the function and not detract from their role in the education sector.

58 ERO is a government department. As a result, it is subject to Ministerial instruction. Notwithstanding its organisational form, the practice of successive Ministers responsible for ERO has been to treat its assurance and monitoring work as independent. The role of the Minister responsible has been to identify priorities for ERO to review within the education system. Identifying priorities for the monitor of the children's system could provide for more systematic examination of practices across agencies. It may be necessary to consider further the Ministerial arrangements for ERO if it is determined the appropriate entity for the monitoring role.

Legislative implications of option (b)

59 Changes to legislation and/or new legislation would be required if any of these entities were to be assigned the monitoring function under option (b). The nature of these changes would be likely to include reducing the monitoring role allocated to OCC, expanding the functions of the monitoring agency if these are designated in legislation, and assigning the monitor relevant powers, including access to information and premises.

60 The links between the advocate, monitoring and complaints bodies could be specified in legislation (and supported by working arrangements), to foster information flows and avoid the three agencies operating in silos.

Functional and legislative changes for OCC under option (b)

61 If the monitoring function were to be separated out of OCC under option (b), there would be scope to consolidate the OCC's systemic advocacy function, building on its existing strengths. In consultations on wellbeing, DPMC has consistently heard a push for a strong agent for children and children's voice. Continued agency on children's wellbeing and rights would be expected, and can be boosted so that the views of children and their interests are consistently heard by decision makers. OCC is well

⁶ We will provide Minister Martin and you with further advice on the transitional provisions and role of NCS monitor in early December.

placed to regularly collect systematic feedback from children and young people. This would position the organisation to be more effective in its advocacy on children's issues. There is also value in the OCC providing guidance and advice to agencies on how to engage with children and consider their views and voices into the development of policy and advice, supporting government agency capability building in this area.

- 62 The OCC has also identified a gap in their capacity to provide a view on a number of legislative, policy and service changes that impact children. The recently introduced Child Poverty Reduction Bill includes new requirements to consult the Children's Commissioner before adopting or changing a strategy on child wellbeing. A stronger focus on the interests and needs of Māori children might also be considered. Institutional and community settings to better protect children could also be a specific focus in the coming years, taking early action on learning from the Royal Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions. Point 78 considers how a boosted advocacy function could be resourced.

Overall assessment, considering risks and stakeholder views

- 63 On balance, we consider that the intelligence from monitoring is more credible if it is separate from advocacy, and that ERO is better placed than the OCC to successfully deliver the monitoring and assurance function.
- 64 ERO would bring expertise and a mature understanding of how to monitor for both compliance and quality in a more regulatory system, and thus is likely to be more effective and efficient in the role.
- 65 Both OCC and ERO would need to build capacity and capability. ERO have highlighted they would need to develop their care and youth justice sector knowledge and invest further in specific capabilities to carry out the role.
- 66 Even so, the build for ERO would also be faster, with less implementation risk than for the OCC. This is because ERO is a mature monitoring and assurance specialist and is operating at a scale that can better support expansion. (ERO has 216 FTE whereas OCC has just 23 FTE in total, with around 10 FTE in the monitoring and investigations team).
- 67 ERO also have the conformance assessment know how required to confidently develop the assessment framework for NCS next year
- 68 Assigning the role to ERO would also avoid the possible tensions arising under option (a) from having advocacy and monitoring functions in a single organisation.
- 69 As outlined in the paper there is likely to be strong stakeholder interest in changes to the OCC's functions. As the key advocate for children, the OCC would still have the ability to comment on the Oranga Tamariki system. We expect that they would draw on the findings of the monitor to bolster arguments for change.
- 70 If the monitoring function were to be separated out of OCC under option (b), there would be the opportunity to consolidate the OCC's systemic advocacy function, building on its existing strengths. This could for example involve expanding the OCC's contribution to the Child Wellbeing Strategy, building greater issues-awareness across the public service, and an enhanced advocacy focus on the interests and needs of Māori children.
- 71 If ERO were to take up the monitoring role, stakeholders may be concerned that the widened scope may detract from their education oversight. It will be important that ERO is fully resourced for the role, including at leadership levels, so that there are no resourcing tensions and ERO's organisational focus on monitoring education providers is sustained. We note that the Tomorrow's School Review may identify some further roles for ERO, but there is no clear direction as yet and ERO consider they are in a position to manage the new function if they were to be given the monitoring function.
- 72 An offset is that bringing this function into ERO could provide a view of what is and is not working at delivery level, for our most vulnerable children and young people, including the interoperability across care, protection and education systems. This has

been a difficult theme to tackle to date, and monitoring by a common entity could allow better synthesis of information to aid problem solving.

We are working with the Office of the Ombudsman to consider new arrangements for the complaints oversight function

- 73 Consistent with his written submission in July 2018, the Ombudsman is strongly supportive of his office assuming the complaints oversight function and we have been working with the Office on powers, resourcing and scope. This will be included as part of the detailed advice for Cabinet due in February 2019.
- 74 Some legislative amendments may be required to provide some additional powers to oversee complaints practices and deal with unresolved complaints, and to clearly delineate the new complaints oversight function for children. Resourcing is also a consideration.

Financial implications

Financial differences between option (a) and (b) for monitoring and assurance

- 75 We estimate there would be little difference in the 2019/20 establishment costs for options (a) and (b). There may be some minor cost savings associated with leveraging ERO's infrastructure and specialist monitoring expertise however these are likely to be within the margin of error of budget calculations.
- 76 The first high level estimate for costs was \$83m over four years. We are continuing to refine the costs and assumptions underpinning the budget, and to develop options for decision makers. Current estimates suggest that the monitor would require new funding of \$16 million in 2019/20 for establishment. Ongoing costs would scale up to maximum amount in 2022/23 of between \$9 million - \$20 million, depending on Ministers' choices regarding the level of assurance they wish to purchase. The total cost over the four years is estimated to range between \$40 million - \$68 million. Advice will be provided shortly detailing options for a 2019 budget bid.
- 77 The cost of independent monitoring should be considered relative to Oranga Tamariki's 2018/19 appropriation of \$951 million. This is expected to increase over the short and medium term to deliver its new operating model. Assuming Oranga Tamariki receives the additional baseline funding it is seeking in budget 2019/20, the cost of independent monitoring of Oranga Tamariki is between 1% and 1.8% of the total Oranga Tamariki appropriation.

Advocacy

- 78 There is a case for some increase in funding for advocacy. If the OCC reduces its monitoring role, OCC's baseline funding might be re-allocated to the Commissioner's advocacy activities. Currently \$1.9 million per year is allocated to their monitoring and investigations output. If option (b) was preferred we will work through how much of the existing baseline could be reinvested.

Complaints

- 79 The Ombudsman would require increased resourcing to build capacity, and develop and promote a child and whānau-friendly pathway to resolving complaints.
- 80 The Ombudsman does not receive funding in the way other government agencies do. Due to the Ombudsman's independence, the Ombudsman would make its own bid for funding, which would be considered by the Officers of Parliament Committee (OPC) by early March 2019. Prior to OPC considering the Ombudsman's request for funding, Cabinet would need to recommend to OPC that the Ombudsman undertake the complaints oversight function.

Next Steps

- 81 To progress funding bids for Budget 2019, direction from Ministers is required by 5 December 2018 on:
- the level of assurance Ministers wish to purchase from the monitor.

- whether the OCC is to be the monitor of Oranga Tamariki; *or*
 - whether another body is to be the monitor and if so, which.
- 82 We will provide advice to you on options for funding and assurance levels in the Budget Bid 2019 by 27 November 2018.
- 83 To progress the development of a preferred way forward, we propose that you agree to discuss this paper with the Prime Minister in her portfolio capacity as Minister for Child Poverty Reduction, the Minister for Children and the Speaker of the House. We will then finalise the budget bid and prepare detailed policy advice for final policy decisions by Cabinet in February 2019.
- 84 To enable the OPC to consider whether the Ombudsman should undertake the complaints oversight function, the Ombudsman requires a recommendation from Cabinet. We propose that this be considered as part of final policy advice to Cabinet in February 2019. In early March 2019, the Ombudsman would need to submit an amendment to his Budget 2019 bid for consideration by OPC. The Ombudsman's Office has indicated they are comfortable with this timeframe, though any delays to Cabinet decisions in February 2019 would negatively impact funding decisions.

Communications with stakeholders

- 85 Following your discussions with other Ministers, we will prepare a communications strategy and work with your Office to support you in engagement with the Children's Commissioner and other stakeholders on this work.

File ref: A10984337

Author: Jo Hartigan, Programme Manager, Seniors and International Policy

Appendix one

Assessment of entities that could undertake monitoring and assurance

Ministers indicated that if the monitoring function was to be shifted from the OCC then they would prefer to have this function be delivered by an existing agency. We examined existing agencies that provide a similar monitoring role in a similar environment (ie social services) to enable synergies with any existing role they currently hold. We identified and engaged discussions with the following agencies, including how they see themselves in delivering the new monitoring function.

Education Review Office (ERO) undertakes evaluation of the performance of schools, early childhood education providers and other education service providers. In discussions with ERO, they have identified a number of synergies and efficiencies that they could bring if they were to undertake the role as the monitor of the care and protection system (as mentioned in the body of the report). ERO has credibility as an evaluation agency and would be in a position to work alongside other monitoring agencies to develop a strong model of professional monitoring and evaluation practice within an ethos of continuous improvement.

The Health Quality and Safety Commission (HQSC). This agency monitors and reports on quality and safety at a system level, and builds health sector capability for quality and safety improvement. In discussions with them they emphasised that their expertise was in quality improvement processes (and data analytics) but that they did not have experience or expertise in monitoring and assurance activities. They did consider that they would be in a position to work alongside a monitoring agency to use their analytical expertise to support the development of a monitoring framework if that was required.

Ministry of Social Development: If the role was allocated to MSD, we expect it would be undertaken or supported by the Social Sector Accreditation (SSA) team, a shared service hosted within MSD. SSA is mandated to accredit providers for social sector agencies including Oranga Tamariki providers. SSA assesses providers against a set of standards at a level that reflects the type of services they deliver. SSA considers that they would have the skills and experience to develop the assessment framework in consultation with Oranga Tamariki providers. They considered that they would require a significant build in capacity to be in a position to be a permanent monitor and require a significant shift in its focus.

Ministry of Health (MoH):

- funds, monitors and drives the performance improvements of health sector Crown entities, including district health boards (DHBs)
- regulates health and disability service providers, including rest homes, DHBs, and residential disability services, under the Health and Disability Service Standards (2008). HealthCERT is responsible for ensuring providers provide safe and quality standards of care under the health and Disability Service (Safety) Act 2001

Improving DHB performance monitoring and management has been identified as a priority for the Ministry following the 2017 Performance Improvement Framework review and a new performance framework is under development. Establishment of a monitoring and assurance function for services delivered by Oranga Tamariki within the MoH would be completely new and, unlike other options outlined, would not rest on an established base of social sector monitoring as core 'Business as Usual' for the organisation.

MoH does not see themselves as the preferred home for Oranga Tamariki monitoring functions. Therefore we have not progressed this option further in the assessment below.

Comparing entities against a common criteria.

We identified the following criteria to assess each possible monitoring and assurance entity (including the OCC).

The results shown in Table 1(over page) indicate that ERO is best placed for the role.

- **A monitoring culture:** the monitoring body must have a culture of rigour, continuous improvement and impartiality to enable an objective and consistent monitoring assessment.
- **Experience in client centric review and assessment:** Monitors for human services should take client centric approach, and be able consider a person's experience of a system and services, marrying this with other lens and inputs such as data and conformance assessments. In this context the monitor must be able to engage with children and young people effectively.
- **Experience in conformance assessment:** The monitor must have the capability to assess compliance of Oranga Tamariki and its providers with standards and regulations.
- **Experience in quality improvement:** the monitor must understand and contribute to continuous improvement disciplines.
- **Knowledge and experience in the care and protection sector:** Existing knowledge, experiences and relationships in the care and protection sector will enable efficiencies in developing the assessment framework and undertaking its new monitoring role.
- **Cultural capability:** The monitor's cultural capability is important as Māori children and young people account for a significant proportion of children in the Oranga Tamariki system.
- **Regional presence:** Regional presence allows the monitor to leverage its existing regional offices and knowledge of the regions.
- **Level of build:** An agency with more mature systems and experience in monitoring at scale will require less build and overall cost to undertake the new monitoring role.

Table 1: Comparing existing monitoring and assurance entities against a common criteria

	OCC	ERO	MSD(through SSA)	HQSC
Current form & size	Crown Entity 10 FTEs for monitoring (23 FTE in total)	Departmental agency 216 FTEs	Hosted Service (within MSD) 58 FTEs	Crown Entity 62 FTEs
A monitoring culture	Low-Moderate (2) – there is a risk that its advocacy function compromises the impartiality of monitoring	High (5)	Moderate-High (4)	Moderate (3)
Experience client centric review and assessment	Moderate-high(4)	High (5)	Moderate (3)	Moderate (3)
Experience in conformance assessment	Low - moderate (2)	High (5)	High (5)	Low-Moderate (2)
Experience in quality improvement	Low-Moderate (2)	High (5)	Moderate (3)	High (5)
Knowledge and experience in the care and protection sector	High (5)	Moderate (3)	Moderate-High (4)	Low (1)
Cultural capability	Moderate-high (4)	High (5)	Moderate (3)	Moderate-High (4)
Regional presence	Low (1)	High (5)	Moderate-High (4)	Moderate (3)
Level of build required	High (-5) – as well as scale, capability and regional build, governance needs to be shifted from a sole commissioner model	Moderate (-3)	Moderate-High (-4)	High (-5)
Total	15	30	22	16



MINISTRY OF SOCIAL
DEVELOPMENT
TE MANATŪ WHAKAHIA TO ORA

Report

Date: 17 December 2018

Security Level: BUDGET-SENSITIVE

To: Hon Carmel Sepuloni, Minister for Social Development

Structural options for the monitoring of the Oranga Tamariki system

Purpose of the report

- 1 The purpose of this report is to confirm the key proposals to include in a paper on the review of independent oversight of the children's system for you to take to Cabinet in February 2019 for decision, in particular the proposal to assign the independent monitoring and assurance function for the Oranga Tamariki system¹ to the Ministry of Social Development (MSD).

Recommended actions

It is recommended that you:

- 1 **note** that on 12 December 2018, you and the Minister for Children met with officials to discuss which entity should carry out the independent monitoring and assurance function for the Oranga Tamariki system
- 2 **note** that, at that meeting, you discussed officials' advice on monitoring options, and agreed that Cabinet's agreement be sought for the Ministry of Social Development (MSD) to be designated as the independent monitor of the Oranga Tamariki system

¹ The term 'Oranga Tamariki system' is used in this report to describe not only the statutory care and protection and youth justice system, as outlined in the Oranga Tamariki Act 1989, but also Oranga Tamariki's early and intensive intervention services provided to children *at risk* of future involvement in the statutory care and protection and youth justice system, and young people transitioning from care.

- 3 **agree** to forward a copy of this report to the Minister for Child Poverty Reduction, Minister of State Services, Minister of Justice, and Minister for Children.


Agree / Disagree



Simon MacPherson
Deputy Chief Executive
Policy, MSD

Date

17.12.18



Hannah Cameron
Deputy Commissioner
Strategy and Policy, SSC

Date

17.12.18

Hon Carmel Sepuloni
Minister for Social Development

Date

Background

- 1 The Ministry of Social Development (MSD)/State Services Commission (SSC) Review of Independent Oversight of Oranga Tamariki and Children's Issues (the Review) is examining options to strengthen three core oversight functions:
 - systemic advocacy for New Zealand children
 - oversight and investigation of complaints, particularly relating to the operation of the Oranga Tamariki system
 - independent monitoring and assurance of the Oranga Tamariki system.
- 2 On 24 October 2018, you met with the Prime Minister and Minister for Children to discuss options for who should undertake these three functions. At that meeting, you noted that the Office of the Children's Commissioner (OCC) has the expertise to continue to lead systemic advocacy for all children in New Zealand, and that there is also a strong case for the Ombudsman to be assigned the complaints oversight function, given its general capabilities and experience in complaints review and investigations.
- 3 Ministers asked for further advice on options for assigning the monitoring function.
- 4 The depth and breadth of independent monitoring that will be required for Oranga Tamariki's new operating model will be a major new undertaking, particularly with the introduction of the new *Oranga Tamariki (National Care Standards) Regulations* (the NCS) from 1 July 2019.
- 5 The Government will need to be very confident in the competence of an independent monitor to help assess Oranga Tamariki's success in delivering on government policy, and ensure the anticipated benefits of significant new investment in the Oranga Tamariki system are realised.
- 6 The independent monitor will be required to assess and report on Oranga Tamariki's compliance with the NCS, drawing on data and evidence from a range of sources, including information directly gathered from children and young people in care.
- 7 On 3 December 2018, you agreed that direct monitoring of up to 33 percent of the population of children covered by the NCS a year would be necessary over the short to medium term, given the requirements of the NCS, the importance of lifting the quality of care as intended, and the value that monitoring intelligence can provide as the NCS are established. [REP/18/11/1605 refers]
- 8 The monitor's role will also cover other Oranga Tamariki services relating to the care system – for example, notifications, assessments, Family Group Conferences and post-care transition services.
- 9 Theoretically the monitoring function could be undertaken anywhere. By law, the entity carrying out the function will need to be independent of Oranga Tamariki, while it should report to the Minister designated responsibility for oversight of the system.
- 10 Regardless of who is assigned the monitoring function, a major build will be required in the designated agency's capacity and capabilities in order to carry out the role to the required standard. This build will need to be underpinned by significant new investment.

In November we provided advice on options for carrying out the monitoring function

- 11 On 23 November 2018, MSD, with input from SSC, provided you with an assessment of the options regarding who should carry out the monitoring function. [REP/18/11/1560 refers]

- 12 In our advice, we considered the strengths and capabilities of the OCC carrying out the monitoring function, but noted the following issues:
- While the OCC brings considerable strengths as a system advocate, its monitoring activity to date has been limited in scale and scope², and we do not consider it has the expertise required in carrying out best-practice monitoring and assurance necessary at the scale or level of intensity that will be required for the new regulatory environment.
 - If the OCC were to be assigned as the monitor, it would take significant time to mature its existing capabilities. The impact of this would be to delay monitoring intelligence for the system. An assessment framework for the NCS must be developed from 1 July 2019. We consider that an *interim* monitor with more mature capacities and capabilities would therefore need to be appointed to develop that framework.
 - There is also a potential tension between the requirement for impartial monitoring at the scale and intensity envisaged, and the OCC's ongoing role as an advocate for children. An advocate's objective is to continue to push for improvements to current system settings; it may or may not have regard to the policy objectives of the government of the day, and tends to seek to influence these. In contrast, for effective monitoring and assurance of services and standards, impartiality, stability and an objective focus on current settings, is a key requirement.
- 13 In the 23 November 2018 report, we also advised on which existing government agencies in related social sectors with experience in monitoring and assurance, could potentially expand their functions to take up the independent monitoring role for the Oranga Tamariki system. The primary agencies considered were the Education Review Office (ERO), the Health Quality and Safety Commission (HQSC), MSD and relevant monitoring teams within the Ministry of Health (MoH).³
- 14 MSD's initial assessment was that ERO would be best-placed to deliver the monitoring function, on the grounds that it has mature capability in carrying out monitoring and assurance in a regulatory environment, well-developed infrastructure including a regional presence, cultural competencies and experience in engaging with children.
- 15 We also advised that:
- there would be scope for MSD to leverage its capabilities, existing systems and infrastructure to carry out the monitoring function, noting that MSD currently hosts the Social Services Accreditation (SSA) team, a shared service whose functions include accrediting non-government organisations providing care and protection services for Oranga Tamariki

² The OCC currently regularly monitors application of the provisions of the Optional Protocol to the Convention against Torture in children's care and custody settings where children and young people are detained, which covers around three percent of children and young people in the care of the chief executive of Oranga Tamariki at present. OCC also undertakes a small number of theme based reviews and in-depth assessments across a selection of sites (for example for the first time, this year OCC assessed care provision through contracted service providers). OCC also reviews quarterly and annual reports for grievance panels for children and young people in residences and remand.

³ The main options were assessed against a common criteria, including each entity's monitoring culture; experience in client-centric review and assessment; experience in conformance assessment; experience in quality improvement; knowledge and experience in the care and protection sector; cultural capabilities; regional presence; and the level of build required.

- while the HQSC has major strengths in quality improvement processes (and data analytics), it has indicated that it would not have the required experience or expertise in monitoring and assurance activities to carry out the independent monitoring of the Oranga Tamariki system
 - assigning the monitoring role within MoH would be completely new and would not rest on an established base of social sector monitoring as core 'business as usual' for the organisation – MoH also advised that they are in the process of rebuilding DHB performance monitoring and management at present, and it would be challenging for MoH to focus on a major new monitoring role along with this rebuild.
- 16 On 28 November 2018, SSC also provided advice to the Minister of State Services indicating that ERO and MSD were both viable candidates for the independent monitoring function, subject to the potential effect of decisions on the Tomorrow's Schools review on ERO.
- 17 On 7 December 2018, the report of the *Tomorrow's Schools Independent Taskforce* was released, which included a recommendation that ERO be disestablished. The Taskforce is to carry out public consultation on its report until April 2019, and the Government is to make decisions on implementing the review in mid-2019.

Ministers met in December to discuss the assignment of the monitoring role

- 18 On 12 December 2018, you met with the Minister for Children and officials to discuss which entity should carry out the independent monitoring and assurance function.
- 19 At that meeting, you and the Minister for Children considered our advice, as outlined above, on each of the main options for the monitoring role. Based on our advice, you agreed that:
- the OCC would not have the quality and assurance capabilities required to carry out the monitoring function at the scale and level of intensity required; and there is also a risk that its systemic advocacy role could compromise its monitoring function
 - the uncertainty around the future of ERO, following the release of the report of the *Tomorrow's Schools Independent Taskforce* and with the Government's decisions on its key recommendations still to be made, made it inappropriate to assign it the independent monitoring role at this time
 - HQSC's capabilities and expertise was relatively narrow and too specialist for them to assume the monitoring role
 - MoH would not be in a position to balance its focus on the rebuild of its core DHB monitoring function and also undertake a major new monitoring role for the Oranga Tamariki system.
- 20 Taking into account the above factors, you agreed that MSD would be the most appropriate agency to carry out the function in the short- to medium-term.
- 21 The assignment of MSD as the monitor over this timeframe would provide scope for the function to possibly migrate elsewhere in future, once Ministers have had an opportunity to review broader social sector monitoring arrangements – in particular the Tomorrow's Schools review, the Mental Health and Addiction inquiry and the Health and Disability System review.
- 22 We envisage that the independent monitoring function would be established as a business unit within MSD, leveraging off the Ministry's corporate and management infrastructure.

- 23 Ministers agreed that assigning the monitoring of the Oranga Tamariki system to MSD provides the opportunity to consolidate the OCC's systemic advocacy function, building on its existing strengths. This could for example involve expanding the OCC's contribution to the Government's Child Wellbeing Strategy, building greater issues-awareness across the public service, and an enhanced advocacy focus on the interests and needs of Māori children – which was an issue highlighted during the consultation phase of the Review.

The assignment of the OCC's role regarding New Zealand's international OPCAT commitments will require further consideration

- 24 The OCC is designated as a National Preventive Mechanism for the purpose of the Crimes of Torture Act 1989 in relation to New Zealand's obligations under the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT), and currently monitors the application of OPCAT in care and custody settings where children are detained. This function covers around three percent of children in the care of the chief executive of Oranga Tamariki at present. The Governor-General designates agencies as National Preventive Mechanisms on the recommendation of the Minister of Justice.
- 25 Agencies carrying out OPCAT monitoring must be 'functionally independent' - ie not subject to the institutional control of an 'executive branch' of government. A government department is not sufficiently independent from central government to carry out OPCAT monitoring.
- 26 The Ministry of Justice has advised that in their view it is not necessary to reconsider the location of the Children's Commissioner's OPCAT functions and considers there is a risk it would reduce the effectiveness of New Zealand's multi-agency monitoring framework.
- 27 However, it is MSD's view that we need to consider where the OPCAT function should be assigned in the context of the wider changes to monitoring that are underway, and the work we are undertaking with the Ombudsman to potentially take up the independent complaints oversight function for Oranga Tamariki. A key consideration would be how to ensure that monitoring activity is aligned, and that investment in capability and resourcing is optimised. The area of work relating to OPCAT is the responsibility of the Minister of Justice, and would require his approval. We therefore recommend that we work through the assignment of the OCC's current OPCAT role with the Ministry of Justice and report back on this issue in January 2019.

Financial implications

- 28 On 14 December 2018, we submitted a bid for Budget 2019 of \$47.6 million over four years from 1 July 2019/20 to fund the independent monitoring of the Oranga Tamariki system.
- 29 We previously advised that MSD would need up to 15 months to build its capabilities to substantively monitor. MSD is not funded to cover the costs it will incur in building capability before 1 July 2019. We are therefore preparing advice to you and the Minister of Finance outlining a need for additional funding from 1 March to 30 June 2019.
- 30 The 2019 Budget bid will be finalised over the course of January/February 2019.

Legislative Implications

- 31 MSD's view is that legislation will be required to provide the monitoring unit with the necessary functions and powers to enable independent monitoring of Oranga Tamariki's care and protection services, and to enable appropriate information sharing between agencies (eg between MSD, Oranga Tamariki, OCC, and the Ombudsman as the complaints body).
- 32 This legislation could be included in an omnibus Bill covering all aspects of the Review of the oversight of the Oranga Tamariki system and children's issues – provisionally to be entitled the *Independent Oversight (Children's Issues and Oranga Tamariki System) Bill* (the Bill). We are consulting with affected agencies on the development of advice on this legislation.
- 33 On 24 November 2018 you agreed to the submission of a legislative bid in the 2019 legislation programme for the Bill. The proposed priority is category 2 (must be passed within the year). [REP/18/11/1556 refers]

Next steps

- 34 Before the end of the year, MSD will provide:
 - a 'road map' briefing for your office, summarising what has to be in place by when, in order to progress the key elements of the Review
 - a report on interim funding options for the latter stages of 2018/19, to enable MSD to make the necessary preparations to commence the independent monitoring role by 1 July 2019.
- 35 MSD and SSC will prepare a Cabinet paper for policy agreement on all aspects of the Review in February 2019, including:
 - Cabinet's agreement that the OCC be designated the systemic advocacy function, and MSD the monitoring and assurance function, respectively – with the assignment of relevant powers and legislative amendments
 - a recommendation to the Officers of Parliament Committee (OPC) that the Ombudsman undertake the complaints oversight function (due to the Ombudsman's independence, agreement to any new funding for this function would need to be determined by OPC by March 2019)
 - the submission of instructions to the Parliamentary Counsel Office for the drafting of the Bill.
- 36 As part of the subsequent proactive release of the February 2019 Cabinet paper, we will also prepare a communications plan for communicating the outcome of the review to stakeholders.



Report

Date: 18 December 2018

Security Level: BUDGET - SENSITIVE

To: Hon Carmel Sepuloni, Minister for Social Development

Funding to commence work to establish independent oversight of Oranga Tamariki and children's issues

Purpose of the report

- 1 This report provides you with information around additional funding for the 2018/19 year for the Ministry of Social Development (MSD) to establish a monitoring function consistent with Ministers decisions that Cabinet approve MSD as the independent monitor for Oranga Tamariki.

Recommended actions

It is recommended that you:

- 1 **note** that to date the Review of independent oversight of Oranga Tamariki and children's issues (the Review), commissioned by Cabinet, has highlighted the need to strengthen independent monitoring of Oranga Tamariki.
- 2 **note** that new Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018 (the Regulations) require the appointment of an independent monitor to develop an assessment framework and monitor application of NCS.
- 3 **note** that on 12 December Ministers met to consider advice on options for monitoring and determined that the Ministry of Social Development (MSD) should be recommended to Cabinet as the independent monitor.
- 4 **note** that, as outlined in our 11 December advice to Ministers MSD will take up to 15 months to establish functionality and it is important that work get underway as soon as possible.
- 5 **note** that, until recently, both the MSD and Oranga Tamariki understood that the Regulations allowed time for the independent monitor to be established. s9(2)(h)

s9(2)(h)

s9(2)(h)

- 6 **agree** that this paper be forwarded to the Minister for Children

AGREE/DISAGREE

- 7 **note** that as a consequence of Minister's view that MSD should be the monitor, MSD will need Cabinet to approve a new appropriation and funding from 1 March 2019 to support preparations to establish the new functions and continued work on the Review.
- 8 **note** current estimates for funding required in this financial year are approximately \$2.425 million. This will fund multiple streams of work that need to run in parallel to ensure MSD can stand up monitoring functions. Further work will be done to finalise these funding estimates and requirements for this calendar year and will be incorporated in the February Cabinet paper.
- 9 **note** that MSD is looking reprioritisation of existing funds as well as seeking new funding from in-between 2019 budget contingency.
- 10 **note** that MSD has identified the following underspends that could be reprioritised:
- 10.1 \$1.2 million from Superu
 - 10.2 \$0.467 million from the Social Bonds pilot.
- 11 **note** that Cabinet have already agreed that joint Ministers may transfer Superu funding between appropriations, therefore, further Cabinet agreement is not required.
- 12 **note** that reprioritisation Superu funding within Vote Social Development will require agreement from the Minister of Finance. Shifting funding from the Social Bonds pilot and obtaining funding from between budget contingency, to make up the shortfall, will also require Cabinet agreement.
- 13 **agree** to discuss the funding requirements with the Minister of Finance by 25 January 2019 including seeking agreement to the re-prioritisation of Superu funds.

AGREE/DISAGREE

- 14 **note** that following your discussion we will support the process to confirm any decisions made regarding the allocation of Superu funding if required.

15 **agree** that in February 2019 Cabinet be asked to agree:

- 15.1 to a new appropriation – *Independent Monitoring of Oranga Tamariki and Children's Issues* – being established.
- 15.2 an appropriation transfer of \$0.467 million in Social Bonds funding.
- 15.3 that any remaining shortfall be made available from 2019 in-between budget contingency from 1 March 2019.

AGREE/DISAGREE

pp Journal

Simon MacPherson
Deputy Chief Executive
Policy

18 December 2018

Date

Hon Carmel Sepuloni
Minister for Social Development

Date _____

Independent monitoring of Oranga Tamariki and Regulations by MSD

- 2 The review of independent oversight of Oranga Tamariki and children's issues (the Review), commissioned by Cabinet, has highlighted a need to strengthen independent monitoring.
- 3 In addition, the Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018 (the Regulations) require the appointment of an independent monitor to monitor compliance from 1 July 2019. Regulations also require the development of a framework against which compliance with the Regulations and the effect of that can be monitored and assessed (the Framework).
- 4 Advice has been provided to Ministers that notes that in addition to increasing the scale of monitoring; for the new regulatory context monitoring requires a specialist, impartial and objective approach. Advice noted that given the Commissioner's appropriately strong focus on advocacy, changes within the Office of the Children's Commissioner (the Office) would be required in capability and organisational structure if independent monitoring were to remain with the Commissioner.
- 5 On 12 December 2018 Ministers met to consider advice and agreed that MSD would be the independent monitor given uncertainty surrounding the future of the ERO and capacity and capability issues with the other options. This proposal will be considered by Cabinet in February 2019.
- 6 On 14 December a budget bid for \$47.6 million over four years, was submitted to support a new monitoring function. The bid included establishment funding of \$15.767 million in 2019/20.
- 7 In MSD's advice on options for agencies to undertake monitoring, it was advised that MSD would require up to 15 months of development to be in a position to begin substantive monitoring. If MSD is to be in a position to substantively monitor by 1 July 2020 establishment activity needs to start in early 2019.

s9(2)(h)

¹ Development over 2019/20 would allow the monitor to undertake consultation as required by Regulation, and with Maori.

Oranga Tamariki is required to develop self-monitoring and continuous improvement. A year of lead-in time would enable concurrent development of the internal and external monitoring framework.

Monitoring funding required prior to 1 July 2019

Developing the Framework

- 11 Development of the Framework is the corner stone of monitoring activities and is a significant undertaking. Development will include fulfilling regulatory requirements for consultation and ensuring the Framework is balanced against Oranga Tamariki's own internal systems for continuous improvement and self-monitoring, which are currently being developed. Developing the Framework will require specialist expertise which will be a combination of internal staff and external advice.

Establishing the monitoring function

- 12 To get a function fully stood up as soon as possible and by July 2020 at the latest, and be able to undertake some level of monitoring from July 2019 if required, establishment of a programme needs to commence in the new year to:
- progress new legislation to provide the monitor with the necessary functions and powers required
 - stand up a programme management and establishment team for the new function
 - commence design and development of the monitor's operating model and the Framework
- 13 Funding estimates outlined below are subject to the assumption that resources can be brought on-board from 1 March 2019 including undertaking relevant procurement processes. This assumption is necessary at this time given the 15 month build time associated with MSD undertaking monitoring functions and the risk that Regulations may not be amended, or that we may need to allow for some level of monitoring in 2019.
- 14 Based on our experience with other machinery changes MSD currently estimates that up to \$2.425 million would be required prior to 1 July 2019 to commence multiple streams of work in parallel. These estimates will be further refined in January 2019.

Cost Breakdown

Programme Management	\$0.37
Shared Services requirements	\$0.315
Contracted resource to support policy Development and Legislative change	\$0.3
Development of 2019/20 Budget Bid	-
Infrastructure (e.g. IT, property)	\$0.36
Operating model & Monitoring framework	\$0.8
Information sharing mechanisms	\$0.18
Branding	\$0.1
Total	\$2.425

Appropriation transfer and budget contingency

- 15 MSD has identified \$1.2 million of existing funding appropriated to Superu and \$0.467 that currently supports the Social Bonds pilot. Subject to approval there are two options for how the underspend is dealt with. The first would see the underspend used to offset the \$2.425 million and the remaining \$0.758 million sought from 2018/19 budget contingency. The second option would see the estimated \$2.425 million sought from between budget contingency and \$1.667 million in underspends from the two projects returned to the centre. We suggest you discuss the preferred option with the Minister of Finance in time to inform the Cabinet paper for consideration in February 2019, at which time Cabinet approval will also be required to establish a new appropriation.

Implications for 2019/20 budget bid

- 16 These costs are in addition to funding sought through budget 2019/20. They recognise the costs MSD will incur given it is likely that some level of monitoring will be required from July 2019, rather than July 2020.
- 17 Establishment will continue through 2019/20 where MSD will invest in infrastructure, such as IT and property, and staff to support long-term monitoring at the levels recommended in the 2019/20 budget bid.

RELEASED UNDER THE
OFFICIAL INFORMATION ACT



Report

Date: 29 January 2019

Security Level: CABINET-SENSITIVE

To: Hon Carmel Sepuloni, Minister for Social Development

Draft Cabinet paper for feedback: Strengthening Independent Oversight of the Oranga Tamariki System and Children's issues

Purpose of the report

- 1 This report provides you with an initial draft version of the Cabinet paper *Strengthening Independent Oversight of Oranga Tamariki and Children's Issues* for your feedback prior to Ministerial consultation. In order for this paper to be considered at the Cabinet Social Wellbeing Committee on 20 February 2019, it should be circulated for Ministerial consultation on 1 February 2019 (and will need to be lodged by 14 February 2019).

Recommended actions

It is recommended that you:

- 1 **note** that in March 2018, the Cabinet Social Wellbeing Committee invited the Minister for Social Development to seek final policy decisions following a targeted consultation process
- 2 **note** that the attached initial draft Cabinet paper aims to provide you with a sense of direction for the final proposals to strengthen core independent oversight functions for New Zealand children and the Oranga Tamariki system
- 3 **note** that due to the complexity of the issues and extent of feedback from departments we are still working through the detailed feedback from agencies and will continue to amend the paper and incorporate your feedback in a revised Cabinet paper for ministerial consultation.
- 4 **note** that in order for the paper to be considered at Cabinet Social Wellbeing Committee on 20 February 2019, it should be circulated for Ministerial consultation on 1 February 2019

- 5 **agree** that an updated version of the initial draft Cabinet will be provided to the Minister of State Services, Minister for Children and Minister for Child Poverty Reduction on 30 January for their early feedback on policy direction ahead of wider ministerial consultation

Agree/Disagree

jeormall

Justine Cornwall
General Manager
Seniors & International Policy

29th January 2019

Date

[Signature]

Hon Carmel Sepuloni
Minister for Social Development

1/02/2019

Date

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

We have prepared an initial draft Cabinet paper that outlines the final policy decisions to strengthen independent oversight

- 2 In March 2016, the Cabinet Social Policy Committee agreed that the Ministry of Social Development (MSD) lead a Review (using an independent reviewer) to identify overlaps and gaps in the current mechanisms for monitoring, complaints, investigations and advocacy in services for vulnerable children and young people; and to identify a range of potential reform options to support the new system for vulnerable children and young people. The Review was undertaken with support from the State Services Commission (SSC) [SOC-17-MIN-0115].
- 3 In March 2018, the Cabinet Social Wellbeing Committee invited the Minister for Social Development to seek final policy decisions from Cabinet following the targeted consultation process to test the preliminary work done as part of the first phase of the Review.
- 4 From May 2018 to July 2018, the independent reviewer led the engagement with a range of stakeholder groups and provided a post consultation report (the Beatie Report). The Beatie report informed the next phase of the Review where MSD and SSC undertook further analysis to develop detailed policy proposals.
- 5 The attached initial draft Cabinet paper seeks final policy decisions to strengthen three core independent oversight functions for New Zealand children and the Oranga Tamariki system:
 - systemic advocacy for all New Zealand children
 - oversight and investigation of complaints made by and on behalf of children, particularly relating to the operation of the Oranga Tamariki system
 - independent monitoring and assurance of the Oranga Tamariki system.
- 6 In order to strengthen the above functions, the paper proposes that:
 - the Office of the Children's Commissioner (OCC) continue as the primary systemic advocacy oversight body with existing baseline funding reallocated to strengthen this function from 1 July 2020
 - subject to the agreement of the Officers of Parliament Committee, the Ombudsman take on the independent complaints oversight function
 - MSD is appointed as the independent monitoring entity in the short to medium term, providing flexibility to consider wider monitoring arrangements across the social sector, for example as a result of the Mental Health Inquiry and the changes proposed in the Tomorrow's Schools review
 - a bill is progressed in 2019 to provide clarity of role between the oversight bodies and the necessary functions and powers to support effective oversight (the Bill).

The paper incorporates comments from departmental consultation

- 7 On 17 January 2019, an initial draft of the Cabinet paper was circulated to Oranga Tamariki - Ministry for Children, the Ministry of Education, the Education Review Office, the Office of Disability Issues, the Social Services Accreditation team, 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 Legislation Design and Advisory Committee Subcommittee, the Ombudsman, the New Zealand Police, the Treasury, and the Department of the Prime Minister and Cabinet.

- 8 The most substantial feedback covered three main themes. This is summarised below, together with how we have dealt with the issues raised:

Theme	Issues	Response
Ensure the oversight system is designed to ensure practice is child-centred and family and whanau-friendly	The Ministry for Women, Te Puni Kokiri, Oranga Tamariki and the Ministry for Pacific Peoples raised concerns that there needed to be a stronger focus on ensuring practice is child-centred and family and whanau-friendly. Te Puni Kokiri in particular had significant concerns at the lack of formalised Maori involvement and representation in the monitoring function and that the advice was not taking a whanau-centred approach. The Ministry of Pacific People emphasised that functions need to be advocated for in a culturally appropriate manner for all cultures, including Pacific people.	We have incorporated changes in the paper but will continue to refine and liaise with key departments.
Scope and working relationships of oversight bodies and mitigations for potential conflicts of interest	Several departments emphasised the need for significant investment and resourcing to ensure appropriate oversight capability and capacity. A number of departments (including Police, and Corrections) sought clarification of whether the oversight functions would apply to their sector, including youth who are eligible for transition support services. Oranga Tamariki and Te Puni Kokiri questioned the rationale for having three separate entities performing the oversight functions and the selection of the proposed entities. Oranga Tamariki also raised the issue of whether monitoring was for a 'whole of system' view.	We have incorporated changes in the paper but will continue to refine and liaise with key departments.
Access to information powers	NZ Police, the Ministry of Justice and Oranga Tamariki raised a number of concerns about access to information, including direct access to agency systems, the proposed power to enter private homes to obtain information directly from children, young people, caregivers and their families for the purpose of monitoring and information sharing. Oranga Tamariki expressed significant concern about a proposed power to enter private homes to obtain information directly from children noting that it was a coercive power that requires robust justification and checks and balances in primary legislation.	We have considered the feedback and removed the proposed power to enter private homes, on the assumption that permission would need to be sought to enter a property and that evidence would be provided to the monitor from Oranga Tamariki.

- 9 We are still working through the detailed feedback from agencies and not all changes have been fully incorporated. In addition, we received a number of minor technical changes. We will continue to amend the Cabinet paper, address concerns and further edit and refine. These changes will be reflected alongside your feedback in a revised Cabinet paper for ministerial consultation.

Engagement with the Children's Commissioner and other stakeholders

- 10 There are two potential approaches for announcements and proactive release that we would like to discuss with your office:

- i. Public announcement on final decisions and proactive release of the Cabinet paper following the introduction of the Bill to the House of Representatives in June 2019. We would recommend releasing the Beatie report along with the Cabinet paper. Taking this approach would delay establishment of the new oversight function within MSD, in particular, recruitment for an Establishment Director could not take place until decisions had been announced. This is not our preferred approach.
- ii. Public announcement on the high level final decisions following Cabinet decision and Officers of Parliament Committee's (OPC) consideration in relation to the Ombudsman's enhanced role and associated budget. This is likely to be in April 2019. Proactive release of the Cabinet paper and Beatie report could follow after the introduction of the Bill to the House of Representatives in June 2019.

Taking this approach would enable progress to be made on setting up the independent oversight functions, but in particular the separate function within MSD, i.e. appointing an Establishment Director. However Budget 2019 decisions would not have been finalised so budget information would remain confidential and need to be redacted. This is our preferred approach.

- 11 We note that the proposals in the cabinet paper have not yet been consulted with the OCC. We recommend that, given the significant implications the proposals have on the OCC, you advise the OCC, in confidence, of the outcome of the Review following Cabinet agreement and subsequent OPC decision in April 2019, and prior to any public announcement.
- 12 There is likely to be significant interest from the sector in the outcome of the Review as it includes proposals to enhance independent complaints review mechanisms in relation to Oranga Tamariki as well as the independent monitoring role, and potential changes to the functions of the OCC. Some stakeholders may have concerns with assigning the independent monitoring role to MSD in the short to medium term given MSD's recent involvement in overseeing the care and protection system.
- 13 The Ministry will develop communications collateral including a holding statement, key messages and FAQ's based on the next iteration of the Cabinet paper, incorporating your feedback. The Ministry's communications team will liaise with the relevant agencies and impacted organisations to ensure a cohesive response in a 'no surprises' approach.
- 14 We will work with your Office to support your engagement with the OCC and wider stakeholders to effectively communicate how the changes proposed would, on balance, strengthen the independent oversight system.
- 15 The revised Cabinet paper will put forward your preferred approach to announcements.

Next steps

- 16 There are some early changes that are required to the National Care Standard (NCS) Regulations that relate to the independent monitor's commencement and scope of its functions and its power to request for information. These changes must be made before the commencement of the NCS Regulations on 1 July 2019 and therefore must

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

be progressed separately from the Bill process. The report has been provided to the Minister for Children for agreement and will be forwarded to your Office.

- 17 A legislative bid has been made for priority Category 2 (enacted this year) to enable oversight bodies to have sufficient powers and functions to undertake their roles in time.
- 18 In order for the Bill to be passed within the year, the paper will need to be considered at Cabinet Social Wellbeing Committee on 20 February 2019. In order to achieve this timeframe, we recommend that you provide feedback on the paper to MSD by 1 February 2019. We will provide you with a revised paper to be forwarded for Ministerial consultation on 1 February 2019.
- 19 We will provide a final paper to you by 11 February 2019 seeking your agreement for lodgement.
- 20 We set out the proposed timeline below. The Cabinet paper timelines are very tight. This is due to: the need to secure a decision from OPC in time for Budget; drafting for the Bill and the amendments to the National Care Standards and enabling establishment of the standalone monitoring function within MSD to be initiated.

Milestone	Date
Initial draft Cabinet paper provided to you for your feedback	28 January 2019
Initial draft Cabinet paper provided to Minister for Children, Minister for State Services and Minister for Child Poverty Reduction	30 January 2019
Feedback required for inclusion prior to Ministerial consultation	By 1 February 2019
Cabinet paper revised and returned for Ministerial consultation	1 February 2019
Feedback required from Ministerial consultation	12 February 2019
Final Cabinet paper provided to you for approval to lodge	13 February 2019
Cabinet paper lodged on CabNet	10.00am, 14 February 2019
Cabinet Social Wellbeing Committee	20 February 2019
Cabinet	25 February 2019



Report

Date: 28 January 2019

Security Level: IN CONFIDENCE

To: Hon Tracey Martin, Minister for Children

Early changes to the National Care Standards Regulations relating to the independent monitor

Purpose of the report

- 1 This report seeks your agreement to make changes to the Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018 (NCS Regulations) prior to its commencement on 1 July 2019 to:
 - set out commencement provisions for independent monitoring
 - clarify the scope of the independent monitoring function.
- 2 It seeks your agreement that Cabinet agreement be sought for the proposed changes through the Cabinet paper, led by the Minister of Social Development and the Minister of State Services, on strengthening independent oversight of the Oranga Tamariki system and children's issues.

Recommended actions

It is recommended that you:

- 1 **note** that in September 2018, you agreed that the Ministry of Social Development (MSD) and State Services Commission advise you directly on the appointment of the independent monitor for the National Care Standards (NCS)
- 2 **note** that the NCS Regulations come into force on 1 July 2019 and require the independent monitor to be ready to perform its monitoring function, as set out in Part 6 of the NCS Regulations, promptly after 1 July 2019
- 3 **note** that the independent monitoring required by the NCS is a major new undertaking and requires a significant build in the appointed monitor's capacity and capabilities
- 4 **agree** that to allow time for the monitoring function to develop the commencement provisions in the NCS Regulations set out that substantive monitoring starts from 1 July 2020 (rather than 1 July 2019)

Agree / Disagree

- 5 **note** that the following provisions in Part 6 of the NCS Regulations will continue to commence from 1 July 2019:

- 5.1 regulations 77 and 78 – the independent monitor must establish an assessment framework

- 5.2 regulation 85 – provision of information to the independent monitor on reports of abuse or neglect that the chief executive of Oranga Tamariki has received under regulations 69 and monitors how those reports were responded to
- 5.3 regulation 82 – the independent monitor may provide supplementary reports to the Minister
- 5.4 regulations 86 and 87 – Oranga Tamariki’s self-monitoring
- 6 **agree** that all other Regulations in Part 6 commence from 1 July 2020 and that these provisions are set out in the commencement provisions in regulation 2
- Agree / Disagree**
- 7 **agree** that regulation 77 is amended to specify that the independent monitor must develop and establish the Framework
- Agree / Disagree**
- 8 **agree** that regulation 83 of the NCS regulations is amended to reflect the intent that the scope of independent monitoring only extends to non-compliance with the regulations, that the independent monitor becomes aware of or informed in the ordinary course of monitoring, that places or is likely to place a child or young person in care or custody at immediate risk of suffering serious harm
- Agree / Disagree**
- 9 **note** that the recommended changes to the NCS Regulations are required before they come into force on 1 July 2019
- 10 **agree** that Cabinet agreement be sought for the proposed changes through the Cabinet paper, led by the Minister of Social Development and Minister of State Services, on strengthening independent oversight of the Oranga Tamariki system and children’s issues
- Agree / Disagree**
- 11 **agree** that if Cabinet approve the proposed changes to the NCS Regulations, the MSD progress these amendments, with support from Oranga Tamariki, and prepare a paper to the Cabinet Legislation Committee; we will provide you with further advice on the appropriate arrangements for this
- Agree / Disagree**
- 12 **note** that you will receive a draft Cabinet paper for comment during the week beginning 28 January 2019 which will provisionally include the proposed NCS Regulation changes outlined in this paper
- 13 **note** that the Independent Oversight (Oranga Tamariki System and Children’s Issues) Bill may include some changes to the information sharing provisions in the Oranga Tamariki Act 1989 to clearly provide for information sharing for the purposes of independent monitoring, including to monitor compliance with the NCS Regulations

14 **agree** to forward this report to the Minister for Child Poverty Reduction, Minister for Social Development and the Minister of State Services.

Agree / Disagree

gcornall
Justine Cornwall
General Manager
Seniors and International Policy

28th January 2019
Date

Hon Tracey Martin
Minister for Children

Date

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Background

- 3 The Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018 (NCS Regulations) set out the standards of care children or young people in care or custody are entitled to, and the level of care that caregivers must provide. Section 447A of the Oranga Tamariki Act 1989 requires that you appoint an agency or body independent of Oranga Tamariki to monitor and report on compliance with the new care standards. Part 6 of the NCS Regulations set out the provisions related to the monitoring and reporting of compliance with the new care standards.
- 4 In September 2018, you agreed that the Ministry of Social Development (MSD) and State Services Commission (SSC) advise you directly on the appointment of the independent monitor for the NCS.
- 5 In December 2018, you met with the Minister for Social Development and officials to discuss which entity should carry out the independent monitoring and assurance function. You agreed that MSD would be the most appropriate agency to carry out the function in the short to medium term.
- 6 This paper proposes changes to the NCS Regulations that must be made before the commencement of those Regulations in 1 July 2019 and seeks your agreement that these changes are progressed through the Cabinet paper (led by the Minister of Social Development and Minister of State Services) on strengthening independent oversight of the Oranga Tamariki system and children's issues. You will be forwarded the draft Cabinet paper for comment during the week beginning 28 January 2019.
- 7 Other matters that are related to the wider functions and powers of the independent monitor that are considered less urgent will be progressed through the Independent Oversight (Oranga Tamariki System and Children's Issues) bill (the Bill) following Cabinet agreement to wider reforms to independent oversight in February 2019.
- 8 Oranga Tamariki has been consulted and has no major concerns with these proposals.¹

Changes to the NCS Regulations are required prior to 1 July 2019 to clarify timing and monitoring requirements

Existing commencement requirements in NCS Regulations are not feasible

- 9 The NCS Regulations as currently set out require the independent monitor to develop an assessment framework to use when monitoring compliance with the NCS Regulations and be ready to perform its monitoring function promptly after the commencement date of 1 July 2019 (or promptly after the date).
- 10 There are transitional provisions² and flexibility in the NCS Regulations that apply to Oranga Tamariki and its approved organisations³. However, there are no provisions to allow the independent monitor to develop and scale up its monitoring function.
- 11 MSD is of the view that it is not feasible for an independent monitor to be in a position to meet all requirements by July 2019. We have previously advised that if

¹ Oranga Tamariki has indicated that it does not take a view on the amendments around commencement of independent monitoring, since they relate to the monitor's compliance with the NCS

² Schedule 1, NCS Regulations

³ OT's cabinet paper: Oranga Tamariki' "Oranga Tamariki (National Care Standards) Regulations 2018" (Cabinet Paper from Office of the Minister for Children to the Chair, Cabinet Social Wellbeing Committee, Feb 2018)

- The Cabinet Paper proposes allowing "a degree of flexibility to the independent monitor to develop an appropriate monitoring and reporting regime" [at para 63.1]
- It is clear from the Cabinet Paper that the Regulations were not intended to be "overly prescriptive" and would allow a "significant scope for operational decision-making as to how the Ministry can best meet the proposed requirements in each area" [at para 84]. This is partly due to costs which will be phased in over time [at para 85].

Early changes required to the National Care Standards relating to the independent monitor

appointed as the independent monitor⁴, MSD would need up to 15 months to build its capabilities for that role [REP/18/12/1684 refers]. Independent monitoring required for NCS is a major new undertaking. An independent monitor would require time to:

- stand up its new function including to establish operations and infrastructure sufficient to meet the obligations and intent of the independent monitor
- undertake consultation, develop, test and refine the framework for monitoring⁵
- establish information sharing and other working arrangements⁶ with appropriate bodies including Oranga Tamariki and its contracted providers and other oversight bodies
- better align with Oranga Tamariki's implementation timeframes.⁷

MSD recommends that NCS Regulations are amended to specify commencement provisions

- 12 We propose amending the commencement provisions in the NCS Regulations to enable the independent monitoring function to scale up over time. We have considered the time needed to establish the monitoring function and the importance of ensuring the safety of children in developing our recommendations.

Monitoring related provisions that should continue to commence from 1 July 2019

- 13 We believe that the following provisions in Part 6 of the NCS Regulations should continue to commence from 1 July 2019 to ensure the safety of children and young people in care and custody.

Intent	These NCS Regulations should commence from 1 July 2019
To enable the monitor to commence the development of the Framework	The content and establishment of the assessment framework (regulations 77 and 78)
To enable the monitor to have oversight of the safety of children and young people in care and custody from the commencement of the NCS Regulations	The requirement for the chief executive to provide information to the independent monitor on abuse or neglect (regulation 85)
To enable the monitor to report on any relevant topic to the Minister for example on matters related to the abuse and neglect of children and young people	Provisions for supplementary reports by the independent monitor (regulation 82)

⁴ Final policy decisions that MSD would be undertaking the independent monitoring function will be sought late February 2019.

⁵ The NCS Regulations specify that the Framework must be developed in consultation with the chief executive of Oranga Tamariki and any approved organisation with children or young persons in their care or custody. Sufficient time is required to work through avoiding potential duplication of the monitoring of NCS with the accreditation processes. The Framework must also be developed having regard to the consistency of the framework with the Oranga Tamariki systems for continuous improvement and self-monitoring. The monitor would require sufficient time to use early prototypes to refine the framework before it is applied across the board.

⁶ This would include the monitor fully informing Oranga Tamariki and its approved organisation the processes and the Framework used by the monitor to assess their compliance.

⁷ Oranga Tamariki Care Cabinet paper (REF) states Oranga Tamariki intends to build its system so that, over four years all children and young people in care, and their caregivers, receive a standard of care that fully delivers on the policy intent of the NCS to provide high quality care.

Early changes required to the National Care Standards relating to the independent monitor

- 14 Note that the provisions that relate to the requirements for self-monitoring and self-improvement of Oranga Tamariki will continue to commence from 1 July 2019. Oranga Tamariki intends to have a framework and processes in place to enable it to monitor its practice against the standards from 1 July 2019. These processes will continue to evolve beyond 1 July 2019, alongside the independent monitor as it develops its framework.
- 15 Regulation 77 sets that the independent monitor must establish a framework for monitoring. This provision can be interpreted to mean that the framework must be in place shortly after 1 July 2019. As detailed in paragraph 11, the independent monitor requires sufficient time to undertake consultation, develop, test and refine the Framework. We therefore recommend that regulation 77 is amended to specify that the independent monitor must *develop and* establish the Framework.

Monitoring related provisions to commence from 1 July 2020 (rather than from 1 July 2019)

- 16 MSD recommends that all other provisions under Part 6 of the NCS Regulations commence from 1 July 2020 (as set out in the box below except for regulations 86 and 87 that relate to the self-monitoring of Oranga Tamariki). These provisions will enable the independent monitor to commence substantive monitoring from 1 July 2020.
- 17 To note, we expect the development of the monitoring framework will identify further detail on methods of assessment and information requirements for monitoring. We also expect the Bill to introduce new powers and functions for the independent monitor that are not already provided in the NCS Regulations.

Provision in the NCS Regulations to commence from 1 July 2020
Source of information to assess compliance (regulation 79)
Method of assessing compliance with these regulations (regulation 80)
Reporting requirements for independent monitoring body (regulation 81)
The obligation to do urgent reports on non-compliance where a child or young person is at risk (regulation 83)
Independent monitor may request information (regulation 84)
Reporting by Oranga Tamariki and approved organisations to Minister and Independent Monitor on self-monitoring (regulation 87)

- 18 Risks and mitigations for delaying commencement of monitoring and not delaying are noted in **Attachment A**. The primary risk of delay is that public and stakeholders may be disappointed with amending the Regulations to push out the date on which substantive independent monitoring will start. However, we believe there is a greater reputational risk if independent monitor is seen to breach privacy, or rushes the development of the framework for monitoring, as this will require consultation with a wide range of stakeholders (and Māori in particular) and will require specialist expertise to develop.

Amendments are also required to the NCS Regulations as it will require the monitor to discover all non-compliance, which is not operationally feasible

- 19 Regulation 83 of the NCS Regulations will require the independent monitor to ensure it discovers *all* non-compliance with the Regulations that could give rise to immediate risk to a child or young person in care or custody.

- 20 No statutory watchdog could reasonably be expected to perform its function to that absolute standard. Therefore we propose amending the regulation 83 to clarify that the scope of the monitoring should only extend to non-compliance with the NCS that the independent monitor becomes aware of in the ordinary course of monitoring that places or is likely to place a child or young person in care or custody at immediate risk of suffering serious harm.
- 21 We propose that regulation 83 commence from 1 July 2020 when the independent monitor has the capability and capacity to commence substantive monitoring. However, the amendment to regulation 83 is required prior to 1 July 2019 to make the scope of monitoring done by the independent monitor clear, as it impacts on how the function would be resourced and developed.

Next steps

- 22 Following your agreement, the proposed changes to the NCS Regulations will be progressed through the Cabinet paper (led by the Minister of Social Development and Minister of State Services) seeking wider changes to strengthen independent oversight of the Oranga Tamariki systems and children's issues.
- 23 You will be forwarded an early draft Cabinet paper for comment during the week beginning 28 January 2019 that will include the proposed NCS changes. Following your agreement, we will finalise the Cabinet paper for ministerial consultation from 1 February 2019.
- 24 The Cabinet paper will be considered at the Social Wellbeing Committee on 20 February 2019 and drafting instructions will be issued to the Parliamentary Counsel Office. We recommend that, following Cabinet approval to the proposed changes to the NCS Regulations, MSD progress these amendments, with support from Oranga Tamariki. We will provide you with further advice on the appropriate arrangements for this.
- 25 We would work to ensure that the drafted Regulations will be considered by the Cabinet Legislation Committee in time for the amended Regulations to be in place before 1 July 2019.
- 26 The Cabinet paper will also include proposals related to other functions, powers, and administrative provisions of the independent monitor that may have further implications on the NCS Regulations⁸. The paper may also include changes to the information sharing provisions in the Oranga Tamariki Act 1989 to clearly provide for information sharing for the purposes of independent monitoring. MSD will continue to work with Oranga Tamariki on this matter. These changes are considered less urgent and will be progressed through the Bill process.
- 27 We recommend that you forward this report to the Minister for Child Poverty Reduction, Minister of Social Development and the Minister of State Services for their information. **Attachment B** provides background information on the NCS requirements for their information.

⁸ The proposed functions of an independent monitor are wider than monitoring compliance with the NCS Regulations. The Bill will enable the independent monitor with functions and powers to monitor the entire Oranga Tamariki operating model, which NCS is a part of.

Early changes required to the National Care Standards relating to the independent monitor

Attachment A

Risk and issues of delaying substantive independent monitoring of the NCS

Risk/issue	Consequences/mitigation
<p>The public and stakeholders would be disappointed with amending the Regulations to push out the date on which substantive monitoring will start</p>	<p>There is a greater reputational risk if Government is seen to rush the development of the Framework and commencement of monitoring.</p> <p>A communication plan will be developed to clearly communicate to stakeholders that certain functions would still be undertaken by the independent monitor to ensure the safety of children and young people in care.</p>
<p>Lack of independent assurance over the safety of children and young people in care during 2019/20</p>	<p>Oranga Tamariki will have systems in place to commence self-monitoring from 1 July 2019. Also, Oranga Tamariki has created a Safety of Children in Care Unit in 2018 which is implementing a new method of reporting on harm of children in care. Since October 2018, the unit has been undertaking an assessment of all findings of abuse of children in care. This data will be provided to the Minister for Children in February 2019, and on a quarterly basis thereafter.</p> <p>The Office of the Children's Commissioner will continue to undertake its current monitoring activities through 2019/20.</p> <p>Also, from 1 July 2019, the independent monitor would:</p> <ul style="list-style-type: none"> • provide oversight over how Oranga Tamariki respond to reports of abuse or neglect in the care and protection system • have the ability to seek information and report on any topic to the minister to ensure the safety of children and young people.
<p>For some children and young people in care, and caregivers, support plans will be renewed to be in line with the requirements under the new care standards during 2019. This would not be externally monitored.</p>	<p>The learnings of the application of the NCS will build-up over time, and lessons derived from the initial months of implementation could be picked up by the independent monitor after July 2020.</p> <p>The absence of independent monitoring of children covered by the NCS over 2019 would only be temporary, and we do not consider that it presents an inordinate systems risk.</p>
<p>Potential to delay a first NCS-State of Care report</p>	<p>Implementing monitoring on 1 July 2020 would still enable the compilation of a comprehensive monitoring report to be provided to Ministers by 2022 (ie three years from commencement of the regulations as required).</p>

Issues of not delaying substantive independent monitoring of the NCS

Issues	Consequences/mitigation
<p>The independent monitor would be required to develop the Framework before 1 July 2019 to enable monitoring to commence promptly after 1 July 2019.</p>	<p>It does not allow the independent monitor sufficient time to fully consult with Oranga Tamariki and its approved providers, including with iwi providers. There have been strong calls from the approved providers and the sector for the need to avoid potential duplication with the current accreditation processes.</p> <p>It will also not allow sufficient time for the independent monitor to give full consideration to how the Framework aligns with the Oranga Tamariki systems in place for internal self-monitoring and continuous improvement.</p>
<p>Oranga Tamariki's record keeping system in its current form has too few relevant data fields to generate data driven reports</p>	<p>The independent monitor cannot rely on Oranga Tamariki to provide information that will support the independent monitor to fulfil its monitoring role from year one. As a result, there is a need for the independent monitor to undertake direct collection of information from children and young people in care which requires a significant build in the capacity and capability of the independent monitor. This will require time. There is insufficient time to establish this ahead of 1 July 2019.</p>
<p>The scale of independent monitoring required under the NCS is a substantial undertaking for the independent monitor and requires a significant build</p>	<p>The independent monitor would not have sufficient resources and infrastructure, including regional presence to undertake its monitoring function at full scale from 1 July 2019. The independent monitor would ideally scale up its function over time and changes to the regulations will be progressed through a separate process to enable this.</p>

Attachment B

Overview of National Care Standards and what is required of an independent monitor

- 1 New legislative national care standards (NCS) for children or young people in care or custody will come into force on 1 July 2019. NCS are intended to address the variability in the quality of care experienced by children and young people in the care or custody of the chief executive and organisations approved under section 396 of the Oranga Tamariki Act and places explicit obligations on them.
- 2 NCS sets out the actions and steps that must be taken by the chief executive and approved organisations to ensure children and young people receive an appropriate standard of care that is consistent with the principles of the Act. These steps and actions cover the spectrum of the care experience for children and young people in care and also set out the support that caregivers can expect when they have a child or young person in their care. They cover:
 - the needs assessment and planning that must occur when a child or young person comes into care
 - the support they and their caregiver must receive to meet the child or young persons needs
 - matters to be explained to children and young people
 - planning and support that must occur when the child or young person leaves care.
- 3 Under section 447A of the Oranga Tamariki Act, the Minister for Children must appoint an agency or body (independent of Oranga Tamariki) to monitor compliance by the chief executive, the chief executive's delegates, and approved organisations with the NCS regulations.
- 4 The minimum requirements for the independent monitoring agency or body are to:
 - establish an assessment framework for monitoring and reporting on compliance with the NCS Regulations which must:
 - be developed in consultation with the chief executive and other affected organisations
 - specify how compliance and the quality of care will be assessed
 - include detail of key sources of information and key indicators of performance.
 - use multiple sources of information to assess compliance, and that this must include a range of information from Oranga Tamariki sources and stakeholder feedback (including advocacy sources), and information obtained directly from children and young people
 - report to you every three years on an overall assessment of the state of care provided under the Oranga Tamariki Act and the NCS Regulations⁹
 - make supplementary reports on its own initiative or at your require on any relevant topic

⁹ Under Regulations 81(1), the independent monitor must report, at the minimum, on the state of care provided to children and young people in the care and protection system. The scope of reporting does not extend to the assessment of the entire operations of Oranga Tamariki including the operations that take place before a decision is made by the Family Court for the 'uplift of the child into the custody of Oranga Tamariki.

- report urgently to Oranga Tamariki any non-compliance with the NCS Regulations if, in the course of carrying out its functions, it finds that place a child or young person is at immediate risk
 - monitor reports of abuse and neglect that Oranga Tamariki has received and how those reports were responded to
 - monitor self-monitoring reports by the chief executive and approved organisations of Oranga Tamariki.
- 5 In undertaking these tasks, the monitor must have regard to the purposes of the Oranga Tamariki Act (to promote the wellbeing of children, young persons and their whānau) and encourage Oranga Tamariki to work towards continuous service improvement by identifying areas of high performance and areas for improvement.

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