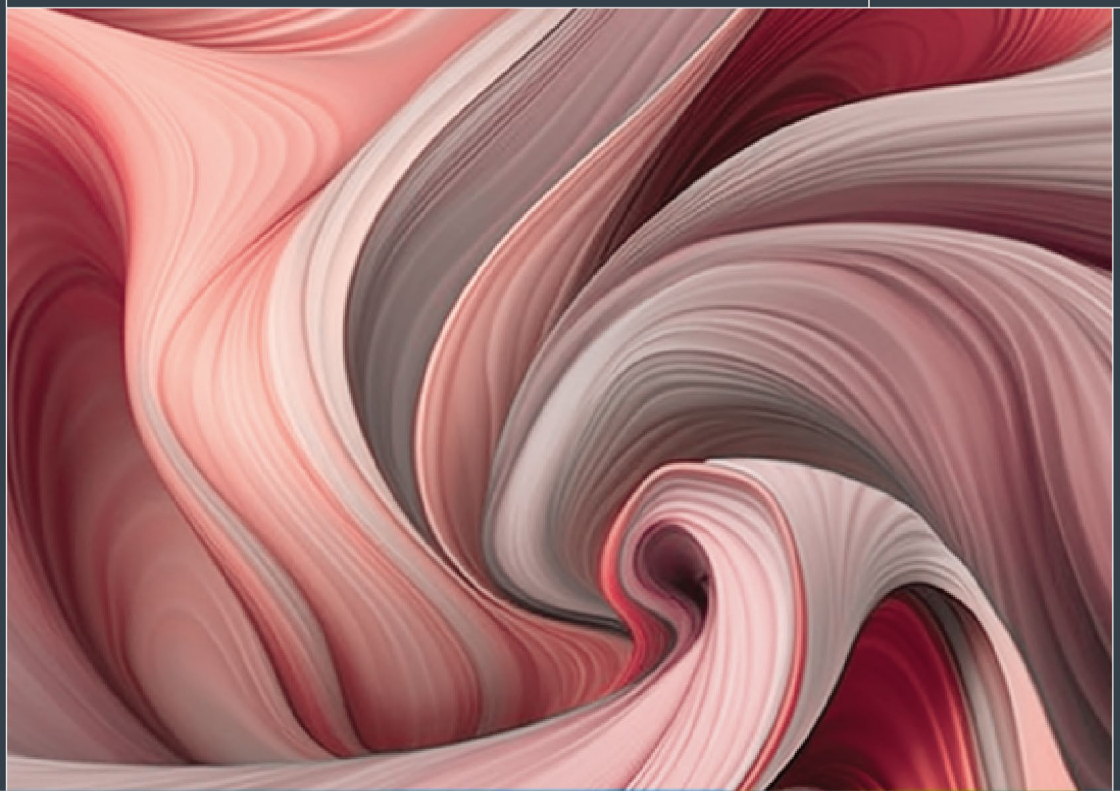
INDEPENDENT STATUTORY REVIEW OF THE

Oranga Tamariki Oversight System

Final report
24 January 2025



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Preface

This report has been prepared for the Ministry of Social Development by MartinJenkins (Martin, Jenkins & Associates Ltd).

For over 30 years MartinJenkins has been a trusted adviser to clients in the government, private, and non-profit sectors in Aotearoa New Zealand and internationally. Our services include organisational performance, employment relations, financial and economic analysis, economic development, research and evaluation, data analytics, engagement, and public policy and regulatory systems.

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Established in 1993, we are a privately owned New Zealand limited liability company, with offices in Wellington and Auckland. Our firm is governed by a Board made up of Executive Partners and Independent Directors. Our Independent Directors are Sophia Gunn and Chair David Prentice. Our Executive Partners are Sarah Baddeley, Nick Carlaw, Allana Coulon, Nick Davis, and Richard Tait. Michael Mills is also a non-shareholding Partner of our firm.

Executive summary

This review confirmed the importance of high-quality oversight, monitoring, and accountability arrangements for maintaining public trust and supporting transparency around how the state cares for children and young people

All the stakeholders we engaged with for this independent review understood the value of supporting a high-quality oversight system so that the Oranga Tamariki system does better for children and young people in Aotearoa New Zealand.

Oversight issues were at the front of many of our stakeholders' minds, especially after past systemic failures. Stakeholders were concerned that the significant public resources invested in upholding the rights of children and supporting their wellbeing are used effectively to achieve better results for children, young people, and whānau who experience the Oranga Tamariki system.

This was clear from consulting extensively with relevant people and organisations and reviewing documents

For our review we considered over 200 documents and interviewed a wide range of people and organisations. This included the three oversight bodies, 16 agencies and advisory groups in the Oranga Tamariki oversight system, seven care providers, four organisations that represent children and young people, nine iwi and Māori organisations, and 30 individual children and young people with care experience. For some of the organisations and groups we engaged with, we interviewed multiple people to gather a range of insights.

Drawing from our Terms of Reference, our lines of inquiry covered six workstreams:

- Operation of the Acts and the functions, duties, and powers of the oversight bodies
- Engagement with hapū, iwi, and Māori organisations
- How the oversight bodies work together
- Whether the Independent Children's Monitor | Aroturuki Tamariki (the Monitor) is obstructed in performing its functions
- Resourcing of the Monitor and the Children and Young People's Commission | Mana Mokopuna (the Commission)
- The Optional Protocol to the Convention Against Torture (OPCAT).

This report considers each of those in turn.

Reviewing the oversight arrangements so soon after they came into force has limitations and advantages

This review concerns the Oversight of Oranga Tamariki System Act 2022 (called "the Oversight Act" in this report) and the Children and Young People's Commission Act 2022 ("the Commission

Act"), which came into force in May and July 2023, respectively. The legislation recognises the importance of continuous improvement: each Act requires a review of the Act to begin within three years after it came into force.

Several implications stem from the current systems being established only recently:

- An advantage is that the meaning and intent of the legislation have not been lost through the passing of time. Many of the people who developed the legislation, and many stakeholders who made submissions on it, are active within the system and understand what was intended.
- There is mixed understanding of the current arrangements among stakeholders. Some have only limited awareness or understanding of the current arrangements.
- There is scope for aspects of the current arrangements to mature further – for example, through processes becoming more efficient.
- There may not be enough data to properly evaluate the effectiveness of the current system. Many initiatives could still be in their establishment phase and systemic changes need longer to show clear outcomes.
- It can be difficult to distinguish between normal implementation challenges and fundamental design problems that require legislative changes, especially when relationships between oversight bodies and Oranga Tamariki are still maturing.

Regardless of those issues, the timing of this review is particularly important given that its findings will inform Parliament's consideration of proposed amendments to the oversight legislation in the Oversight of Oranga Tamariki System Legislation Amendment Bill. The policy decisions that the Bill is giving effect to are out of scope as per our Terms of Reference.

Stakeholders have high expectations, informed by their broad experience and context, that the care system will be held accountable

Recent events have heightened the visibility of the subject matter of this review.

Our review took place following the release of the report of the Royal Commission of Inquiry into Abuse in State Care and in the Care of Faith-based Institutions. The Royal Commission recommended considering whether to establish a Care Safe Agency[1] that could have functions currently held by the three current oversight agencies. The government has not fully responded to the recommendations at the time of writing.

Some stakeholders we talked to argued for a simpler oversight structure, with fewer oversight agencies. However, it is outside our Terms of Reference to consider options other than the three-agency structure of the current oversight system. A full government response to the Royal Commission is expected no earlier than mid-2025.

Stakeholders were also well informed about the broader context of the care and protection system, and this included having concerns about the repeal of section 7AA of the Oranga Tamariki Act 1989. This is relevant to our Terms of Reference to the extent that the repeal raises

[1] The report uses the terms "Care Safe Agency" in recommendations 41–44. It also uses the term "care safety agency" elsewhere.

concerns about Oranga Tamariki being less accountable to Māori children. In this context, the oversight system has become more important and relevant for those stakeholders.

RANGATAHI INSIGHTS

Trust and values that matter for rangatahi

The rangatahi we spoke with talked about the different elements of trust, the values that are important for them and their wellbeing, and the need for these to inform how the Oranga Tamariki system is held to account. For example, rangatahi emphasised the importance of taking action, reliability, honesty, transparency with processes and information, and the importance of cultural identity, whakapapa, and belonging.

The Oversight Act and Commission Act are operating effectively and as needed to achieve their intended purposes

The Oversight Act is working as intended

We found no evidence that the Oversight Act is not working as intended. Our document review and interviews with system participants and stakeholders confirmed that the Monitor has the powers it needs to fulfil its duties and discharge its functions, and therefore to achieve the purpose of the Act.

We regularly heard stakeholders question if the accountability framework could be adjusted to provide more incentives to improve the system. Some suggested the Monitor be empowered to force monitored organisations to comply with national care standards under threat of a penalty. We do not support this proposal, for several reasons:

- Penalties exist elsewhere in the system. For example, Oranga Tamariki, with the approval of the Minister, can close a residence, or suspend or revoke an approval to provide services. Similarly, many of the key professions in the system, like social workers, are subject to occupational regulations that require them to meet standards or risk having their registration revoked.
- The Oranga Tamariki system is not suited to a sanction-heavy regulatory regime. Imposing sanctions (for example, fines) on care and custody providers could have collateral impacts on children and young people in care and custody, with care and custody providers providing a lower standard of care because of the penalties.
- It is reasonable for monitored organisations to develop their responses to the reports of the Monitor. They have context and expertise that inform what is reasonable. A "regulatory regime" would prescribe an approach with no regard for this expertise.

Within the parameters of our Terms of Reference, we recommend that no significant changes be made to the Oversight Act. A number of parties we engaged suggested changes that they described as "desirable" rather than "necessary". We recommend that few changes be made.

The Commission Act is working as intended

We found no evidence that the Commission Act is not working as intended. The Commission has the powers it needs to fulfil its duties and discharge its functions, and therefore to achieve the purpose of the Act. We found that the different components of the Act reinforce one another. For example, to operate in accordance with the principles in section 5 would entail performing the functions in sections 20–22, and vice versa.

Oversight agencies are developing relationships with iwi and Māori organisations

We found that the Independent Children's Monitor and the Children and Young People's Commission have appropriate plans and approaches in place for engaging and working with iwi and Māori organisations. These plans align with best practices and demonstrate appropriate capability, capacity, leadership.

Both the Monitor and the Commission are developing positive relationships with iwi and Māori organisations, specifically targeting regions of need and those active in the Oranga Tamariki system. The quality of this engagement has been high, with feedback indicating that it has been respectful and consistent with tikanga Māori, and that the agencies engaged for specific purposes.

However, we observed differing levels of engagement with the oversight system among the iwi and Māori organisations we consulted. While some had established strong relationships with the Commission and the Monitor, others had only minimal interaction. Given the stage of implementation, this is not unexpected.

We often heard confusion expressed by stakeholders about the specific roles of each oversight body, their collaborative processes, and the mechanisms ensuring effective oversight. Consequently, some iwi and Māori organisations perceived the oversight bodies as having little wider relevance beyond care providers, especially at whānau level.

The perspectives of iwi and Māori organisations are shaped by a broad, intergenerational context. This includes their roles as Treaty partners and as providers of diverse social services, holding accountability to their iwi, hapū, whānau, and tamariki. Iwi and Māori have well-established and nuanced views on accountability, where the wellbeing of tamariki is deeply connected to the wellbeing of whānau, hapū, and iwi.

Our view is that both the Monitor and the Commission are working with iwi and Māori as well as could be expected at this stage of implementing the Acts. For completeness, we note that the Monitor will publish its first annual report on the performance of the Oranga Tamariki system in respect of outcomes being achieved for Māori children, young people, and their whānau in 2025. We expect this report to be of high interest to iwi, Māori, and all stakeholders.

Over time, we would expect to see the oversight agencies:

- collaborating more to increase understanding of the oversight system among iwi and Māori at all levels and to make the oversight system more relevant for them
- continuing to develop positive relationships with iwi and Māori, in a strategic and targeted way to ensure relationships are of value to all parties, and

- moving beyond relationship building and working towards increasing substantive improvements for the wellbeing of tamariki and rangatahi Māori in the Oranga Tamariki system.

The working relationships between the oversight agencies are maturing, and they are where we would expect them to be given that the system changes are only recent

The three oversight agencies have been meeting since they were established. These relationships are maturing, and we saw evidence that they are collaborating well, have a shared intent, and are coordinating effectively.

A good basis exists for oversight agencies to develop their relationships further. Terms of Reference have been agreed covering the areas where the agencies need to work together. Oversight agencies are aligned in their high-level goals and have a shared understanding of roles and responsibilities. This is reflected in documentation, such as the Terms of Reference and a memorandum showing the three oversight agencies agreeing how to deal with issues that could otherwise have been ambiguous.

Good arrangements are in place for sharing information, reflecting well-understood requirements relating to statutory authority and privacy. Importantly, the "no wrong door" approach puts the onus on the oversight agencies, rather than on complainants, children, or other participants in the system, to understand the different roles and responsibilities in the system. This is a good step for a maturing system, but stakeholders would like greater understanding of the oversight system which could reduce the need for this approach over time.

We heard from stakeholders that there are clearly areas where greater collaboration amongst the oversight agencies would be beneficial. We expect to see this as the system matures.

- We heard from non-government stakeholders that the oversight system was convoluted and difficult to understand from the outside. This is not a result of the three oversight agencies failing to work constructively together. However, the three agencies will need to continue to collaborate to present a united picture of the oversight system and encourage greater understanding of the system.
- The oversight agencies have powers to request information, and we heard that the agencies are getting better at using them to benefit the oversight system, by passing information between each other. However, we also heard that information requests can be challenging and resource-intensive for the agencies receiving them. Speaking generally, monitoring is important for all Crown agents and should not be seen as "too hard", "nice to have", or an "unnecessary burden" by any monitored agencies. However, in this case, the common duties of the oversight agencies provided by the Oversight Act require oversight agencies to "minimise the burden on agencies when they are gathering information". We encourage the oversight agencies to have a sustained, focused effort to work together to minimise the burden on monitored agencies when the oversight agencies are gathering information and carrying out initial inquiries, investigations, or reviews in line with their common duties.

As discussed above, the oversight system is not based around penalties and relies instead on transparency and influence to be effective. The oversight agencies' effectiveness therefore

depends on how much influence they can exert. We expect that the three agencies will maximise their influence if they present a united front to stakeholders and the general public, particularly if they can collaborate and prioritise more strategically over time.

There is no evidence of anyone deliberately obstructing the Monitor, but some improvements to the system would support better reporting and more transparency and accountability

We found no evidence of the Independent Children's Monitor being intentionally or maliciously obstructed in its work.

The Monitor has, however, reported three cases of non-compliance, where Oranga Tamariki was slow to provide data and information. These events of non-compliance can affect the Monitor's ability to publish reports as required under the Oversight Act in a timely way. Delays in publication can mean that the data and the Monitor's findings are out-of-date and so less relevant. Delays in providing data also mean the Monitor is relying on older information when it is planning and carrying out its monitoring visits.

These delays have been attributed to Oranga Tamariki undergoing a significant internal restructure in 2024. Over time, we expect that Oranga Tamariki and other agencies will get better at providing information to the Monitor more quickly. In some cases, this will require changes to how Oranga Tamariki manages and collects information.

As noted above, the oversight agencies may be able to do more to align information requests to reduce the burden on monitored agencies.

Resourcing for the Monitor and the Commission is broadly reasonable

Assessing the system oversight function for value for money is challenging when there has not yet been time for outcomes to be achieved or measured. In making our assessment, we have considered relevant factors such as the overall cost of the Monitor and Commission, evidence of duplicated functions or effort, and the degree to which data and information value is improving the way the oversight system participants work together to fulfil their functions.

We found no evidence the Monitor is under-resourced or operating inefficiently. We concluded that its current level of resourcing is probably about right.

We also found no evidence the Commission is operating inefficiently. Mana Mokopuna would benefit from having certainty over its funding, that is, baseline funding at a level that supports its operation. Historic baseline funding was recognised as being inadequate for this purpose. We identify that there are some areas where additional resourcing beyond its expenditure in FY24 could extend its reach beyond a "minimum viable level" against its functions, and/or support Mana Mokopuna to be better placed to respond to resourcing pressures when external events require it to move resources to react.

The case for changing the designation of the National Preventive Mechanism under OPCAT for places of detention for children and young people is weak, because alternatives to the status quo have major drawbacks

Throughout the review we heard a range of views for and against designating each of the oversight agencies as the National Preventive Mechanism (NPM) under OPCAT. We have considered what we heard, as well as international expectations for designating NPMs under OPCAT. Ultimately, we think the case for change is weak because alternatives to the status quo have major drawbacks. We have given greater weight to the option that supports greater confidence in the oversight system.

Those in favour of the Monitor taking the NPM designation claim that benefits of scale and efficiencies could be realised from a single monitoring visit being able to be used for monitoring against domestic obligations and OPCAT obligations. This is theoretically attractive, but we do not think it would work well in practice for either reporting regime. To meet international requirements, the Monitor would need to ring fence the OPCAT function and undertake the two monitoring activities independently of each other. The practical effect of that would be that the monitoring burden for monitored agencies would be unchanged. Responsibility in a single entity for the two separate reporting regimes could also present risks that could reduce the effectiveness of reporting under both regimes. For example, there is a risk that contradictory monitoring reports are produced by the same entity due to the different reporting standards. Elsewhere in this review, we support leaving monitored agencies to decide how best to respond to the reports of the Monitor. This approach may be undermined if the Monitor also produces reports under OPCAT which must include recommendations, and undertakes the NPM's proactive activity to follow up on recommendations and encourage implementation.

The Ombudsman would be a credible alternative were it not for some key factors. While this designation would not reduce the monitoring burden on monitored agencies (that is, it retains a domestic monitor and an OPCAT monitor), it brings the benefit of an experienced NPM with the strongest degree of independence. However, the role of the Ombudsman does not meet the OPCAT standard of providing an expert member in child rights. Further, New Zealand has chosen to establish a multi-party NPM combining diverse areas of expertise. If this designation were added to the Ombudsman's current designations the disproportionate size of the Ombudsman's designation could disrupt the balance of the NPM group, and the wider benefits of New Zealand's multi-party NPM arrangement.

We find that retaining the designation with the Chief Children's Commissioner is likely to garner more confidence in the system given the specialist expertise of a Chief Children's Commissioner in both child rights and international human rights standards. We note that some interviewees considered the Commission's advocacy function to be a conflict with OPCAT monitoring, but that the Association for the Prevention of Torture (APT) and all New Zealand NPMs consider that their OPCAT activities of reporting and follow up on recommendations are a form of advocacy. Whilst it will be important to continue to manage perceptions of a conflict between advocacy and monitoring within the Commission, this perceived conflict is managed under the status quo, and can continue to be managed by demonstrating that, as with other NPMs, the Commission operates processes that ensure advocacy is undertaken following the completion of monitoring reports.

Background and context

A. This review is required by legislation

The "Oranga Tamariki system" is the system that is responsible for providing services or support to children, young people, and their families and whānau under, or in connection with, the Oranga Tamariki Act 1989 (also titled the Children's and Young People's Well-being Act 1989).

Three bodies are legislated to oversee the system: Mana Mokopuna | the Children and Young People's Commission; Aroturuki Tamariki | the Independent Children's Monitor; and the Ombudsman. The current oversight structure was established through the Oversight of the Oranga Tamariki System Act 2022 (the Oversight Act) and the Children and Young People's Commission Act 2022 (the Commission Act), which commenced in May and July 2023, respectively.

The Oversight Act and the Commission Act are required to be independently reviewed. In May 2024, the Ministry of Social Development undertook targeted engagement with key stakeholders of the Oranga Tamariki system to get further advice on the scope of the reviews, in addition to the requirements under legislation. The Terms of Reference for this review is attached as Appendix 1.

This is the first time the Acts have been reviewed.

Oversight of Oranga Tamariki System Act 2022

Under Section 58 of the Oversight Act, an independent review of the operation and effectiveness of the Act, and the operation of Aroturuki Tamariki under the Act, is required to commence no later than three years after May 2023. The findings must be reported to the Minister responsible for Aroturuki Tamariki; the Minister responsible for administration of the Oranga Tamariki Act 1989; and, as far as they relate to Ombudsmen, the House of Representatives.

The Oversight Act gives the Ombudsman additional duties and powers when dealing with matters that fall under the Ombudsmen Act 1975 that relate to services or support delivered by the Oranga Tamariki system. The Oversight Act does not require the Ombudsman to be subject to a review, however it does provide for a review of whether Aroturuki Tamariki is working effectively with the Ombudsman.

Children and Young People's Commission Act 2022

Similarly to the Oversight Act, an independent review of the operation and effectiveness of the Commission Act, and the operation of Mana Mokopuna under the Act, is required under section 38 of the Commission Act to begin no later than three years after July 2023. The findings of the review must be reported to the Minister responsible for Mana Mokopuna.

B. It is useful to understand the context in which we conducted this review

Cabinet decisions are being implemented through a Bill at the time of this review

On 2 May 2024, Hon Louise Upston, Minister for Social Development and Employment, announced structural changes to the oversight system, including:

- disestablishing the Mana Mokopuna Board and reverting to a single Children's Commissioner, and
- transforming Aroturuki Tamariki from a departmental agency hosted within the Education Review Office to an independent Crown entity, governed by a Board.

The Oversight of Oranga Tamariki System Legislation Amendment Bill was introduced on 31 October 2024 to give effect to the policy decisions.

The policy decisions and timing relating to this Bill are out of scope for our review. This means we have not considered legislative changes that would expand or reduce the number of agencies in the oversight system, or any options contrary to the decisions already made.

Royal Commission of Inquiry into Abuse in Care

The Royal Commission of Inquiry was established on 1 February 2018 to investigate what happened to children, young people, and adults in state care and in the care of faith-based institutions in Aotearoa New Zealand between 1950 and 1999.

The final report, Whanaketia, was presented to the Governor-General on 25 June 2024 and included 138 recommendations on how Aotearoa New Zealand can better care for tamariki, rangatahi, and pakeke. The Prime Minister made a formal, public apology on 12 November 2024 to survivors of abuse in care and a Crown Response Office has been established within the Public Service Commission. The Crown Response Office is working through the recommendations in Whanaketia, and a response is expected in 2025.

Proposed Care Safe Agency

The findings of the Royal Commission of Inquiry need to be read in totality. However, most directly relevant to this independent review are the recommendations related to the establishment of a new independent Care Safe Agency. This proposed agency would have an independent Board to oversee it, to ensure there is a holistic view of people at risk in care. The proposed functions of the Agency include: independent leadership and coordination of the care system; setting, monitoring, and enforcing care safety rules, standards, and guidelines; and promoting and increasing public awareness of care safety.

If government chooses to establish a Care Safe Agency, it would need to review the roles, functions, and powers of the oversight bodies for the Oranga Tamariki system to identify and address any overlaps or gaps between the Care Safe Agency and the oversight bodies. The oversight bodies would continue to have a critical role in providing oversight for the care system,

which operates at arm's length from both care providers and the Care Safe Agency. These issues will be considered as part of the Crown's response and are separate from this review.

Recommendations to ensure that independent oversight and monitoring is coherent and well-resourced

The Royal Commission also recommended that the government:

- review the roles, functions, and powers of independent monitoring and oversight entities to identify and address any unnecessary duplication and encourage collaboration
- consolidate the existing care and protection and youth justice independent monitoring and oversight entities into a single entity, and
- ensure that there are no unreasonable barriers preventing all responsible oversight bodies from investigating complaints, proactively monitoring the care system, and collaborating as appropriate to enable a whole of system view.

Proposed changes to the Oranga Tamariki Act 1989, Children's Act 2014, Crimes Act 1961, and Public Records Act 2005

The Government announced the Responding to Abuse in Care Legislation Amendment Bill on 11 November 2024 in response to the Royal Commission of Inquiry to better protect people in state care. The Bill amends the following legislation:

- Oranga Tamariki Act 1989: to authorise universal searches on entry to secure youth justice residences; for search plans to be made with children and young people in all secure residences; to repeal the ability to undertake strip searches; and to clarify the length of time for secure care prior to judicial oversight.
- Children's Act 2014: to extend the existing workforce restriction on core children's workers to include convictions for overseas offences equivalent to specified New Zealand offences; and to include offences against children and young people under the Prostitution Reform Act 2003 in the list of specified offences.
- Crimes Act 1961: to explicitly include disability in the definition of a vulnerable adult.
- Public Records Act 2005: to enable earlier re-audit of agencies identified as having low information management maturity; create an ability to require an action plan and time-bound correction of non-compliance; and make clear that Archives New Zealand may undertake its own audits.

Repeal of section 7AA of the Oranga Tamariki Act 1989

The Oranga Tamariki (Repeal of section 7AA) Amendment Bill was introduced and passed its first reading in Parliament on 21 May 2024. Section 7AA requires Oranga Tamariki to ensure its policies and practices reflect its obligations to give effect to Te Tiriti o Waitangi and to develop strategic partnerships with iwi and Māori organisations. The Bill is relevant for this review as the Bill would

result in consequential amendments to the Oversight Act and the Oversight of Oranga Tamariki System Regulations 2023.[2]

The Social Services and Community Committee recommended in its report back to Parliament that some aspects of Section 7AA relating to strategic partnerships and reporting requirements be retained or amended. The Minister for Children will consider the recommendations made by the Social Services and Community Committee ahead of the second reading of the Bill.

C. Three agencies are legislated to perform specific functions to oversee the Oranga Tamariki system

The "Oranga Tamariki system" is defined in legislation

Section 9 of the Oversight Act defines "the Oranga Tamariki system" as "the system that is responsible for providing services or support to children, young people, and their families and whānau under, or in connections with, the Oranga Tamariki Act 1989".

The system applies to the delivery of services or support by agencies or their contracted partners, including the delivery of health, education, disability, and other services. For example, the system includes agencies such as Oranga Tamariki – Ministry for Children; New Zealand Police; Ministries of Health, Social Development, Education, and Justice; Department of Corrections; Health New Zealand, Kāinga Ora, and these agencies' contracted partners.

RANGATAHI INSIGHTS

Rangatahi interact with various players across the Oranga Tamariki system

Rangatahi we spoke to interact with a range of care professionals, agencies, and services across the Oranga Tamariki system.

Three agencies each have specific responsibilities for oversight of the Oranga Tamariki system

Three agencies are legislated to perform specific functions and oversee the current Oranga Tamariki system: Mana Mokopuna (advocacy); Aroturuki Tamariki (monitoring); and the Ombudsman (complaints and investigations). Together, the oversight agencies are responsible for ensuring those that make up the Oranga Tamariki system are upholding the rights of children in Aotearoa New Zealand and working in ways that support their wellbeing. In addition to legislative requirements, the agencies work together under a Terms of Reference.

[2] Clause 8 of the Bill would repeal Section 57(1)(e)(i), which states that the Governor-General may make regulations that prescribe content requirements in the three-yearly State of the Oranga Tamariki System report prepared by Aroturuki Tamariki related to the application of Section 7AA.

Clauses 10 and 11 would amend regulations 6(1)(d), 8(1)(a), and 8(1)(b) of the Oversight of Oranga Tamariki System Regulations 2023, removing the minimum requirements for the State of Oranga Tamariki System report to include matters related to the chief executive's performance of duties referred to in Section 7AA.

Mana Mokopuna | Children and Young People's Commission

Mana Mokopuna was formally established in its current form by the Commission Act. It was established to be an advocate for children and young people, that is, to "promote and advance the rights, interests, and participation of children and young people and to improve their well-being within (without limitation) the context of their families, whānau, hapū, iwi, and communities" (section 4 of the Commission Act).

Mana Mokopuna advocates for the rights, wellbeing, and interests of all tamariki and rangatahi in Aotearoa New Zealand up to the age of 18 years, and up to 25 years for those that are, or have been, in care or custody.

It does this by fulfilling functions grouped under three main headings: promoting interests and well-being of children and young people, promoting and advancing rights of children and young people, and engaging children's and young people's participation and voices (sections 20–22 of the Commission Act).

Aroturuki Tamariki | Independent Children's Monitor

Aroturuki Tamariki was established in 2019 to monitor compliance with the National Care Standards Regulations. Under the Oversight Act, its role expanded to monitor the performance of the Oranga Tamariki system, in the context of its interface with other systems.

The objectives of the Monitor are to carry out objective, impartial, and evidence-based monitoring, and provide advice. Aroturuki Tamariki does this by producing reports of its findings, with final reports required to be tabled in Parliament.

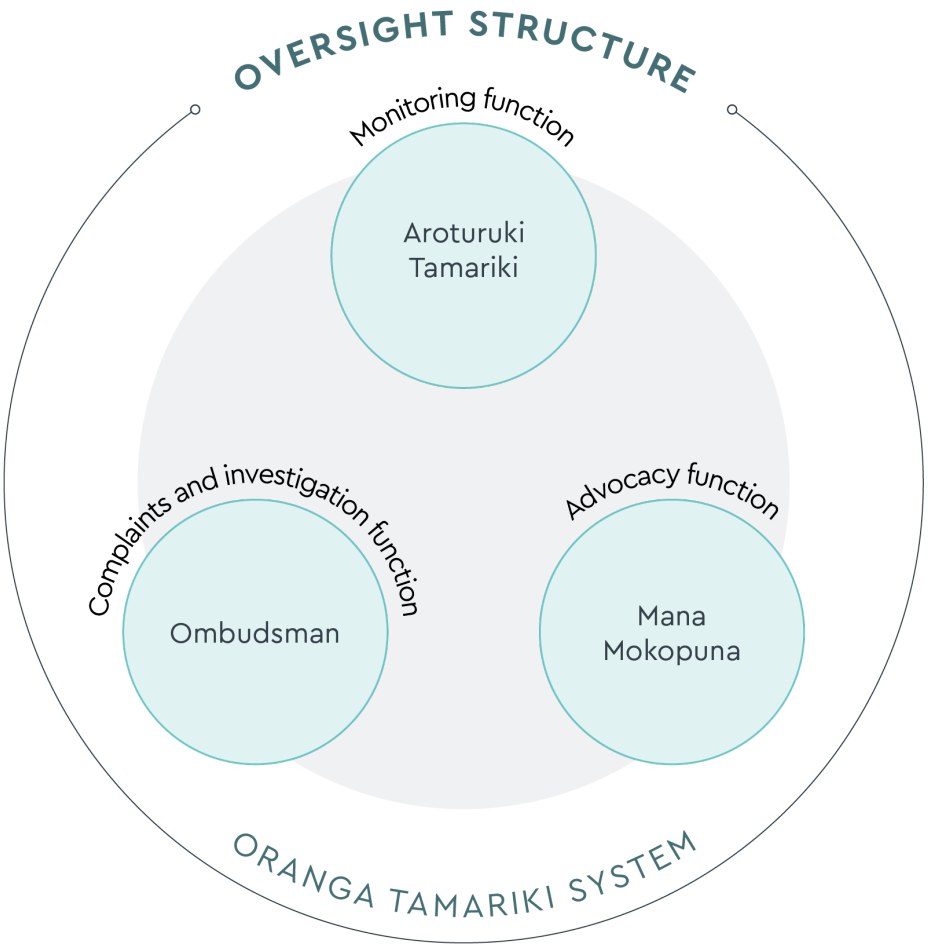
Ombudsman

The Ombudsman can investigate the processes and practices of the Oranga Tamariki system under the Ombudsmen Act 1975. Prior to commencement of the Oversight Act, the Ombudsman received 2,142 complaints and other enquiries about Oranga Tamariki between July 2019 and June 2023.

The Oversight Act provided new duties and powers for the Ombudsman to perform a specific function as the oversight body for complaints and investigations within the Oranga Tamariki system. The Ombudsman handles complaints about Oranga Tamariki, its care or custody providers, and other government agencies. The Ombudsman can also undertake self-initiated interventions and investigations largely focused on wider system improvement, and has a function to provide advice and guidance to Oranga Tamariki and its care or custody providers on their own complaint-handling processes.

The three oversight agencies are presented in Figure 1 below.

Figure 1: Overview of the oversight bodies and their functions



D. Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman, Degrading Treatment or Punishment (OPCAT)

OPCAT is an international human rights treaty that has been ratified by New Zealand, and therefore New Zealand governments have an obligation under international law to give effect to it. The Crimes of Torture Act 1989 gives effect to OPCAT and sets out the powers and responsibilities of the four National Preventive Mechanisms (NPMs) in Aotearoa New Zealand that have been designated by the Minister of Justice, which include Mana Mokopuna and the Ombudsman.

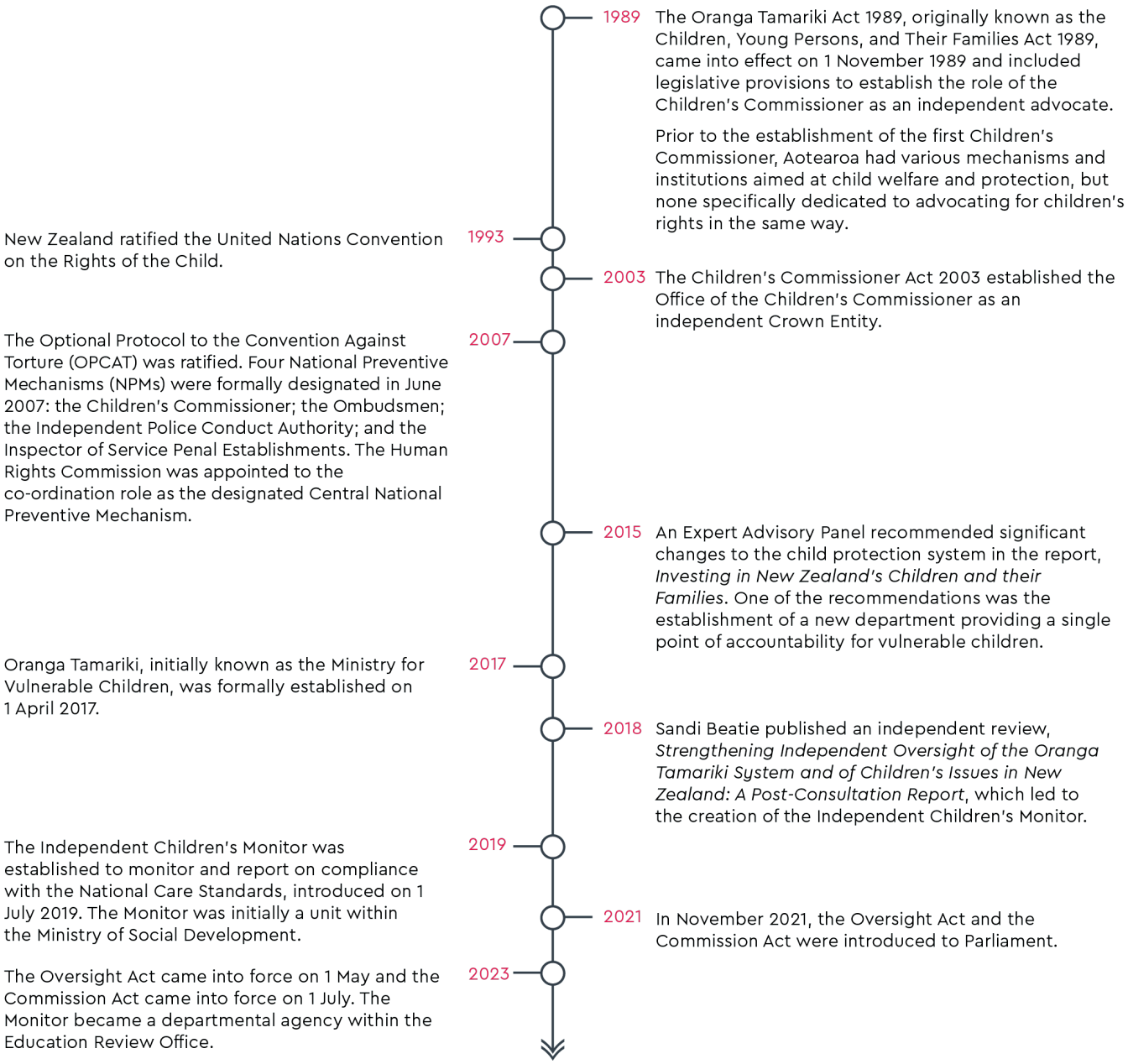
OPCAT aims to prevent torture and cruel, inhuman, or degrading treatment or punishment through establishing a system of regular visits to places of detention.

Under OPCAT, Mana Mokopuna (Children's Commission) monitors detention facilities where tamariki and rangatahi are deprived of their liberty. This designation includes Oranga Tamariki residences, so in these places monitoring under the international regime of OPCAT is undertaken as well as monitoring under the domestic regime of the oversight system.

E. Oversight arrangements have been in place since 1989, but have continuously evolved

The oversight arrangements for child welfare and protection systems in Aotearoa New Zealand have evolved over time. The timeline in Figure 2 below highlights some of the key changes and developments in the legislation and oversight structures intended to ensure the safety, well-being, and rights of tamariki, rangatahi, and their whānau in Aotearoa New Zealand.

Figure 2: Timeline of high-level milestones in the history of the oversight system



F. The current arrangements for oversight of the Oranga Tamariki system are relatively new

The Oversight Act and Commission Act were passed in 2022 and commenced in mid-2023. As noted, the legislation recognised the importance of continuous improvement and required a review of the Acts to begin within three years of the commencement.

Reviewing the Oversight Act and Commission Act arrangements so soon after that commencement presents challenges and opportunities. The short timeframe means there may be insufficient data to properly evaluate effectiveness, as many initiatives could still be in their establishment phase and systemic changes need longer to show clear outcomes. It is also difficult to distinguish between normal implementation challenges and fundamental design issues that require legislative changes, especially when relationships between oversight bodies and Oranga Tamariki are still developing. Nonetheless this review is particularly important as Government takes the opportunity to have the findings inform Parliament's consideration of the Oversight of Oranga Tamariki System Legislation Amendment Bill.

The recency of the current system's establishment has several implications:

- An advantage is that the meaning and intent of the legislation have not been lost through the passing of time. Many of the people who developed the legislation, and many stakeholders who made submissions on it, are active within the system and understand what was intended.
- There is mixed understanding of the current arrangements among stakeholders. Some have only limited awareness or understanding of the current arrangements.
- There is scope for aspects of the current arrangements to mature further – for example, through processes becoming more efficient.
- There may not be enough data to properly evaluate the effectiveness of the current system. Many initiatives could still be in their establishment phase and systemic changes need longer to show clear outcomes.
- It can be difficult to distinguish between normal implementation challenges and fundamental design problems that require legislative changes, especially when relationships between oversight bodies and Oranga Tamariki are still maturing.

We call out these implications at appropriate points throughout the report.

G. The review required us to look across the Oranga Tamariki system and the oversight system to consider the broader accountability framework

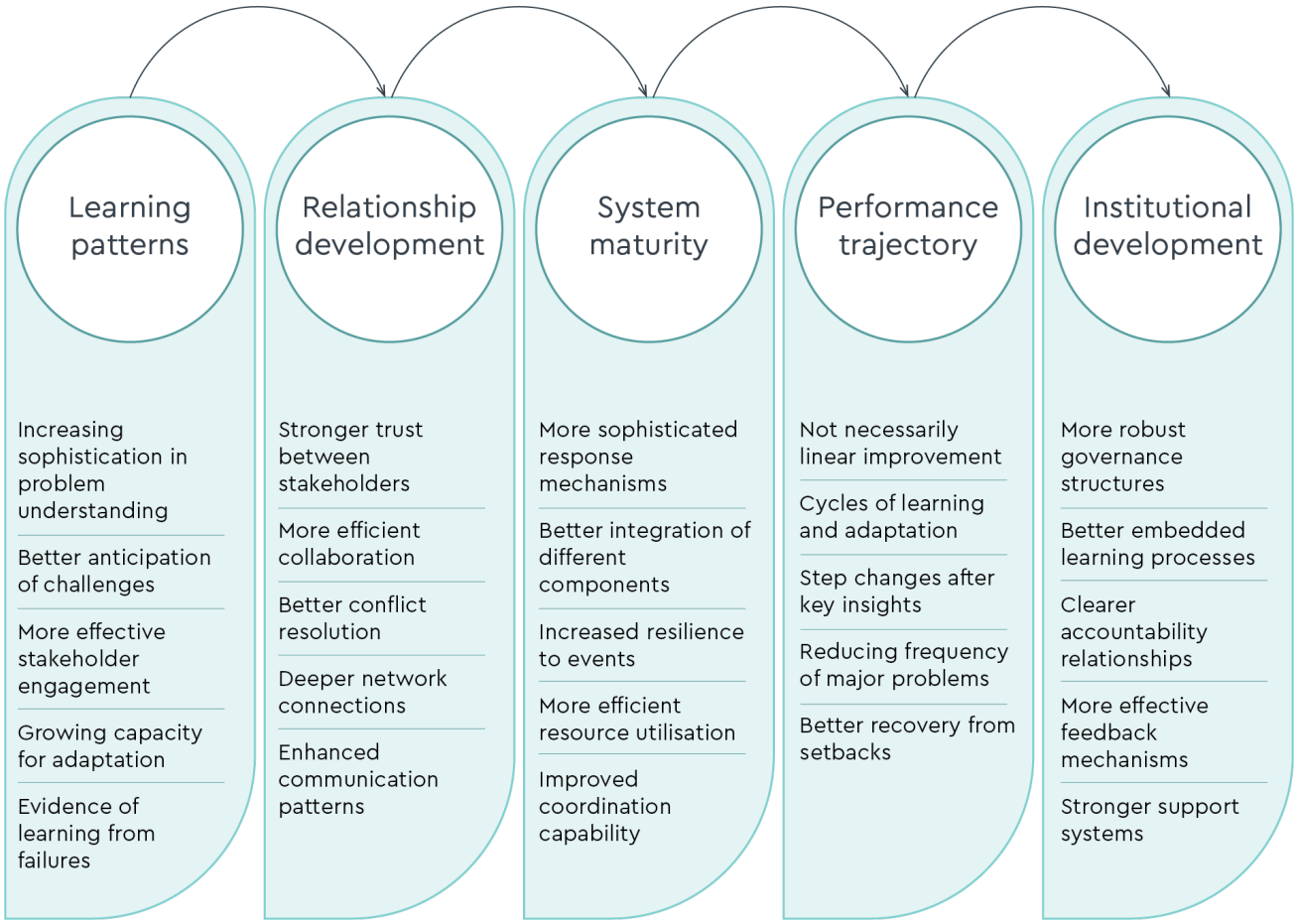
REVIEWING DYNAMIC SOCIAL SERVICES SYSTEMS

Our review sits within the broader context of public accountability of government agencies. This public accountability system includes the principles, procedures, regulations, institutional arrangements, and participants that support public accountability.[3] Within the New Zealand public sector, Oranga Tamariki sits within the "ordinary" arrangements in place for other government departments. However, the separate statutory oversight arrangement sits alongside these orthodox arrangements as an additional mechanism to provide the public assurance. A map of the public accountability arrangements is summarised in Appendix 2. Accountability arrangements in complex systems are dynamic. Our broad approach to this review was informed by systems thinking. In particular, institutional theory that recognises that systems that attend to complex societal issues reflect an evolution that is informed by understanding, objectives, and the broader social, economic, and cultural context. Ansell and Gash's formative work on adaptive governance in public institutions also highlights the concept of dynamic accountability that places value and emphasis on constant learning and adaptation, the value of multiple accountability relationships operating simultaneously, and a focus on continuous improvement (Ansell and Gash, 2008).

Our review therefore examined the evidence we received both against the existing accountability framework combined with judgements in the areas set out below as to whether the current oversight arrangement is showing signs of maturity and improvement.

[3] Office of the Auditor General, Building a stronger public accountability system for New Zealanders (2021)

Figure 3: Measures of performance in dynamic adaptive systems



H. Our method

We organised the review into six lines of inquiry

Informed by the accountability arrangements and systems set out above, our approach for conducting the independent review of the Oversight Act and Commission Act was organised into six distinct lines of inquiry, each designed to thoroughly examine and address specific areas of the Terms of Reference:

- Operation of the Acts and the functions, duties, and powers of the oversight bodies.
- Engagement with hapū, iwi, and Māori organisations by the oversight bodies.
- How Mana Mokopuna, Aroturuki Tamariki, and the Ombudsman work together.
- Support for Aroturuki Tamariki by agencies within the Oranga Tamariki system and their contracted partners.
- Resourcing of Aroturuki Tamariki and Mana Mokopuna.
- The Optional Protocol to the Convention against Torture (OPCAT).

This report contains six main chapters, each of which documents what we found in one of the six lines of inquiry. Table 1 below shows how the lines of inquiry relate to the Terms of Reference.

Table 1: Questions from the Terms of Reference relating to each line of inquiry

Line of inquiry	Relevant questions from the Terms of Reference
1. Operation of the Acts and the functions, duties, and powers of the oversight bodies	• Are the Oversight Act and Commission Act operating effectively? • Do the functions, duties, and powers set out in the Oversight Act give effect to the Act's purpose? • Do the functions, duties, and powers set out in the Commission Act give effect to the Act's purpose? • Could the oversight system as a whole, and the Monitor in particular, benefit from any additional powers focused on enforcing compliance, additional powers of entry, and creating practical outcomes from their reporting? • Are there any amendments to the Oversight and Commission Acts that are necessary or desirable?
2. Engagement with hapū, iwi, and Māori organisations by the oversight bodies	• Is the Monitor working effectively with…hapū, iwi, and Māori organisations, as required in the Oversight Act? • Is the Commission working effectively with hapū, iwi, and Māori organisations?
3. How Mana Mokopuna, Aroturuki Tamariki, and the Ombudsman work together	• Is the Monitor working effectively with…hapū, iwi, and Māori organisations, as required in the Oversight Act? • Is the Commission working effectively with hapū, iwi, and Māori organisations?
4. Support for Aroturuki Tamariki by agencies within the Oranga Tamariki system and their contracted partners	• Is the Monitor being effectively supported by agencies and their contracted partners in the Oranga Tamariki system to be able to prepare their monitoring reports under section 23 of the Oversight Act, and is there any evidence that the Monitor is being obstructed in performing their functions, duties, or powers under the Oversight Act?
5. Resourcing of Aroturuki Tamariki and Mana Mokopuna	• Are the Monitor and Commission operating effectively under the Oversight and Commission Acts respectively? • Are the Monitor and the Commission appropriately resourced to efficiently and effectively discharge their functions, duties, and powers, and to support the resilience of the Oranga Tamariki system?
6. The Optional Protocol to the Convention against Torture (OPCAT)	• With respect to the Commission's designation as a National Preventive Mechanism under the Crimes of Torture Act 1989 for the purposes of the Optional Protocol on the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which entity within the oversight system would you view as best placed to perform this designated function to the greatest effect?

Our findings were informed by an extensive research and engagement programme

We undertook a desktop review of over 200 documents and engaged with stakeholders in the Oranga Tamariki system to gather insight as to how the oversight of the system is working and how it could be improved. Our engagement included dozens of interviews with:

- Mana Mokopuna, Aroturuki Tamariki, and the Ombudsman
- government agencies in the Oranga Tamariki system and their contracted partners
- care providers
- organisations that represent children and young people
- hapū, iwi, and Māori organisations, and
- 30 children and young people referred by care providers and youth-led[4] groups).

I. Key themes from stakeholder engagement

We asked stakeholders how they think the oversight of the Oranga Tamariki system is working to protect, advocate for, and monitor children's and young people's rights, based on our six lines of inquiry. Feedback from stakeholders often centred around themes of accountability, systematic improvements, engagement and awareness, and the rights of children and young people. The key themes are summarised below:

- Stakeholders, including children and young people, emphasised the need for a comprehensive accountability framework due to past system failures and power imbalances.
- Stakeholders, including children and young people, perceived a lack of children's voices in the oversight system and the need to focus on children's rights within the Oranga Tamariki system. Children and young people expressed their desire to participate in the design of accountability framework.
- Agencies recognised that the oversight system is still new and evolving, requiring continuous monitoring and improvement.
- The current oversight system is seen as overly complex, making it difficult for families and children and young people to navigate.
- We heard concerns from care providers about data exchange, quality assurance, and communication with Oranga Tamariki hindering effective monitoring.
- Interviewees emphasised the importance of independence for advocacy and monitoring roles, making suggestions for a Māori Children's Commissioner, retaining the current Chief Children's Commissioner for their five-year term and improving the complaints systems through the Ombudsman.

[4] For more information refer to Appendix 3.

- We heard reports of high-quality engagement where it occurred, but we noted varying levels of engagement among iwi and Māori organisations and low levels of awareness of the oversight system.
- Stakeholders called for a more integrated approach to monitoring that includes all stakeholders and addresses systemic issues.
- Stakeholders sought clarity for the important role which VOYCE Whakarongo Mai plays in the Oversight system, as advocates for children and young people.
- Iwi and Māori organisations expressed a strong desire for more meaningful collaboration between the oversight bodies. They believe that increased collaboration is essential to enhance the relevancy and effectiveness of these bodies for Māori communities.

A more fulsome summary of what we heard through engagement is in Appendix 3.

LINE OF INQUIRY 1.

Operation of the Acts and functions, duties, and powers of oversight bodies

SUMMARY

This chapter is in nine parts:

A. Context for this chapter

B. Overview of the Oversight of Oranga Tamariki System Act 2022

C. What does it mean for the Oversight Act to operate effectively?

D. Comments on the Oversight Act

E. Overview of the Children and Young People's Commission Act 2022

F. What does it mean for the Commission Act to operate effectively?

G. Comments on the Commission Act

H. Does the oversight system need new enforcement powers?

I. Other legislation issues raised with the review

It responds to the following parts of the Terms of Reference:

- *Are the Oversight Act and Commission Act operating effectively?*
- *Do the functions, duties, and powers set out in the Oversight Act give effect to the Act's purpose?*
- *Do the functions, duties, and powers set out in the Commission Act give effect to the Act's purpose?*
- *Could the oversight system as a whole, and the Monitor in particular, benefit from any additional powers focused on enforcing compliance, additional powers of entry, and creating practical outcomes from their reporting?*
- *Are there any amendments to the Oversight and Commission Acts that are necessary or desirable?*

The current legislation is operating effectively to achieve the intended purposes of the Acts

The Oversight Act is working as intended

We found no evidence the Oversight Act is not working as intended. Review of accountability documentation and interviews with system participants and stakeholders confirmed that the Monitor has the powers to fulfil its duties, discharge its functions, and thus achieve the purpose of the Act.

Many stakeholders suggested the Monitor be empowered to force monitored parties to comply with national care standards under threat of penalty. We do not support this proposal for several reasons:

- Penalties exist elsewhere in the system. For example, Oranga Tamariki, with the approval of the Minister, can suspend or revoke approval for certain

types of service provision, such as providing a residence. Further, many of the professionals in the system are also subject to occupational regulation.

- The Oranga Tamariki system is not suited to a sanction-heavy regulatory regime. Imposing sanctions (for example, fines or forced closure of residences) on care and custody providers would have collateral impacts on tamariki and rangatahi in care.
- It is reasonable for monitored organisations to develop their responses to the reports of the Monitor. They have context and expertise that inform what is reasonable.

Within the parameters of our Terms of Reference, we recommend no material changes are made to the Oversight Act. A number of parties we engaged suggested changes that were "desirable" rather than "necessary". We recommend very few changes of substance are made.

The Commission Act is working as intended

In general, stakeholder awareness of the functions of the Commission was more limited. A small number of significant legislative amendments were suggested by a small number of stakeholders:

- The Commission's functions should be extended to drive a cross-government strategy and implementation relating to the United Nations Convention on the Rights of a Child (the Children's Convention).
- The functions should be amended to provide for the Commission to take legal action on behalf of children, including to the UN once domestic channels are exhausted.

Both suggestions are predicated on New Zealand fully "incorporating" the Children's Convention in domestic law to a level beyond the functions of the Commission provided by the Commission Act and the other provisions in a range of domestic law which provide partial incorporation of this Convention.[5] There may be good reasons for government to give greater weight to the Children's Convention in domestic law through full incorporation, as has been done in similar jurisdictions such as Scotland. Regardless, our Terms of Reference do not include considering whether the Children's Convention should be fully incorporated in New Zealand law and given effect through associated infrastructure. Hence, we offer no view on these suggestions.

We found no evidence the Commission Act is not working as intended. The Commission has the powers to fulfil its duties, discharge it functions, and thus achieve the purpose of the Act.

[5] "Incorporation" is the process by which a country gives effect to a Treaty it has ratified by reflecting its provisions in domestic law. A state can incorporate a Treaty directly, indirectly, or in a piecemeal fashion.

A. Context for this chapter

This chapter considers if the Acts are operating effectively, both individually and in tandem

RANGATAHI INSIGHTS

Rangatahi identified four "superpowers"

For the rangatahi we spoke to, operating effectively means that the oversight system is focused on the needs of children and young people, built on fairness and trust. Rangatahi identified four "superpowers" that each oversight body needs to ensure accountability for: listening, taking action, speed, and truth.

In our view, the Oversight and Commission Acts operate effectively if:

- each Act is achieving its intended purpose
- the functions, powers, and duties outlined in each Act enable the relevant agencies to achieve the purpose of the Act
- the provisions are clear and understood and in line with good legislative drafting practice, and
- each Act is internally consistent, meaning the provisions work as a whole.

Further, the two Acts will work effectively in tandem if they create an effective oversight system where agencies work together in clearly defined, complementary roles.

The oversight system, in its current form, is still establishing itself

Both the Oversight Act and Commission Act were granted Royal assent on 29 August 2022. The Oversight Act entered into force on 1 May 2023. The Commission Act entered into force on 1 July 2023.

These Acts have only been in force for approximately 18 months at the time of review. This has some very tangible implications for this review. For example, the Monitor has not used (and therefore not tested) key provisions in the Oversight Act.

- The first State of Oranga Tamariki system report will be published in 2027.
- The first annual report on the performance of the Oranga Tamariki system in respect of outcomes being achieved for Māori children and young people and their whānau will be published in 2025.
- The Monitor has not relied on its power to enter premises under section 34, meaning it has entered premises without obstruction.

We have considered the system maturity of the current arrangements as part of our analysis.

RANGATAHI INSIGHTS

Direct challenges are with the Oranga Tamariki system

For the rangatahi that we spoke to, the direct challenges are with the Oranga Tamariki system that is overseen by the oversight bodies and relate to the rights, interests, and wellbeing of children and young people in Aotearoa New Zealand. For example, rangatahi told us they experience a lack of transparency about decision making, a lack of communication and information sharing, and unreasonably slow responses.

B. Overview of the Oversight of Oranga Tamariki System Act 2022

This part describes key features of the Oversight Act.

Purpose

The purpose of the Oversight Act is to uphold the rights and interests and improve the wellbeing of tamariki, rangatahi, and their whānau who are receiving, or have previously received, services or support through the Oranga Tamariki system and to promote the effectiveness of the Oranga Tamariki system (section 4). To this end, the Act:

- sets out the functions, duties, and powers of the Monitor
- gives the Ombudsmen additional duties and powers when dealing with matters that may fall under the Ombudsmen Act 1975 and that relate to services or support delivered by Oranga Tamariki and care or custody providers, and
- creates a framework for the Monitor and Ombudsmen to work together in a comprehensive, cohesive, and efficient way, and to consult one another and share information, as appropriate.

Objectives of Aroturuki Tamariki under the Oversight Act

Section 13(1) of the Oversight Act sets out the objectives of Aroturuki Tamariki.

The objectives of the Monitor are to carry out objective, impartial, and evidence-based monitoring, and provide advice in order to—

(a) assess the extent to which the Oranga Tamariki system and its interface with other systems support the rights, interests, and well-being of children, young people, and their families and whānau who are receiving, or have previously received, services or support through the Oranga Tamariki system:

(b) assess whether the coercive powers exercised under the Oranga Tamariki Act 1989 are being exercised appropriately and consistently:

(c) support public trust and confidence in the Oranga Tamariki system:

(d) identify areas of high performance and areas for improvement in relation to the chief executive of Oranga Tamariki and approved providers to encourage them to work towards continuous improvement:

(e) support an understanding of specific aspects of the Oranga Tamariki system and its interface with other systems[6]

(f) support informed decision making.

Functions, duties and powers of Aroturuki Tamariki under the Oversight Act

Monitoring function

Section 14 of the Oversight Act provides that the function of Aroturuki Tamariki is to monitor the performance of the Oranga Tamariki system in the context of its interface with other systems. Table 2 sets out aspects of this function.

Table 2: Aspects of the monitoring function provided by section 14 of the Oversight Act

Section	Aspects of the monitoring function
Section 14: Monitoring function	• Assessing compliance with the Oranga Tamariki Act 1989, National Care Standards regulations, and other regulations and standards made under that Act by the chief executive of Oranga Tamariki and approved providers. • Assessing the quality and impacts of service delivery, service mix, service resourcing, and practices on the experiences of children, young people, families, and whānau. • Assessing outcomes for children, young people, families, and whānau who receive services or support through the Oranga Tamariki system, and changes in outcomes over time, with particular regard to Māori children and young people and their whānau.

This function is largely given effect through the reporting obligations on the Monitor. The Monitor:

- must, at least once every 3 years, prepare a State of the Oranga Tamariki system report (section 22)
- must prepare an annual report on compliance with national care standards regulations (section 23)
- must prepare an annual report on the performance of the Oranga Tamariki system in respect of outcomes being achieved for Māori children and young people and their whānau (section 24)

[6] **Other systems** means the services or support provided by agencies or their contracted partners, or the performance or exercise of statutory functions or powers in relation to tamariki or rangatahi who are or were the subject of a report of child abuse or are subject to any youth court processes or the youth justice system under the Oranga Tamariki Act; and those that aim to address the risk factors that increase the likelihood of a person's involvement in the statutory care and protection system or youth justice jurisdiction.

- must carry out a review on any topic within their monitoring function at the request of the Minister responsible for the Monitor (section 25), and
- may, on their own initiative, carry out reviews of issues, themes, concerns, or areas of identified practice relating to the delivery of services or support through the Oranga Tamariki system (section 26).

Duty to act independently

Section 16 provides that the Monitor must act independently when—

(a) carrying out their monitoring function under section 14; and

(b) developing tools and monitoring approaches under section 15.

Specific functions, powers, and duties to support better outcomes for tamariki and rangatahi Māori

In addition to working effectively with hapū, iwi, and Māori organisations (as discussed in the following chapter):

- Under section 17, Aroturuki Tamariki is required to appoint a Māori Advisory Group.
- Under section 18, Aroturuki Tamariki must collaborate with, and have regard to the views of, the Māori Advisory Group when developing priorities, work programmes, and monitoring approaches.

As noted, Aroturuki Tamariki is required to prepare an annual report on the performance of the Oranga Tamariki system in respect of outcomes being achieved for tamariki and rangatahi Māori, and their whānau.

Powers provided to the Monitor

The Oversight Act provides powers to the Monitor to enable it to discharge its responsibilities.

Power to enter premises

One of the most significant powers is the power to enter premises. The Monitor may authorise any of their employees or contracted staff to enter premises in accordance with the Oversight Act (section 33). An authorised staff member may enter premises if they reasonably believe it is necessary for the purpose of monitoring the performance of the Oranga Tamariki system under section 14 (section 34). Before entering premises under section 34, an authorised staff member must give written notice of the proposed entry to the person in charge of the premises.

An authorised staff member must not enter premises under section 34 if:

(a) the authorised staff member has reason to believe that entering the premises may result in a child or young person being at risk of being harmed; or

(b) a person in charge of the premises denies entry to the premises in "exceptional circumstances" (as defined in the Act).

Power to require information

The Monitor may require an agency that delivers services or support to children, young people, and their family and whānau through the Oranga Tamariki system to provide them with information the Monitor considers relevant to fulfil their objectives and perform or exercise their functions, duties, or powers under this Act (section 45).

The Act sets parameters around this power. For example, section 46 provides that consent is required to collect information from a child or young person, and section 48 provides that the Monitor must not disclose information it has collected unless certain conditions apply.

Common duties of the oversight bodies under the Oversight Act

Under section 7, the common duties of the oversight agencies when carrying out work relating to tamariki or rangatahi who are receiving, or have previously received, services or support through the Oranga Tamariki system include to:

- work together in a comprehensive, cohesive, and efficient way with each other, including by consulting and co-ordinating with each other and sharing information, as appropriate
- minimise the burden and potential risk of harm to individuals when performing or exercising a function, duty, or power
- minimise the burden on agencies when they are gathering information under this Act and carrying out preliminary inquiries, investigations, or reviews, and
- co-ordinate communications to individuals, agencies, Ministers of the Crown, and the public, as appropriate.

Provisions of the Oversight Act specifically relating to the Ombudsmen

The Oversight Act does not limit or affect the functions, duties, and powers provided to Ombudsmen under the Ombudsmen Act 1975.

Section 39 provides the duties of the Ombudsman in relation to complaints and investigations, specifically how the Ombudsman must operate when dealing with a complaint or investigation.

Under Section 39, an Ombudsman must incorporate a tikanga Māori approach and operate in a way that recognises the importance of whānau, hapū, iwi, and culture of tamariki and rangatahi. Their processes for complaints and investigations must be visible and accessible to tamariki, rangatahi, their whānau, and the Oranga Tamariki system and involve the tamariki and rangatahi in a complaint or investigation process, as appropriate, as well as their whānau, hapū, and iwi. The Chief Ombudsman must make reasonable efforts to develop arrangements with hapū, iwi, and Māori organisations for specified purposes (section 43).

An Ombudsman:

- may provide guidance to Oranga Tamariki and care or custody providers (section 40), and
- may require Oranga Tamariki or a care or custody provider to provide the Ombudsman with any information they consider necessary for the purposes of carrying out preliminary inquiries (section 41).

As provided by section 42, the chief executive of Oranga Tamariki or the care or custody provider must provide an Ombudsman with access to all information that is available to them in stipulated categories.

Provisions of the Oversight Act specifically relating to the Commission

The Oversight Act has some provisions that pertain to the Commission including:

- section 7 provides common duties that apply to the Commission, amongst other oversight agencies
- section 28 provides that the Monitor must provide copies of its final reports produced under sections 22–26 to the Commission, and
- section 56 provides that the Monitor or Ombudsman may refer matters to the Commission where they are more properly within the scope of the Commission's functions.

C. What does it mean for the Oversight Act to operate effectively?

This section of the chapter considers two questions in the Terms of Reference:

- Is the Oversight Act operating effectively?
- Do the functions, duties, and powers set out in the Oversight Act give effect to the Act's purpose?

In our view, the Oversight Act operates effectively if:

- the Act is achieving its intended purpose
- the functions, powers, and duties outlined in the Act enable the relevant agencies to achieve the purpose of the Act
- the provisions are clear and understood and in line with good legislative drafting practice, and
- the Act is internally consistent, meaning the provisions work as a whole.

D. Comments on the Oversight Act

We will consider the two questions from the Terms of Reference listed above in tandem.

Is the Act achieving its purpose? Do the functions, duties and powers provided allow the purpose to be realised?

We found no evidence of the Act not working as intended.

The Monitor considers it has powers to fulfil its duties, discharge its functions, and thus achieve the purpose of the Act.

A number of parties we engaged with suggested ways the Act could be amended to make minor changes, or changes that agencies suggested were "desirable" rather than "necessary". These changes are discussed at the end of this chapter. This includes specific commentary on issues raised by many parties we engaged with, such as whether the Monitor should have more "teeth", akin to a regulator, to drive accountability for improvements in the provision of care.

RANGATAHI INSIGHTS

Rangatahi agreed that the oversight functions were important for their wellbeing

The purpose of the Act is to uphold the rights and interests and improve the wellbeing of care-experienced tamariki and rangatahi. Rangatahi we spoke to had a good understanding of the concept of accountability and agreed that the functions of the oversight agencies were extremely important for and directly related to their wellbeing.

Are the provisions of the Oversight Act clear and understood and in line with good drafting practice?

We found no evidence of the Act lacking clarity and causing confusion. We also found the Act appears to be consistent with the Legislation Design and Advisory Committee Guidelines.

This is an advantage of the legislation being relatively young: it was drafted using a contemporary approach and many individuals involved in the policy decisions, drafting process, and passage of the Bill are still working at key agencies.

Is the Act internally consistent?

In our view, yes. The components of the Act form a workable whole. The monitoring function (section 14) and the reports the Act requires the Monitor to produce (sections 22–26) allow it to achieve the objectives the Act provides in section 13.

Comments on the working relationship between agencies are provided in a subsequent chapter. However, we note here that the provisions of the Act provide for a collaborative working relationship, for example, the common duties (section 7) and information sharing provisions (sections 51–52).

FINDINGS

1.1 The Oversight Act is operating effectively.

1.2 The functions, duties, and powers set out in the Oversight Act allow the Monitor to give effect to the Act's purpose.

E. Overview of the Children and Young People's Commission Act 2022

Purpose

The purpose of the Commission Act is to establish the Children and Young People's Commission | Mana Mokopuna as an independent Crown entity to promote and advance the rights, interests, and participation of children and young people to improve their wellbeing within (without limitation) the context of their families, whānau, hapū, iwi, and communities.

Mana Mokopuna advocates for children and young people. Under the Commission Act:

- a "child" is a person under the age of 14 years
- a "young person" is:
  - a person aged 14 years or over but under 18 years; and
  - a person aged 18 years or over but under 25 years if they are, or have been, in care or custody.

There are 1.2 million mokopuna aged under 18 in Aotearoa New Zealand.

Functions, duties and powers of Mana Mokopuna under the Commission Act

Functions and duties

Sections 20–22 of the Act provide the core functions of Mana Mokopuna. These are detailed in Table 3 below.

Table 3: Functions of the Children's Commission provided by sections 20–22 of the Commission Act

Section	Functions
Section 20: Functions relating to promoting interests and well-being of children and young people	• Developing and publishing reports and submissions on issues through a child- and young person-centred lens and, when appropriate, making those reports publicly available. • Advocating for children's and young people's well-being, and their interests collectively. • Supporting a child or young person to engage with agencies to facilitate the resolution of issues. • Providing information to members of the public who have questions about matters relating to children's and young people's rights, interests, or well-being. • Raising public awareness and understanding of matters that relate to children's and young people's rights, interests, or well-being, including (without limitation) by contributing to public debate. • Undertaking and promoting research into any matter that relates to the rights, interests, or well-being of children and young people, while giving special attention to te ao Māori.

Section	Functions
	• Receiving and inviting representations from members of the public on any matter that relates to the rights, interests, or well-being of children and young people. • Reporting, with or without request, to the Prime Minister on matters affecting the rights of children and young people. • Inquiring generally into, and reporting on, any systemic matter, including (without limitation) any legislation or policy, or any practice or procedure, that relates to or affects the rights, interests, or well-being of children and young people. • Presenting reports to proceedings before any court or tribunal that relate to the Children's Convention or to the rights, interests, or well-being of children generally and presenting reports on such issues to the court or tribunal, at the request of: – the court or tribunal – counsel representing any party to the proceedings – counsel representing any child who is the subject of the proceedings, or – counsel assisting the court or tribunal.
Section 21: Functions relating to promoting and advancing rights of children and young people	• Raising awareness and understanding of children's and young people's rights, including the rights set out in the Children's Convention, and advocating for the advancement of the application of the Children's Convention by the public. There is more information on the Children's Convention in the box below this table. • Monitoring the application of the Children's Convention by departments and other instruments of the Crown and making reports to the United Nations. • Raising awareness and understanding of children's rights and the Children's Convention and advocating for the advancement of the application of the Children's Convention, including (without limitation) by departments and other instruments of the Crown.
Section 22: Functions relating to encouraging children's and young people's participation and voices	• Promoting, in relation to decisions that affect the lives of children and young people: – the participation of children and young people in those decisions, and – best practice approaches to listening to the views of children and young people and taking those views into account. • Developing mechanisms and means to ensure that the Commission engages and supports children and young people to participate and express their views and be informed by those views in the performance of the Commission's functions. • Modelling and promoting best practice in children's and young people's participation through the Commission's engagements with children and young people. • Publishing and sharing the views and voices of children and young people with the general public and relevant groups. • Providing support and advice to any person, body, or organisation carrying out engagement with children and young people to better hear their views and uphold their rights.

Section 23(1) provides that the Commission must perform any other function or duty and may exercise any other power conferred on it by or under other legislation.

Section 23(2) specifically notes the common duties of the Commission (and the other oversight agencies) provided by section 7 of the Oversight Act.

THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

The United Nations Convention on the Rights of the Child (the Children's Convention) is a human rights treaty that outlines the rights of children and the obligations of governments to protect these rights. It was ratified in Aotearoa New Zealand on 6 April 1993.

Mana Mokopuna convenes the Children's Convention Monitoring Group (CMG), which consists of representatives from the Human Rights Commission, the Children's Rights Alliance Aotearoa New Zealand, Save the Children New Zealand, and UNICEF Aotearoa. The CMG operates under a Terms of Reference, and also holds a Terms of Engagement with the Government Deputy Chief Executives Group for the Children's Convention. There are regular meetings between the CMG and DCEs Group throughout the year.

The CMG monitors the government's implementation of the Children's Convention and its Optional Protocols, and the government's response (if any) to the Concluding Observations of the Committee on the Rights of the Child. In addition to its monitoring role, the CMG advocates for the adoption of processes that embed the Children's Convention across government and planning to advance children's rights.

Specific functions, powers, and duties to support better outcomes for tamariki and rangatahi Māori

Under section 13, the Board of Mana Mokopuna is required to have a collective knowledge and understanding of te Tiriti o Waitangi/the Treaty of Waitangi and half of the Board members must have Māori knowledge and experience in, and knowledge of, tikanga Māori. Under section 15, the nominations panel convened for a vacancy on the Board must include people with expertise and experience in Māori leadership.

The functions, powers, and duties relating to the Board of Mana Mokopuna will transfer to the Commissioner when the Board is disestablished if the Oversight of Oranga Tamariki System Legislation Amendment Bill is to pass. At the time of review, the Bill requires the Minister, when recommending a candidate for appointment as the Children's Commissioner, to have regard to the candidate's knowledge and understanding of te Tiriti o Waitangi/the Treaty of Waitangi, Māori knowledge, and knowledge of, and experience in, tikanga Māori. If the Bill passes into law, the amendments are expected to come into force on 1 July 2025.

Powers provided to the Commission

The Commission Act provides powers to support the Commission to fulfil its function to undertake inquiries under section 20(i).

Section 27 provides that if stipulated conditions are met, the Commission can call for information or documents. Under section 28, a person to whom a notice under section 27 is given must, without charge, comply with the requirement stated in the notice in the manner and within a period (being not less than 20 working days after the notice is given to the person) specified in the notice. The Commission may report to the chief executive of a department or an agency, or to any Minister responsible for the department or agency, if the department or agency has not complied with a requirement from the Commission to provide information under section 27, and there are no grounds on which the information could be withheld (section 34).

F. What does it mean for the Commission Act to operate effectively?

This section of the chapter considers two questions in the Terms of Reference:

- Is the Commission Act operating effectively?
- Do the functions, duties, and powers set out in the Commission Act give effect to the Act's purpose?

In our view, the Commission Act operates effectively if:

- the Act is achieving its intended purpose
- the functions, powers, and duties outlined in the Act enable the Commission to achieve the purpose of the Act
- the provisions are clear and understood and in line with good legislative drafting practice, and
- the Act is internally consistent, meaning the provisions work as a whole.

G. Comments on the Commission Act

We will consider the two questions from the Terms of Reference listed above in tandem.

Is the Act achieving its intended purpose? Do the functions, duties and powers provided allow the purpose to be realised?

We found no evidence of the Act not working as intended.

The Commission considers it has powers to fulfil its duties, discharge its functions, and thus achieve the purpose of the Act.

We heard few suggestions for amendments to the Commission Act. The most significant suggested amendments are discussed below.

Are the provisions of the Commission Act clear and understood and in line with good drafting practice?

We found no evidence of the Act lacking clarity and causing confusion. We also found the Act appears to be consistent with the Legislation Design and Advisory Committee Guidelines.

This is an advantage of the legislation being relatively young: it was drafted using a contemporary approach and many individuals involved in the policy decisions, drafting process, and passage of the Bill are still working at key agencies.

Is the Act internally consistent?

In our view, yes. The components of the Act form a workable whole. For example, if the Commission has regard to the principles in section 5, we consider it would undertake activities in line with its statutory functions. Similarly, if the Commission was to undertake its functions effectively it would naturally do so in accordance with the principles in section 5. In this way, the components of the Act are internally consistent and mutually reinforcing.

FINDINGS

1.3 The Commission Act is operating effectively.

1.4 The functions, duties, and powers set out in the Commission Act allow the Commission to give effect to the Act's purpose.

H. Does the oversight system need new enforcement powers?

Over the course of our engagement, parties often raised the idea of whether the Monitor should have enforcement powers, or whether the incentives in the system are sufficient for the reports of the Monitor to generate change. Stakeholders often phrased this by asking whether the oversight system, and the Monitor in particular, had enough "teeth".

The Terms of Reference for this review oblige us to consider if the oversight system as a whole, and the Monitor in particular, would benefit from any additional powers focused on enforcing compliance, additional powers of entry, and creating practical outcomes from their reporting?

In our view, the Monitor does not need "teeth" if the oversight system and Oranga Tamariki accountability system work as a coherent whole.

Despite the oversight arrangements being in place, there was some continued concern about overall system accountability for the care and protection of children

Under the current arrangements:

- The Monitor is to produce reports as provided by sections 22 to 26 of the Oversight Act.
- Monitored agencies have a "reasonable opportunity" to comment on draft reports (section 27).
- Section 28 provides that the Monitor must provide a copy of a final report to the Minister responsible for the Monitor, the Minister responsible for the administration of the Oranga Tamariki Act 1989, the chief executive of an agency that is the subject of the report, Ombudsmen, and the Children and Young People's Commission.

- Section 29 provides that the Minister responsible for the administration of the Oranga Tamariki Act 1989 must present a final report to Parliament.
- Section 30 provides that the "chief executive of an agency that is the subject of any final report of the Monitor must prepare a response in writing to that report". Further, it sets out that the response must state what the agency intends to do in response to the Monitor's findings, specify the timeframe in which the agency intends to make any necessary changes, and state how the agency intends to monitor the impact of those changes. Section 30 also provides timeframes for a chief executive to provide their response to the Monitor, the Minister responsible for the Monitor, and the Minister responsible for the administration of the Oranga Tamariki Act 1989.
- Section 31 provides that the Monitor will publish its final reports alongside the responses of the agencies who have been reviewed.

We understand the Monitor chooses to deliver findings but could make recommendations if it considered that appropriate.

This statutory process means the regime relies on:

- The oversight system producing reports, advocacy and data that shines a light on areas that could be improved.
- The distinct accountabilities of chief executives under the Public Service Act 2020, and the ability for the Head of the Public Service to hold them to account.
- The dual responsibility of relevant Ministers to Parliament and collectively to Cabinet to ensure monitored agencies want to do better for tamariki and rangatahi where there are adverse findings, and they are adequately resourced to do so.

Differentiating monitoring from performance management is key

Under current legislative settings, the Monitor is not intended to take steps to directly address performance issues related to the Chief Executive's accountability. Instead, the Monitor is to carry out objective, impartial, and evidence-based monitoring, and provide advice in accordance with the objectives in section 13 of the Oversight Act.

Accordingly, the Monitor values the relationships it has developed with monitored agencies and seeks to use its relationship capital to get data and work with agencies to produce its outputs.

Monitored agencies we spoke to emphasised:

- they aimed to cooperate with the Monitor
- they respected and valued the function of the Monitor as a catalyst for constant improvement, and
- they strove to comply with statutory demands.

The Monitor does not need enforcement powers if incentives for change elsewhere are adequate

It is important to note that providing enforcement powers to the Monitor could duplicate the powers of Oranga Tamariki and other actors in the system.

Oranga Tamariki has the power to close a residence and transfer the residents under section 366 of the Oranga Tamariki Act. Similar powers exist in in sections 396 and 405 of the Oranga Tamariki Act whereby the Chief Executive can suspend or revoke approval of some services. The power of Oranga Tamariki to close residences is important – in some cases this will be the most appropriate course of action.

It is also important to note that sanctions applied to care providers carry significant collateral damage. If a residence is to close, Oranga Tamariki needs to re-house the children. This requires significant care and effort to minimise the impacts on the children and should not be done lightly. Similarly, if a care provider was to be fined (for example) there would be flow on impacts on children in care. Providing enforcement powers to the Monitor could create more harm than good given the potential for collateral impacts and unintended consequences.

There are many regulated occupations in the sector. For example, all social workers in New Zealand are required to be registered by the Social Workers Registration Board (SWRB). If a social worker fails to meet the standards expected of them, their registration or practicing certificate can be suspended. Similar requirements apply to lawyers and other professions.

A monitoring regime makes practice transparent, incentivising improvements without enforcement powers

With enforcement handled elsewhere, the Monitor is appropriately tasked with bringing transparency to current practice through the reports it produces. Transparency incentivises decision makers to deliver a high standard of care.

Many we spoke to suggested more could be done to hold the chief executive of Oranga Tamariki to account. Chief executives need to drive agency changes and thus performance indicators are useful. The performance of chief executives is reviewed by the Public Service Commissioner. Under the Public Service Act, the Public Service Commissioner is responsible to the appropriate Minister or Ministers for reviewing the performance of each chief executive. Chief executives also operate with the resources that Ministers make available, so Ministers have an important role to play in ensuring resourcing is adequate to drive improvements.

For this reason, we consider it reasonable for this oversight system to be based on the premise that transparency incentivises chief executives, the Public Service Commissioner, and Ministers to prioritise making decisions that help children. In this context, the levers currently available to the Monitor are appropriate.

Effective collaboration between oversight agencies will maximise oversight system effectiveness

As the oversight system relies on transparency as its main lever, the Oversight Act requires the three oversight agencies to work together effectively, as this will maximise the transparency they can bring to the system, and thereby maximise their potential collective impact.

For example, if the Monitor reports adverse findings, the Commission can use the findings of the Monitor as part of its evidence base to advocate for change, which enables the Commission, as the advocate, to hold agencies within the Oranga Tamariki system to account for delivering on their duties and obligations to mokopuna.

Collaboration between oversight agencies (as required by the Oversight Act) supports system accountability. We saw some good initiatives to collaborate during our review. A full chapter is dedicated to this theme later in this report. Notwithstanding this, the complexity of the oversight system requires a continuous effort to collaborate to maximise impact and support public understanding of the system.

FINDINGS

1.5 The Oranga Tamariki oversight system is better suited to a monitoring regime rather than a sanction-heavy regulatory regime.

1.6 An effective monitoring regime can bring transparency to the system, incentivising decision makers to allocate resources to drive system improvements.

1.7 The oversight system does not need new penalties. Penalties exist elsewhere in the system. The Oranga Tamariki system is not well-suited to a sanction-heavy regime as sanctions carry the risk of significant collateral damage. The functions, duties, and powers set out in the Commission Act allow the Commission to give effect to the Act's purpose.

I. Other legislation issues raised with the review

During our review, some matters were raised that relate to the legislative design of the oversight system as a whole. These matters are discussed here.

We received other suggestions for changes that we consider minor in scale including those that could be considered by Parliamentary Counsel Office. These suggestions are considered in Appendix 4.

Adjusting the timeframe for responding for agencies to respond to the Monitor's reports

Section 30 provides the timeframes under which the chief executive of a monitored agency must provide their response to the Monitor, the Minister responsible for the Monitor, and the Minister responsible for the administration of the Oranga Tamariki Act 1989.

For some reports, a chief executive has 35 working days to respond. This includes:

- the state of Oranga Tamariki system report produced every three years under section 22
- reports of findings from a review requested by the Minister responsible for the Monitor under section 25, and
- reports of findings from a review instigated by the Monitor under section 26.

For other reports, a chief executive has 20 working days to respond. This includes:

- the annual report on compliance with national care standards regulations produced under section 23, and

- the annual report on outcomes for Māori children and young people and their whānau produced under section 24.

It is important to note that the Monitor can then take up to 10 working days to publish the response alongside its report.

It has been suggested that the timeframe for responding to all reports should be 20 working days to keep momentum and sharpen the focus of the response.

A shorter timeframe may have these benefits. Further, costs to monitored agencies may be limited as the Monitor is required to give monitored agencies a "reasonable opportunity" to comment on a draft report (section 27). It was suggested that agencies could start formulating their responses at this stage.

The Minister responsible for the Monitor may extend the timeframe for providing a response if a final report of the Monitor makes findings relevant to multiple agencies and the Minister responsible for the Monitor considers that a multi-agency response is desirable (section 30(4)).

It is important to note that the Bill introduced in 2021 originally stipulated a timeframe for response of 60 working days. The current timeframes are significantly reduced from that timeframe, reflecting careful consideration of the need for a response to be both swift and considered.

We can see the trade-off between encouraging a swift response to a report and giving agencies adequate time to develop a considered response. After considering the trade-off, we are inclined to keep the current timeframes. The 35-working day timeframe applies to reports that have the potential to be larger and more complex than the other reports. Even if reports produced under section 26 have been shorter and less complex than reports produced under section 23 so far, the potential exists for the Monitor to instigate reviews that produce more complex reports. We would not want agencies to rush their responses to reports and commit to actions that were less targeted or effective than optimal. Further, some of these timeframes are untested. For example, the Monitor's first State of the Oranga Tamariki system report under section 22 is due in 2027.

FINDINGS

1.8 The statutory timeframe for responding to reports needs to balance the benefits of a swift response to a report with allowing adequate time for agencies to develop a considered response. The timeframes in the current legislation are significantly reduced from the timeframes provided when the Bill that became the current arrangements was introduced. On balance, we find the case for change too weak to recommend reducing the longer response timeframes.

The requirement for information rules

Section 49 of the Oversight Act requires the Monitor to make "information rules" relating to "the collection, use, and disclosure of information by the Monitor to ensure protection of the privacy of persons to whom personal information relates, and the confidentiality of other information". Section 50 sets out the content that must be included in information rules. Similar provisions are in sections 31 and 32 of the Commission Act.

It was suggested that the requirement for information rules is unnecessary and overly burdensome, with one party suggesting that the Privacy Act and government guidance documents provide an adequate framework for managing information.

The requirement to produce information rules was added to be an additional safeguard for the management of sensitive information in a particularly sensitive environment. We accept that producing information rules creates some cost for the Monitor and Commission and the process attracted little comment from other agencies. We also accept that the Monitor and Commission are committed to appropriately handling information, with or without information rules.

However, the rules have been drafted, the cost of maintaining them is low and the reassurance they provide carries some weight. Therefore, we recommend they remain in place.

FINDINGS

1.9 On balance, we consider it worth continuing to have information rules because they provide some level of reassurance that sensitive information will be handled appropriately and the costs of developing the information rules have already been absorbed.

Legal form of Mana Mokopuna

It was suggested by some stakeholders that Children's Commission could become an Officer of Parliament like the Ombudsman or the Parliamentary Commissioner for the Environment. This was suggested on the basis that this would (i) reflect the legal form of similar agencies overseas; (ii) provide more certainty over the long-term funding of Mana Mokopuna; (iii) make it harder for governments to change the legal form of the entity, thus providing greater stability for the advocacy function; and (iv) allow Mana Mokopuna to provide advice directly to Parliament.

Chapter seven of Parliamentary Practice in New Zealand, 4th edition, edited by Mary Harris and David Wilson, (2017) provides helpful guidance on this issue.[7]

If a position is to be established as an Officer of Parliament, it should be subject to the conditions applying to an arm of the legislative branch of the State, such as being outside the public service and not being subject to control of its actions by the Executive.

The Finance and Expenditure Committee also sets out five criteria to consider when the creation of an Officer of Parliament is under investigation. The committee made the following recommendations:[8]

- An Officer of Parliament must only be created to provide a check on the arbitrary use of power by the Executive.
- An Officer of Parliament must only discharge functions that the House itself, if it so wished, might carry out.
- An Officer of Parliament should be created only rarely.

[7] Chapter 7 Officers of Parliament and the Other Officers and Bodies Associated with Parliament - New Zealand Parliament

[8] Finance and Expenditure Committee *Inquiry into Officers of Parliament* (21 March 1989) [1987–1990] AJHR I.4B.

- The House should, from time to time, review the appropriateness of each Officer of Parliament's status as an Officer of Parliament.
- Each Officer of Parliament should be created in separate legislation principally devoted to that position.

These recommendations were endorsed by the Government of the day and have formed the basis ever since for considering whether it is appropriate to make a particular position an Officer of Parliament position.

In an elaboration of these criteria, a committee considering a proposal for the creation of an Officer of Parliament said that it was not an appropriate model for an official with an advocacy role, because an Officer of Parliament must be seen to act impartially so as to retain the integrity and confidence of the whole House. The ability of an Officer of Parliament to take a position on a matter of public controversy is thus necessarily inhibited. It also considered it inappropriate for an Officer of Parliament to exercise executive responsibility, and so become involved in the development of policies and services provided by the Government, or for Officer of Parliament status to be accorded where the official's functions were confined to providing informational and related educational activities.

CASE STUDY: PARLIAMENTARY COMMISSIONER FOR THE ENVIRONMENT

The Parliamentary Commissioner for the Environment is established under the Environment Act 1986. The Commissioner's functions are drawn from section 16 of the Environment Act 1986, and the Commissioner has wide discretion to exercise them. They include:

- review the system of agencies and processes set up by the Government to manage the country's resources, and report to the House of Representatives
- investigate the effectiveness of environmental planning and management by public authorities, and advise them on remedial action
- investigate any matter where the environment may be or has been adversely affected, advise on preventative measures or remedial action, and report to the House
- report, on a request from the House or any select committee, on any petition, Bill, or any other matter which may have a significant effect on the environment
- inquire, on the direction of the House, into any matter that has had or may have a substantial and damaging effect on the environment
- undertake and encourage the collection and dissemination of information about the environment
- encourage preventive measures and remedial actions to protect the environment.

Under the Act, the Commissioner also has strong powers to obtain information.

The Commissioner can request information that is not publicly available from any organisation or person. If the information is not provided, the Commissioner can summon people to be examined under oath. This power to obtain information comes with a duty of secrecy. The Commissioner will only disclose the information obtained if he judges it necessary for carrying out his functions. The Commissioner can make recommendations but cannot require their implementation.

This issue of the difference between an ability to make recommendations, but not advocate is a balanced judgement. In an institutional theory context, there's an important distinction that can be difficult and subjective to assess in practice.

Review and recommendation powers represent a more neutral, analytical role where the Office examines issues, gathers evidence and presents findings to Parliament without taking specific positions. This aligns with traditional institutional principles of impartiality and evidence-based analysis. The Office acts as a technical adviser, providing options and implications rather than pushing for outcomes and to retain the confidence of Parliament.

In contrast, advocacy powers represent a more activist institutional role where the Office can actively promote specific policy positions or changes and often across a relatively wide remit (such as all of the environment). This creates a different institutional dynamic since the Office becomes a policy actor itself rather than just an analytical resource. This affects its relationships with other institutions and perceived legitimacy and authority. There would also likely be relevant considerations in the relationship between any such office and the Treaty of Waitangi responsibilities that sit with the Crown.

The distinction matters because it influences the Office's relationship with Parliament, its institutional legitimacy, the types of staff it attracts, and how other institutions respond to it.

Within the oversight system, the judgement is whether the objectives of the Act are better met by an independent Children's Commission function with recourse to the public sector system (albeit a step distant from the Executive as a Crown entity) and the Executive as compared to one that has recourse to influence Parliament as a whole. A relevant consideration is whether their areas of focus are constrained within a system, or across systems.

Within the parameters of our terms of reference, an advocate like the Children's Commissioner is better established as an independent Crown entity, operating at arm's length from the Executive but within the wider public service system. There are other examples within the sector where oversight functions are within these structures including the Independent Police Conduct Authority.

In this context, a change from the current institutional arrangements for Mana Mokopuna would constitute a major change in role as primary advocate for children and their relationship with other parts of the oversight system. Further, Government might also consider the precedent it would offer other Independent Crown Entities with advocacy functions such as the Human Rights Commission. We note that the legal form of the Children's Commissioner might be more appropriately considered as part of the government's response to the Royal Commission.

FINDINGS

1.10 While we acknowledge similar organisations are officers of Parliament in other jurisdictions, it is at least as appropriate for the Commission to be an independent Crown entity. We discuss the Commission's resourcing in a later chapter. We recommend that certainty is provided and consider this possible with its current legal form.

How does the system as a whole access appropriate te ao Māori expertise?

A number of people we spoke to noted that the Treaty of Waitangi requirements of the Commission were tied to Board membership. For example:

- Section 13(1)(b) of the Commission Act requires the Commission to have, on a collective basis, among its board members knowledge and understanding of te Tiriti o Waitangi/the Treaty of Waitangi.
- Section 13(2) requires that at least half of the board members have Māori knowledge and experience in, and knowledge of, tikanga Māori.
- Section 17(1)(a) provides that the duties of the board include building and maintaining relationships with hapū, iwi, and Māori organisations, including by:
  - having a strong focus on the rights, interests, and well-being of Māori children and young people within the context of their whānau, hapū, and iwi
  - setting strategic priorities and work programmes that support improved outcomes for Māori children and young people within the context of their whānau, hapū, and iwi
  - promoting Māori participation and leadership and te ao Māori approaches in the performance of its functions, as appropriate.

Those we spoke to wanted reassurance that the Commissioner sole would have te ao Māori expertise and/or access to te ao Māori expertise, noting the Oversight of Oranga Tamariki System Legislation Amendment Bill disestablishes the Board.

The Bill requires the Minister, when recommending a candidate for appointment as the Children's Commissioner, to have regard to the candidate's knowledge and understanding of te Tiriti o Waitangi/the Treaty of Waitangi, Māori knowledge, and knowledge of, and experience in, tikanga Māori. Without this provision, the appointment process would be based on the provisions of the Crown Entities Act 2004 which do not place the same emphasis on understanding te ao Māori. The Bill transfers the duties of the board under section 17 to the Commissioner sole.

We have heard suggestions that a Māori co-commissioner or deputy commissioner be appointed, or that the Commissioner have a Māori Advisory Group as the Monitor has.

More broadly, it has been suggested that a Māori Advisory Group could be appointed to advise the three oversight agencies.

As set out in the following chapter, the oversight agencies have been engaging appropriately with iwi and Māori. The obligations on the commissioner sole will be quite clear and tangible and if resourced to the same level we would expect to see little change in the quantity of engagement.

We do not consider it necessary for the Commission to have a statutory requirement to have an advisory board because engagement has been appropriate so far. It is reasonable to continue to leave it to the Commissioner to determine how they get advice and support (when required) for Māori engagement.

The Oversight of Oranga Tamariki System Legislation Amendment Bill provides for the Governor-General to appoint a Deputy Children's Commissioner on the recommendation of the Minister. The Deputy Commissioner may perform or exercise all the functions, duties, and powers of the

Commissioner if there is a vacancy in the position of Commissioner or the Commissioner is absent from duty (for whatever reason).

Given this, there is a prima facie case for the Minister when recommending a candidate for appointment as the Deputy Children's Commissioner to have regard to the same factors as when recommending a candidate for appointment as the Chief Children's Commissioner, including the candidate's knowledge and understanding of te Tiriti o Waitangi/the Treaty of Waitangi, Māori knowledge, and knowledge of, and experience in, tikanga Māori.

Given the government's aim of strengthening the advocacy by having a single Commissioner, we would not expect a Deputy Commissioner to act as Commissioner for long periods or on a regular basis.

FINDINGS

1.11 Mana Mokopuna has been engaging appropriately with iwi and Māori (see next chapter). Therefore, we do not see a need for legislation to require the Commissioner to establish a dedicated advisory board.

1.12 There is a prima facie case for the Minister when recommending a candidate for appointment as the Deputy Children's Commissioner to have regard to the same factors as when recommending a candidate for appointment as the Chief Children's Commissioner, including the candidate's knowledge and understanding of te Tiriti o Waitangi/the Treaty of Waitangi, Māori knowledge, and knowledge of, and experience in, tikanga Māori.

1.13 The oversight system generally has reasonable provisions to ensure the oversight agencies have appropriate te ao Māori expertise, or access to appropriate te ao Māori expertise.

Are the Commission's functions in regard to the Children's Convention appropriate?

A small number of parties suggested that section 21 of the Commission Act be amended to provide the Commission more specific functions in regard to the Children's Convention. In particular, the party wanted the Commission to "establish a National Implementation Strategy for UNCROC [the Children's Convention] and administer reporting, planning and coordinating mechanisms in government for progressively increasing state capacity and policy/societal awareness for statutory incorporation of UNCROC [the Children's Convention]".

In our view, the suggested suite of amendments go beyond the scope of this review. The suggested amendments require government to commit to:

- fully "incorporate" the Children's Convention in domestic legislation, and
- significantly increase resourcing across agencies to enable monitoring, reporting and coordinating across a framework that does not seem to be used currently.

There may be good reasons for government to give greater weight to the Children's Convention in domestic law. But in doing so, significant questions would need to be considered, such as:

- What is the role for existing monitoring frameworks if the Children's Convention is to be used?
- How much additional value would New Zealand get from using a Children's Convention lens given the range of policy work underway across portfolios that is already consistent with the Children's Convention?
- What is the cost of establishing an implementation strategy for UNCROC, and the infrastructure to report, plan, monitor, and coordinate implementation across agencies?
- What additional resourcing would be required in relevant agencies to support this infrastructure and give effect to any policy changes required by giving greater weight to UNCROC?

This issue affects many agencies and portfolios and is thus beyond the scope of our Terms of Reference which focus on the Oversight Act and Commission Act.

FINDINGS

1.14 Our Terms of Reference does not include considering whether the Children's Convention should be fully incorporated in New Zealand law and given effect through associated infrastructure. We have no finding in relation to this matter.

Should the Commission have a function to take legal action of its own volition?

Under section 20(j) of the Commission Act, a function of the Commission is to promote the interests and well-being of children and young people by presenting reports to proceedings before any court or tribunal that relate to the Children's Convention or to the rights, interests, or well-being of children generally and presenting reports on such issues to the court or tribunal, at the request of—

(i) the court or tribunal; or

(ii) counsel representing any party to the proceedings; or

(iii) counsel representing any child who is the subject of the proceedings; or

(iv) counsel assisting the court or tribunal.

It was suggested that the Commission have additional functions to:

- *on its own application to a Court or Tribunal, intervene in proceedings on children's issues;*
- *on its own application to a Court or Tribunal, issue a statement on particular children's issues;*
- *lodge complaints with the Ombudsman and other complaint mechanisms internal to agencies, for example complaint processes within OT, MSD, MOE, INZ (MBIE) etc.*
- *commence proceedings of its own on children's issues, including on a representative basis, in courts of general jurisdiction and specialist tribunals like the Waitangi Tribunal,*

the Human Rights Review Tribunal and the Immigration Protection Tribunal. This also includes judicial review proceedings and proceedings under the Declaratory Judgments Act 1908;

- *advance individual complaints to the UN through the Optional Protocols, including for UNCROC [the Children's Convention], ICCPR and UNCAT.*

The submission notes:

"...the ability to take individual complaints through Optional Protocols is predicated - in a practical sense - on the ability to also commence legal proceedings. This is because domestic remedies must be exhausted before an international competent body gains jurisdiction, and this necessarily includes first appealing the matter to the Supreme Court. It follows that any entity/individual intending to take an individual complaint to the UN must also have the ability to engage the domestic court system, otherwise that power would be rendered somewhat redundant."

Further:

"The recommendations above are linked to the need for greater actionability and enforceability of children's rights in general. As discussed earlier in this paper, children's rights and interests currently protected in domestic law are not co-extensive with children's rights enshrined in UNCROC [the Children's Convention]. Additionally, it is often only children with significant resources who are able to access their rights in court. Having the Commissioner as legal advocate will help curb these issues."

Parties can take legal cases to uphold the rights of children under New Zealand domestic law. The suggested expansion of the Commission's functions seems to be predicated on a desire to allow the Commission to take complaints to the UN, which in turn is predicated on New Zealand "incorporating" the Children's Convention. As noted above, recommending the New Zealand government's position on the Children's Convention is outside the scope of this review.

For completeness, we also note that empowering the Commission to take legal action of its own volition may require the Children's Commissioner to have particular legal expertise which is relatively rare in New Zealand. Further, the Commission would need additional resourcing to enable it to take cases.

FINDINGS

1.15 We make no finding in regard to the suggestion that the Commission be empowered to take legal action of its own volition, as the only calls for this change are driven by a desire to see the "incorporation" of UNCROC in New Zealand law.

Ensuring other written documents are not captured by the requirements of "reports"

Aroturuki Tamariki provide "share backs" after community visits (for example, with tamariki, whānau, Oranga Tamariki, and Police). These documents summarise what Aroturuki Tamariki hears in the course of a community visit.

We have heard concern that these could be considered as "reports" under the Oversight Act, and thus subject to the requirements of the Act relating to reports, e.g. consultation and publishing. We have also heard concern that section 48 of the Oversight Act – which sets out conditions that must apply for the Monitor to disclose information – may prevent the Monitor from distributing share backs.

Aroturuki Tamariki does not publish these documents on its website, beyond a short summary.

Our view is that these documents were never considered to be "reports" and are not analogous to reports produced under sections 22–26. Further, it is good practice for the Monitor to produce these documents and the law should not prevent the Monitor from doing so. The risk of producing a share back that is contrary to section 48 seems low.

Nonetheless, for the avoidance of doubt, section 48 could be amended to clearly provide for the Monitor to produce share backs.

FINDINGS **1.16** The law should enable Aroturuki Tamariki to provide share backs.

Aroturuki Tamariki obligation to publish

The Oversight Act provides that the Monitor must present stipulated content on an "Internet site".

Section 18(2) provides that the Monitor must demonstrate annually on an Internet site maintained by or on behalf of the Monitor how they have had regard to the views of the Māori Advisory Group.

As the requirement is to "demonstrate annually", this content could be more easily presented in an organisational annual report (which would be made available online).

It has been suggested that other stipulated content that is currently required to be presented online could simply be "published", e.g. in an annual report. We do not agree that other statutory obligations lend themselves as easily to this. We think it is appropriate that the Monitor continue to publish the following on an Internet site:

- its code of ethics (section 21(5)) – this should be readily accessible with amendments available in real time
- final reports and responses (section 31) – these need to be readily accessible, and
- matters of interference or non-compliance (section 53) – the law provides that the Monitor "may" publish these on an Internet site, so it is not required to.

For these last three categories of information, there is benefit in this information being clearly available online and able to be updated in real time.

FINDINGS

1.17 The Monitor could demonstrate annually how it has had regard to the views of the Māori Advisory Group in its annual report rather than on an Internet site. Where there is a benefit in information being available in real time it is reasonable for the law to require the Monitor to publish information on an Internet site.

List of other possible legislative amendments

The Terms of Reference asks us to consider whether amendments to the Oversight Act and/or Commission Act are necessary or desirable.

The tables in Appendix 4: Minor legislation proposals raised with MartinJenkins set out amendments suggested to us, along with our position.

LINE OF INQUIRY 2.
Oversight bodies' work with hapū, iwi, and Māori organisations

SUMMARY

This section responds to the following questions in the Terms of Reference:

- *Is the Monitor working effectively with…hapū, iwi, and Māori organisations, as required in the Oversight Act?*
- *Is the Commission working effectively with hapū, iwi, and Māori organisations?*

Our review found

We found that the Monitor and the Commission have appropriate plans and approaches in place for engaging and working with iwi and Māori organisations. These plans align with best practices and demonstrate appropriate capability, capacity, leadership.

Both the Monitor and the Commission are developing positive relationships with iwi and Māori organisations, specifically targeting regions of need and those active in the Oranga Tamariki system. The quality of this engagement has been high, with feedback indicating that it has been respectful and consistent with tikanga Māori, and that the agencies engaged for specific purposes.

However, we observed differing levels of engagement with the oversight system among the iwi and Māori organisations we consulted. While some had established strong relationships with the Commission and the Monitor, others had only minimal interaction. Given the stage of implementation, this is not unexpected.

We often heard confusion expressed about the specific roles of each oversight body, their collaborative processes, and the mechanisms ensuring effective oversight. Consequently, some iwi and Māori organisations perceived the oversight bodies as having little wider relevance, especially at whānau level.

The perspectives of iwi and Māori organisations are shaped by a broad, intergenerational context. This includes their roles as Treaty partners and as providers of diverse social services, holding accountability to their iwi, hapū, whānau, and tamariki. Iwi and Māori have well-established and nuanced views on accountability, where the wellbeing of tamariki is deeply connected to the wellbeing of whānau, hapū, and iwi.

Our view is that both the Monitor and the Commission are working with iwi and Māori as well as could be expected at this stage of implementing the Acts. For completeness, we note that the Monitor will publish its first annual report on the performance of the Oranga Tamariki system in respect of outcomes being achieved for Māori children, young people, and their whānau in 2025. We expect this report to be of high interest to all stakeholders, including iwi and Māori.

Over time, we would expect to see the oversight agencies:

- Collaborating more to increase understanding of the oversight system (at a systems-level and not just at the level of individual agencies) among iwi and Māori at all levels. This could be, for example, by designing a systems-level

engagement framework that includes other relevant agencies (for example, Oranga Tamariki) to (i) enable wider reach (with less duplication and less onus on iwi and Māori to engage with multiple agencies); (ii) support the "any door is the right door" policy; and increase ways to promote and support understanding of the oversight system in communities, at a larger scale.

- Oversight bodies could work with iwi and Māori organisations to co-design a systems engagement approach for their rohe and communities.
- Continuing to develop collaborative and beneficial relationships with iwi and Māori, in a strategic and targeted way.
- Continuing a programme of work, seeking feedback from iwi and Māori and creating two-way feedback loops.
- Identifying ways to bring value to relationships, for example by incorporating and promoting Māori perspectives and practice of caring for tamariki and rangatahi.
- Moving beyond relationship building and working towards increasing substantive improvements for the wellbeing of tamariki and rangatahi Māori in the Oranga Tamariki system.

A. Context for working with hapū, iwi, and Māori organisations

The perspectives of iwi and Māori organisations are shaped by a broad, intergenerational context. This includes their roles both as Treaty partners and as providers of diverse social services, holding accountability to their iwi, hapū, whānau, and hapori (communities).

Iwi and Māori have well-established and nuanced views on accountability, where the wellbeing of tamariki is deeply connected to the wellbeing of whānau, hapū, and iwi.

The context for engaging with hapū, iwi, and Māori is also nuanced and informed by multiple factors including Treaty of Waitangi settlement status, iwi and community priorities, other competing government activities, environmental factors (including natural disasters), political dynamics, and more.

While the Acts specifically provide for engagement with hapū, we have not seen, nor expected to see evidence of direct engagement at this level. In the context of the Treaty partnership, it is right to include hapū as Treaty partners, however engagement at this level requires deep relationship building "at place" and intensive regional reach is usually a prerequisite. While hapū typically do not have formal structures or operate a service-provision level, this differs from rohe to rohe. In our view, the opportunity for hapū to participate in ways that meet their needs in the future, should be preserved in the Acts.

While outside of the scope of this review, the repeal of section 7AA of the Oranga Tamariki Act 1989 was front of mind for iwi and Māori, as it raises concerns about the reduced accountability that Oranga Tamariki would have directly to tamariki Māori and whānau. As well, the attention given to Oranga Tamariki uplifts and the over-representation of tamariki and rangatahi Māori sits close to the surface of what we heard from iwi and Māori.

TAMARIKI AND RANGATAHI MĀORI CONTINUE TO BE OVER-REPRESENTED IN THE CARE POPULATION

While the number of tamariki and rangatahi in care has continued to decline over the years, tamariki and rangatahi Māori continue to be over-represented, accounting for 68% of the care population in 2023/24 despite making up only 28% of the total under 18 population in Aotearoa New Zealand.

B. The oversight bodies must make reasonable efforts to engage with hapū, iwi, and Māori organisations

The legal provisions relating to engagement by the Commission and Monitor with hapū, iwi, and Māori organisations are summarised in Table 4 below.

Table 4: Legal provisions relating to Māori engagement by oversight agencies

Mana Mokopuna ***Commission Act***	• Under Section 17(1)(a), the duties of the Board include: – building and maintaining relationships with hapū, iwi, and Māori organisations (and others) by: ▪ having a strong focus on the rights, interests, and well-being of Māori children and young people within the context of their whānau, hapū, and iwi ▪ promoting Māori participation and leadership, and te ao Māori approaches, in the performance of its functions, as appropriate – setting strategic priorities and work programmes that support improved outcomes for Māori children and young people within the context of their whānau, hapū, and iwi. • These obligations will transfer to the Children's Commissioner if the Oversight of Oranga Tamariki System Legislation Amendment Bill is passed. • Under Section 31(3)(a), the Chief Executive of Mana Mokopuna is required to make reasonable efforts to consult hapū, iwi, and Māori organisations when making information rules relating to the collection, use, and disclosure of information by the Commission.
Aroturuki Tamariki ***Oversight Act***	• Under Section 15(2)(b) and (c), Aroturuki Tamariki is required to ensure that their tools and monitoring approaches operate in a way that recognises the importance of children's and young people's families, whānau, hapū, iwi, and communities and incorporates a tikanga Māori approach. • Section 17 requires the monitor to appoint a Māori Advisory Group in order to support meaningful and effective engagement with Māori. Section 18 provides the Monitor must collaborate with, and have regard to the views of, the Māori Advisory Group when the Monitor is developing their priorities, work programmes, and monitoring approaches. • Under Section 19, Aroturuki Tamariki is required to make reasonable efforts to develop arrangements with hapū, iwi, and Māori organisations for the purposes of providing opportunities to, and inviting proposals on how to, improve oversight of the Oranga Tamariki system and sharing information under the Act. • Under Section 49(4)(b)(i), Aroturuki Tamariki is required to consult hapū, iwi, and Māori organisations with whom the Monitor has entered into arrangements under section 19 when making information rules relating to the collection, use, and disclosure of information by the Monitor.
Ombudsmen ***Oversight Act***	• Under Section 43, the Chief Ombudsman must make reasonable efforts to develop arrangements with hapū, iwi, and Māori organisations for the purposes of supporting Ombudsmen in carrying out their duties and providing for the sharing of information under the Act.

GUIDANCE ISSUED BY TE ARAWHITI SUPPORTS AGENCY ENGAGEMENT

In line with the engagement guidelines published by Te Arawhiti, good engagement with hapū, iwi, and Māori organisations involves, but is not limited to, the following key principles and practices:

- **Early and inclusive engagement**: All relevant Māori groups and individuals are involved from the beginning to build trust and understanding.
- **Building relationships**: Relationships with Māori are established and maintained through regular engagement, listening to concerns, and responding appropriately.
- **Respect and acknowledgement**: The rangatiratanga and status of Māori as Treaty partners is recognised and the value of mātauranga Māori is acknowledged.
- **Clear purpose and communication**: The purpose of the kaupapa is clearly defined and communicated with all involved parties.
- **Collaborative approach**: Māori are consulted and a collaborative approach is taken to identify issues and develop solutions.
- **Flexibility and adaptability**: Different methods of engagement may be required and an adaptable approach to address feedback and the specific needs of Māori is required.
- **Transparency and accountability**: Māori are kept informed about the progress and outcomes of engagement and input is acknowledged and reflected in the final decision.

C. The oversight bodies have appropriate plans and approaches in place and are working with hapū, iwi, and Māori organisations in a strategic and targeted way

Mana Mokopuna

Mana Mokopuna has continued to build on foundational work, in a strategic and targeted way, focused on developing relationships and building internal capability

In September 2023, Mana Mokopuna published its Child Protection Policy outlining its commitment to protect and uphold the mana of mokopuna and respecting their rangatiratanga; seeing mokopuna within the context of their families, whānau, hapū, iwi, and communities; and keeping mokopuna voices and experiences central to their safety and wellbeing.

One of its strategic intentions for 2024–27 is to connect and convene with tamariki and rangatahi, and their whānau, as well as hapū, iwi, and organisations working with and for children and young people to apply an ecosystem framework that will build agencies' capability and support them to view tamariki and rangatahi within the context of their whānau, hapū, iwi, communities,

schools, social services, and other organisations mokopuna and their whānau may be connected with.

This is one indication of strategic focus and prioritisation of engagement with Māori. The organisation seeks to promote and advance children's interests in the context of hapū, whānau, iwi, and Māori structures.

Within Mana Mokopuna, the Mata Māori team has been established under a Pou Whakahaere to provide support, advice, and guidance for all work from a mātauranga Māori perspective. There are also tagged roles across other teams within the organisation with responsibility for aspects of driving the strategic focus on Māori engagement through Mana Mokpuna.

Mana Mokopuna has a Te Tiriti Capability Framework and Plan which was approved by its Board in June 2024. While implementation is in early stages, a number of measures are underway to support organisational capability with te ao Māori, including staff training in te reo Māori and Te Tiriti o Waitangi, a Matariki event co-run with Te Atiawa, kaimahi participation in Te Konohete (an annual public sector, Māori cultural festival), and marae-based wānanga.

An engagement programme is in place

Mana Mokopuna is dedicated to building relationships with iwi and Māori organisations by first understanding their values, priorities, and perspectives to identify mutual benefits. This engagement is based on the principle of mana motuhake (self-determination), ensuring that Māori organisations see value in the relationship. The process involves understanding the aspirations of iwi, hapū, and Māori for mokopuna, clarifying the role and mandate of Mana Mokopuna, and allowing these groups to determine the value and benefits of an ongoing relationship.

Currently, Mana Mokopuna has made progress in developing relationships with some groups, while others remain less engaged. This reflects the maturity of the Act, the implementation stage of the engagement programme, varying priorities of iwi and Māori, and resourcing and capacity.

Examples of the approach for Mana Mokopuna include a programme of engagement with iwi, Māori, and community organisations across Aotearoa New Zealand including Ngāti Toa Rangatira, Te Āti Awa Taranaki Whānui ki Pōneke, Whakatōhea, Ngāti Awa, Te Arawa (health organisations), Waikato Tainui, Ngāpuhi, and Ngāi Tahu. Mana Mokopuna is in the process of exploring relationship agreements with five iwi, and the form of such relationships will be ultimately determined by what iwi view as appropriate and beneficial in relation to mokopuna of their iwi.

Further, the recent report, *Without racism Aotearoa would be better,* published in March 2024 was a collaboration between Mana Mokopuna, the Ministry of Justice, and National Iwi Chairs Forum. Engagements were held with tamariki and rangatahi in communities, in Oranga Tamariki and protection residences, youth justice residences, and remand homes to hear their experiences of culture and racism. Engagements included, but were not limited to, rangatahi and tamariki Māori.

Mana Mokopuna has sought and received advice from Te Arawhiti on engaging with Māori, Te Taura Whiri i te Reo Māori on Māori language planning, and they receive advice from Māori representatives on ethics panels prior to any engagement. Mana Mokopuna has also engaged Te Kāhui Raraunga for guidance on the development of its Māori Data Governance model and Dr Karaitiana Taiuru for feedback on its operational guidelines for its information rules relating to the collection, use, and disclosure of information.

The incorporation of expertise from both inside and outside Mana Mokopuna means a well-informed engagement approach is being followed:

- Mana Mokopuna aims to hold the first meeting on the whenua of the hapū, iwi, or Māori group it is working with.
- Mana Mokopuna seeks to build reciprocal relationships with hapū, iwi, and Māori organisations, ensuring that the terms of the relationship are determined by the Māori entities themselves.
- The Chief Children's Commissioner is personally involved in most engagements, reflecting the principle of "rangatira ki te rangatira".

Mana Mokopuna has well-developed informal relationships and networks through the Pou Whakahaere, which as often is the case, requires drawing from personal and whakapapa relationships. Relationships are also held by other senior leaders including the Chief Children's Commissioner.

Mana Mokopuna also engages with iwi and Māori as part of its OPCAT role, including engaging directly with mokopuna Māori and their whānau. Plans for iwi-remand home monitoring have already commenced.

Feedback from iwi and Māori shows a limited number of high-quality relationships have been established

We observed varying levels of engagement with the Oversight system among the iwi and Māori organisations we spoke to, noting we did not speak to all iwi and Māori organisations Mana Mokopuna has relationships with. While some had developed close relationships with the Children's Commission others had minimal interaction.

Where engagement has occurred, it is reported to be of high quality – respectful, aligned with tikanga, and mutually beneficial where mokopuna and whānau are at the centre.

In addition to the largely positive feedback we heard from stakeholders, there are signs the engagement approach is going well:

- the Chief Children's Commissioner was invited to lead a karakia at Waitangi and collaboration with Ngā Puhi is underway to bring forward a focus on mokopuna rights at Waitangi 2025
- Mana Mokopuna was invited to attend the 70th anniversary conference of the Māori Women's Welfare League
- Mana Mokopuna can collaborate with organisations like the Iwi Chairs Forum, and
- Māori have proactively approached Mana Mokopuna, expressing support for advocacy positions taken and an ongoing exchange of information regarding mokopuna oranga (wellbeing) and aspirations, and invitations to further engage on kaupapa of mutual interest.

Some iwi and Māori we spoke to wanted to see more extensive engagement from the oversight agencies, especially in areas of high need. Our view is Mana Mokopuna should continue to follow a strategic and targeted approach, balancing the quantity of engagements carefully with building collaborative and meaningful relationships.

FINDINGS

2.1 Mana Mokopuna has appropriate plans in place and is engaging with iwi and Māori as well as could be expected at this stage of implementing the Commission Act.

2.2 Although we found mixed levels of engagement from iwi and Māori we spoke to (as with the other oversight agencies) we observed that the quality of existing engagement and relationships is high.

Aroturuki Tamariki

Te Kāhui Māori Advisory Group supports the work of the Monitor

In May 2019, Te Kāhui was established as a Māori Advisory Group to advise on and support the monitoring function of Aroturuki Tamariki, including appropriate engagement with communities and guidance on meeting obligations under section 6 of the Oversight Act (te Tiriti o Waitangi/the Treaty of Waitangi). Te Kāhui is comprised of five Māori leaders with experience and knowledge of tamariki and rangatahi rights and issues within the Oranga Tamariki system, as well as extensive knowledge of tikanga Māori.

Aroturuki Tamariki sought to embed te ao Māori when developing its operating model.

Aroturuki Tamariki advised that it has not entered into any formal engagements with hapū, iwi, or Māori organisations under Section 19 of the Oversight Act, but it has engaged 25 iwi organisations and 32 Māori organisations to develop strong working relationships.

In practice, we note the Monitor has been able to work closely with iwi and Māori providers without the need for formal agreements to be put in place. Work is underway to create information sharing arrangements with iwi in 2025 (which requires access to accurate iwi affiliation data from Oranga Tamariki). In 2024, the Monitor has seconded resource from the Social Investment Agency to build dashboards on system performance and outcomes measures that can be used to provide iwi level data from census data contained in the Statistics NZ Integrated Data Infrastructure.

Advice was sought on an effective engagement approach, and policy documentation supports this

Aroturuki Tamariki has also received advice from Te Arawhiti on its engagement approach with Māori. It takes a tikanga based approach to engagement with tamariki, rangatahi, and their whānau as well as hapū, iwi, and Māori organisations. Aroturuki Tamariki has a pathway for te ao Māori development, including Māori language planning.

Internal policy documents available to kaimahi include policy on how Aroturuki Tamariki acknowledges others (including tamariki, rangatahi, whānau, and agencies) and how Aroturuki Tamariki engage with connectors (agencies that connect Aroturuki Tamariki with tamariki, rangatahi, and whānau) and the connector relationship.

Te Kāhui was consulted during the development of the interim and current information rules, with their feedback reflected where relevant.

Engagement follows the monitoring rhythms of Aroturuki Tamariki

Aroturuki Tamariki has a rhythm of regional monitoring visits. Engagement with Māori naturally follows this rhythm. The Monitor invites regional parties to engage and provides key information, for example, that the Monitor is independent. It connects regional staff and can deploy staff around the country if particular engagement capability is needed. It provides "share backs" to engaged parties so it can confirm what it heard and recorded is accurate. The rhythmic nature of this work means relationships can deepen over time with subsequent engagements. The Monitor can also record engagements in its relationship management tool.

The Monitor started planning its engagement approach before it was established in its current form. It drew on contact lists held by Oranga Tamariki and the Ministry of Social Development to prioritise key strategic partners, for example, Māori groups with tamariki in the Oranga Tamariki system, and Māori groups who are care providers.

The Monitor is aware of the demands on the time of Māori organisations. It seeks to limit the impact of engagement by covering costs or providing koha.

Aroturuki Tamariki invests in cultural competency

Kaimahi at Aroturuki Tamariki are trained in listening to and speaking with tamariki and rangatahi and have experience in working with different communities, including Māori communities. Monitoring teams are made aware of specific tikanga in the rohe they are monitoring before visiting. All staff, including non-Māori, are expected to be comfortable in Māori spaces.

There has been evidence of partnership-based approaches including co-design

In preparation for the publication of the first annual report on outcomes for tamariki and rangatahi Māori and their whānau, Aroturuki Tamariki brought together iwi and Māori social service providers, Oranga Tamariki strategic partners, and representatives from the Social Investment Agency to help develop operational measures to assess the performance of the Oranga Tamariki system in achieving outcomes for tamariki Māori.

Feedback from iwi and Māori that engage with the Monitor is positive

As for the Commission, we heard positive comments from iwi and Māori interviewees who had worked with the Monitor and understood its functions. We heard the Monitor described as "well-reasoned", "genuine", "respectful", and "collaborative" and "helped to improve our processes."

Care providers we spoke to observed the Monitor's engagement with iwi and Māori to be appropriate. We did hear one anecdote from a young person which cautioned about taking care not to inadvertently appear "interrogative" when interacting with rangatahi Māori, as well as appreciating that appearing professional can also be perceived as unrelatable to rangatahi Māori.

FINDINGS

2.3 Aroturuki Tamariki has appropriate plans in place and is engaging with iwi and Māori as well as could be expected at this stage of implementing the Oversight Act.

2.4 Feedback from iwi and Māori engaged by Aroturuki Tamariki has been positive, indicating a high quality of engagement.

Ombudsman

The Ombudsman has a te ao Māori strategy, capability, and engagement programme in place

While not the primary subject of this review, we note a priority for the Office of the Ombudsman is to be more responsive to tangata whenua and to better integrate te ao Māori into its policies and practices. In 2019, the Chief Ombudsman established Pūhara Mana Tangata, an external advisory panel comprised of senior Māori leaders and rangatahi who advise the Ombudsman on engagement and communication matters that impact Māori. The Ombudsman has also set up a dedicated Rōpū Māori Hononga Hapori (Māori and Community Engagement Team), to provide specialist support for staff and effective outreach and engagement.

The Chief Ombudsman is implementing his te ao Māori Strategy, launched with Kiingi Tūheitia Potatau Te Wherowhero VII in 2023, to assist staff to develop their capability and ensure they are appropriately skilled and confident in te ao Māori, te reo, tikanga, and Te Tiriti to support their work. Specific initiatives underway include a te ao Māori cultural capability programme, a continuous improvement programme for the Ombudsman's operational practices, and a Māori outreach programme.

The Ombudsman has a long-standing close relationship with Kiingitanga, including an Ombudsman/Kiingitanga summer internship programme that has been running for the last four years, and an Ombudsman kiosk at the annual Koroneihana event. The Ombudsman has also developed relationships with the National Iwi Chairs Forum and the New Zealand Māori Council. The Chief Ombudsman has been invited to present a karakia at Waitangi for the last three years.

The Ombudsman has a rolling three-year outreach and engagement programme across 12 regions of New Zealand, with four regions being visited every year (before repeating). In each region, the Ombudsman engages with a range of iwi, hapū, and Māori organisations as well as other ethnic groups, community providers, social services, and public groups or associations. One specific focus of the engagements is providing information about the Ombudsman's children in care role. Since 2019, the Ombudsman has engaged with at least 36 iwi, hapū, and Māori organisations around the country. These engagements focus on listening to areas of concern for Māori, sharing information about the Ombudsman's role and functions, and building connections to support the Ombudsman's role for children in care.

D. Areas where the oversight agencies' engagement with iwi and Māori organisations could mature over time

The oversight agencies have a good base to work from…

In general:

- Not all organisations we spoke with had been engaged by all three of the oversight bodies…
- …but where engagement had occurred, comments were positive, with many noting and appreciating the relationships that have been built with Mana Mokopuna and Aroturuki Tamariki.
- Iwi and Māori organisations shared that engagement sessions with kaimahi and whānau have been conducted in a manner that is respectful, collaborative, and genuine. These sessions have been characterised by efforts to listen to and incorporate feedback from kaimahi and whānau.

As noted, the Monitor will publish its first annual report on the performance of the Oranga Tamariki system in respect of outcomes being achieved for Māori children, young people, and their whānau in 2025. We expect this report to be of high interest to all stakeholders, including iwi and Māori.

This provides a good base to work from.

…however, there is mixed understanding of the oversight system, and iwi and Māori do not always see the relevance of the oversight system to them

There was some confusion regarding the specific roles of each oversight body, their collaborative processes, and the mechanisms ensuring effective oversight. Overall, the relevance of the oversight bodies to iwi, Māori, and whānau was perceived as low.

Although the Ombudsman is not the primary subject of this review, it was noted that among the oversight agencies, its role was the least understood by the iwi and Māori organisations we spoke with. Understanding was highest and more in-depth among those who had met the Ombudsman.

Comments were made regarding the Oranga Tamariki system not being kaupapa Māori (by Māori, for Māori), regardless of internal Māori capability. There was a perception that the system focuses on outputs rather than outcomes, is inward-looking rather than outward, and is associated with negative stories (such as uplifts), deficit thinking, and power imbalances. These factors could be contributing to the perception that the oversight system is less relevant to Māori.

Iwi and Māori organisations expressed a desire for more meaningful collaboration with oversight bodies at all levels, including with whānau. They recognised that a collective effort is needed to enhance the relevance of the oversight system and its agencies to iwi and Māori at every level (iwi, hapū, and whānau).

Refinements to the engagement approach would improve iwi and Māori understanding of the oversight system over time. This could include for example:

- Enhancing the way the oversight bodies articulate the roles and responsibilities of each oversight body, their collaborative processes, and the mechanisms ensuring effective oversight to help reduce confusion and improve understanding among iwi and Māori.
- Continuing to make information about the oversight system more accessible to iwi and Māori.
- Shifting the focus from outputs to outcomes, emphasising the positive impacts and benefits of the oversight system for iwi and Māori. Highlight success stories and positive changes resulting from oversight activities.
- Continuing to ensure that Māori have a meaningful say in oversight processes.
- Establishing regular feedback mechanisms to gather input from iwi and Māori on the effectiveness and relevance of the oversight system. Using this feedback to make continuous improvements and adjustments to the engagement approach.

We would expect the number of relationships with hapū, iwi, and Māori organisations to increase with system maturity

As the oversight system matures in its current configuration, we would expect that relationships will continue to be established and strengthened with hapū, iwi, and Māori organisations across Aotearoa New Zealand in a strategic and targeted way. This ongoing development is critical for ensuring that all Māori communities, regardless of their location, are adequately represented and involved in the oversight system.

Oversight agencies should constantly focus on identifying opportunities to align engagement and information requests to reduce the engagement burden on Māori organisations. This would be in line with their common duty under section 7(2)(c): "to minimise the burden on agencies when they are gathering information under this Act and carrying out preliminary inquiries, investigations, or reviews".

We would also expect the oversight bodies to move beyond relationship building and work towards real improvements for the wellbeing of tamariki and rangatahi Māori in the care system, ensuring that their needs are met, their voices are heard, and their rights are upheld.

Organisations reported varying levels of understanding of the oversight system

There is confusion among hapū, iwi, and Māori organisations (as well as some care providers, children and young people, and other system stakeholders) around the specific roles of each oversight body, the mechanisms that provide the oversight, and how the oversight bodies work together.

Concerns were raised that visibility of the oversight system for whānau is low. That could result in whānau spending money pursuing a legal pathway that is unnecessary because they are unaware of the avenues available to them within the oversight system. While the oversight bodies take a

"no door is the wrong door" approach, organisations and whānau still want to understand which "door" they should "knock on" for each situation.

We consider it important that the system is well known and understood by those who need to interact with it. To this end, a greater quantity of engagement would help, alongside coordinated engagement and communications across the three oversight agencies.

Over time, we would expect to see the oversight agencies:

- Collaborating more to increase understanding of the oversight system (at a systems-level and not just at the level of individual agencies) among iwi and Māori at all levels. This could be, for example, by designing a systems-level engagement framework that includes other relevant agencies (for example, Oranga Tamariki) to enable wider reach, with less duplication and less onus on iwi and Māori to engage with multiple agencies, support the "no wrong door" policy, and increase ways to promote and support understanding of the Oversight system in communities, at a larger scale.
- Oversight bodies could work with iwi and Māori organisations to co-design a systems engagement approach for their rohe and communities.
- Continuing to develop collaborative and beneficial relationships with iwi and Māori, in a strategic and targeted way.
- Continuing a programme of work, seeking feedback from iwi and Māori and creating two-way feedback loops.
- Identifying ways to bring value to relationships, for example by incorporating and promoting Māori perspectives and practice of caring for tamariki and rangatahi.
- Moving beyond relationship building and working towards increasing substantive improvements for the wellbeing of tamariki and rangatahi Māori in the Oranga Tamariki system.

FINDINGS

2.5 There is mixed understanding of the oversight system, and iwi and Māori do not always see the relevance of the Oversight system to them.

2.6 Notwithstanding, the oversight agencies have made good progress working with iwi and Māori organisations but as the system matures, we would expect to see increased understanding of the oversight system by iwi and Māori and examples of improved accountability for Māori children and young people within the context of their whānau, hapū, and iwi.

E. We also heard a range of other feedback

Table 5 sets out other themes we heard in our engagement with Māori organisations, as well as our views.

Table 5: Themes identified in engagement with Māori organisations

Theme	MartinJenkins comment
Concern about disestablishing the Board of Mana Mokopuna, given (i) that the current legislation places obligations on the Board in regard to holding knowledge relating to the Treaty; and (ii) that Mana Mokopuna draws on the expertise of Board members to shape engagement.	The Commission Act places significant obligations on the Board. For example: • section 13(1)(b) requires the Commission to have, on a collective basis, among its board members knowledge and understanding of te Tiriti o Waitangi/the Treaty of Waitangi • section 13(2) requires that at least half of the board members have Māori knowledge and experience in, and knowledge of, tikanga Māori • section 17(1)(a) provides that the duties of the board include: – building and maintaining relationships with hapū, iwi, and Māori organisations (and others), including by: ▪ having a strong focus on the rights, interests, and well-being of Māori children and young people within the context of their whānau, hapū, and iwi: ▪ promoting Māori participation and leadership and te ao Māori approaches in the performance of its functions, as appropriate – setting strategic priorities and work programmes that support improved outcomes for Māori children and young people within the context of their whānau, hapū, and iwi. The Oversight of Oranga Tamariki System Legislation Amendment Bill before the House disestablishes the Board and requires the Minister, when recommending a candidate for appointment as the Children's Commissioner, to have regard to the candidate's knowledge and understanding of te Tiriti o Waitangi/the Treaty of Waitangi, Māori knowledge, and knowledge of, and experience in, tikanga Māori. The Bill transfers the duties of the Board in section 17 to the Commissioner sole.
The oversight system is not completely independent as government controls agency budgets and therefore the voice of the child.	Statutory independence is a well-established feature of New Zealand legislation and public administration.
It is not clear how the work of the oversight bodies results in better outcomes for tamariki and rangatahi Māori. Some organisations that we spoke with had no issues with the legislation as written but were concerned that the reports of Monitor were not reinforced through stronger incentives to improve (e.g. penalties for not improving practices with adequate speed).	Our comments on this are provided in the previous chapter. We believe the Oranga Tamariki oversight system does not lend itself to a sanction-heavy regime and that the system needs to be built on the transparency provided by a strong monitoring regime to improve practices.

Theme	MartinJenkins comment
General opposition to other changes, including the repeal of section 7AA.	We have not provided comment on government decisions outside the scope of this review.

LINE OF INQUIRY 3.
How the Monitor, Commission, and Ombudsman work together

SUMMARY

This section responds to the following questions in the Terms of Reference:

- *Is the Monitor working effectively with the Ombudsman?*
- *Are the Commission and Monitor working effectively with each other, and with the Ombudsman?*

The three oversight bodies have been meeting since they were established. These relationships are maturing and we saw evidence of good collaboration, shared intent, and effective coordination.

A good basis exists for oversight agencies to deepen their relationship. Terms of Reference have been agreed covering the areas where the agencies need to work together. Oversight agencies are aligned in their high-level goals and have a shared understanding of roles and responsibilities and this is reflected in documentation. We saw good evidence of practical resolution to overlapping responsibilities and processes that required clarity of roles and responsibilities. Good information sharing arrangements are in place including with well understood requirements relating to statutory authority and privacy. Most importantly, the "no wrong door" approach puts the onus on the agencies, rather than those with complaints, children, or other system participants, to understand roles and responsibilities in the system.

There are some areas where greater collaboration would be beneficial. We expect to see this as the system matures.

- Through consultation, we heard from non-government stakeholders that the oversight system was convoluted and difficult to understand from the outside. This is not a result of the three oversight agencies failing to work constructively together. However, the three agencies will need to collaborate to present a united picture of the oversight system and encourage greater understanding of the system.
- We heard that oversight agencies are becoming better at using their information request powers to benefit the oversight system by passing information between each other. However, we also heard that it can be challenging and resource-intensive for monitored agencies to respond to information requests from oversight agencies. We encourage the oversight agencies to have a sustained, focused effort to work together to minimise the burden on agencies when the oversight agencies are gathering information and carrying out initial inquiries, investigations, or reviews in line with their common duties.

As discussed above, the oversight system is not a penalty-based regime. It relies on transparency and influence to be effective. The design of this system means that the effectiveness of the oversight agencies depends on the influence they can exert. We expect that with three agencies presenting a united front to stakeholders and the general public, the agencies have the best chance of maximising their influence. This is particularly true if the agencies can become more strategic in their collaboration over time.

A. System effectiveness relies on effective collaboration across oversight agencies

As set out earlier in the report:

- the Monitor delivers reports describing how the system is performing
- the Commission is the primary advocate for children and young people in New Zealand, and
- the Ombudsman manages complaints and conducts investigations.

The oversight agencies comprise the "oversight system". For the system to work effectively, the agencies need to collaborate effectively. Similarly, for the Acts under review to work effectively, the agencies giving effect to those Acts need to work effectively, including with each other.

As noted, the oversight system is not a sanction-heavy regulatory regime, yet stakeholder interest in the system driving accountability and improvements is high. The system relies on influence to succeed. Effective collaboration is one of the best ways the oversight agencies can collectively maximise the influence of the oversight system and its ability to drive improvements.

B. The legislation provides a legal framework for collaboration

The Oversight Act provides "common duties"

Section 7 of the Oversight Act provides "common duties" that apply to the Monitor, Ombudsman, and Commission.

7 COMMON DUTIES

1. This section applies to the Monitor, an Ombudsman, and the Children and Young People's Commission when they are carrying out work relating to children or young people who are receiving, or have previously received, services or support through the Oranga Tamariki system.
2. The common duties of the Monitor, the Ombudsman, and the Children and Young People's Commission include—
   a. to work together in a comprehensive, cohesive, and efficient way with each other, including by consulting and co-ordinating with each other and sharing information, as appropriate;
   b. to minimise the burden and potential risk of harm to individuals when the Monitor, the Ombudsman, or the Children and Young People's Commission is performing or exercising a function, duty, or power;
   c. to minimise the burden on agencies when they are gathering information under this Act and carrying out preliminary inquiries, investigations, or reviews;

d. to co-ordinate communications to individuals, agencies, Ministers of the Crown, and the public, as appropriate.

The Oversight Act provides information sharing and referral provisions

Provisions for information sharing between the Monitor and Ombudsman

The common duties are supported by obligations on the oversight agencies to share information and refer matters to relevant parties.

Section 48 provides the circumstances in which the Monitor can disclose information.

Section 51 provides that the Monitor and an Ombudsman may share information with each other if the provider of the information believes either or both of the following apply:

a. the sharing of the information would minimise the burden on individuals or agencies;

b. the sharing of the information would assist the Monitor or an Ombudsman in the performance or exercise of their functions, duties, or powers.

Information may be provided whether or not a request has been made. The Monitor or an Ombudsman may decline a request for the sharing of information under this section.

The Monitor's information rules must include rules relating to the disclosure of information under the Oversight Act.

Provisions for referrals

Section 56(2) provides that if the Monitor or an Ombudsman considers that the subject matter of an inquiry, review, investigation, complaint, or other function relates (whether in whole or in part) to a matter that is more properly within the scope of the functions of a person or body specified in subsection (5), the Monitor or the Ombudsman must, without delay, consult that person or body to determine the appropriate means of dealing with the subject matter.

Fifteen agencies are listed in subsection (5) including the Commission, the Monitor, and an Ombudsman exercising jurisdiction under the Ombudsman Act 1975 or the Oversight Act.

As soon as practicable after consulting the person or body, the Monitor or the Ombudsman must determine whether the subject matter should be dealt with, in whole or in part, under the Oversight Act.

If the Monitor or the Ombudsman determines that the subject matter should be dealt with, in whole or in part, by one of the persons or bodies specified in subsection (5), the Monitor or the Ombudsman must, without delay:

a. refer the subject matter, or the appropriate part of the subject matter, to that person or body; and

b. give written notice of the referral to the individual who initiated the inquiry, review, investigation, or complaint.

The Commission Act provides information sharing and referral provisions

Provisions for information sharing between the oversight agencies

Section 33(1) of the Commission Act provides that the Commission, the Monitor, and an Ombudsman may share information with each other if the provider of the information believes either or both of the following apply:

a. the sharing of the information would minimise the burden on individuals and agencies;

b. the sharing of the information would assist the Commission, the Monitor, or an Ombudsman in the performance of their functions, duties, and powers.

Information may be provided under this section whether or not a request has been made. The Commission, the Monitor, or an Ombudsman may decline a request for the sharing of information under this section.

Provisions for referrals

Section 35(1) provides that if, when performing functions under this Act, the Commission considers that the subject matter relates (whether in whole or in part) to a matter that is more properly within the scope of the functions of a person or body specified in subsection (4), the Commission must, without delay, consult that person or body to determine the appropriate means of dealing with the subject matter.

Fourteen agencies are listed in subsection (4) including the Monitor and an Ombudsman exercising jurisdiction under subpart 2 of Part 2 of the Oversight Act or the Ombudsman Act 1975.

As soon as practicable after consulting the person or body, the Commission must determine whether the subject matter should be dealt with, in whole or in part, under this Act.

If the Commission determines that the subject matter should be dealt with, in whole or in part, by one of the persons or bodies specified in subsection (4), the Commission must, without delay:

a. refer the subject matter, or the appropriate part of the subject matter, to that person or body; and

b. give written notice of the referral to the individual who brought the matter to the Commission's attention.

C. Non-legislative frameworks give effect to the legislative requirements

Terms of Reference (for the) Oversight of Oranga Tamariki system

Overview of the Terms of Reference

The Terms of Reference[9] (ToR) is the core document for setting out how the three oversight agencies work together. The ToR contains the following:

[9] Terms of Reference - Oversight of Oranga Tamariki System

- the roles and obligations of the agencies in the oversight system
- the agreement of the agencies to engage with one another on a good faith basis, with a focus on working together to achieve their common duties while respecting one another's individual statutory roles and obligations, and
- the way in which the oversight agencies will give effect to the common duties.

The Executive Group

The ToR establishes an Executive Group comprising:

- Chief Children's Commissioner
- Chief Executive, Mana Mokopuna – Children and Young People's Commission
- Chief Executive, Aroturuki Tamariki – Independent Children's Monitor
- Chief Monitor, Aroturuki Tamariki – Independent Children's Monitor, and
- Senior Assistant Ombudsman (and/or other person nominated by the Chief Ombudsman).

The key functions of the Executive Group are to:

- set the strategic vision of how Aroturuki Tamariki, Mana Mokopuna, and the Ombudsman will work together in accordance with their common duties
- proactively share information about and consult each other on the development of work programmes and ongoing work to avoid duplication or replication of work as appropriate
- reach agreements on information sharing arrangements
- set the direction for coordinating communications as appropriate relating to the oversight of the Oranga Tamariki system
- agree on the makeup of, and assign tasks to, Working Groups
- consider and approve matters identified, or reported on, by Working Groups, and
- make consensus-based decisions.

The Executive Group meets quarterly, or more frequently by agreement if needed. Quarterly meetings have the following standing agenda items:

- providing updates on relevant key pieces of work and sharing information as appropriate
- identifying trends or important issues relating to the oversight system that may be relevant to other oversight agencies' functions or roles (where appropriate)
- setting the direction for the coordination of communications
- providing updates on, and coordinating where appropriate, stakeholder relationship and outreach programmes
- discussing and agreeing on any matters or proposals raised by working groups, and
- general business and actions points.

The Terms of Reference operationalise the "no wrong door" policy

Through the ToR, the oversight agencies agree to operate a "no wrong door" approach. This means that regardless of which oversight agency an individual, tamaiti, or rangatahi approaches with an issue, complaint, or other matter, the oversight agencies will help them reach the appropriate agency.

The ToR notes the legislative provisions that allow for matters to be referred. A protocol and form for referrals are appended to the ToR. The ToR lists the types of matters that are to be referred to each agency (in accordance with their functions).

The Terms of Reference operationalise the statutory information sharing provisions

The ToR sets out how the oversight agencies will give effect to the information sharing provisions in the Acts.

Other matters

The ToR also describes how oversight agencies will coordinate communications, coordinate engagement to minimise harm to tamariki and rangatahi, handle information requests from third parties, and coordinate on submissions or requests for comment about the oversight system.

- Oversight agencies will coordinate joint and proactive communications to the public, agencies, and others about the oversight system, as appropriate. A key objective is to make it as easy as possible for tamariki, rangatahi, whānau and others to navigate the oversight system.
- Oversight agencies will coordinate their engagement programs to avoid overlaps and minimise impacts on tamariki, rangatahi, whānau, hapū, iwi, communities, and agencies, while conducting education and awareness-raising activities and keeping each other informed.
- Any request for information from third parties will be considered on its own merits, in line with applicable legislative requirements. Where an oversight agency receives an information request from a third party for information that relates to, or has been supplied by, another oversight agency, it will consult with that agency prior to making a decision on the request.
- Where appropriate, oversight agencies may consult and coordinate with one another when drafting external facing documents such as submissions or reports, or when providing comment or feedback on documents such as Cabinet papers, ministerial or other reports, or proposed legislation relating to the oversight of the Oranga Tamariki system.

Information rules

While technically secondary legislation, information rules form part of the infrastructure that operationalises the requirements of the primary legislation.

Section 49 of the Oversight Act obliges the Monitor to produce "information rules", that is "rules...relating to the collection, use, and disclosure of information by the Monitor to ensure protection of the privacy of persons to whom personal information relates, and the confidentiality of other information". Section 50 prescribes the content of the information rules.

The Monitor's information rules reflect the legislative provisions relating to the collection of information and the sharing of information between oversight agencies (amongst other things).

Similar provisions are in sections 31 and 32 of the Commission Act.

D. We have considered the relationship between oversight agencies in the context of the maturity of the system

The three oversight bodies have been meeting since they were established. While the legislation is young, the relationships are beginning to mature. Collaboration between the oversight bodies has increased over time and oversight agencies are hopeful that the three bodies will come to be seen as "the system".

FINDINGS

3.1 Relationships change over time and we think it is reasonable to both (i) consider the relationship between oversight agencies within the context of the maturity of the system; and (ii) expect the relationship to deepen over time as the system matures.

E. What does "good" look like for this relationship?

RANGATAHI INSIGHTS

Clear and accessible information

Rangatahi we spoke to emphasised the need for clear, easily accessible information and communication about the oversight agencies and their roles, and how the oversight system supports their wellbeing.

We would expect a healthy relationship between the oversight agencies to have the following characteristics:

- Oversight agencies are aligned in their high-level objectives and consistent with their statutory purpose.
- Oversight agencies share an understanding of roles and responsibilities.
- Oversight agencies communicate with each other through established, appropriate channels with appropriate frequency and clarity.
- Oversight agencies coordinate public communications as appropriate and support high levels of public understanding of, and trust in, respective roles and responsibilities.

- Oversight agencies minimise the burden on monitored agencies when they are gathering information under this Act and carrying out preliminary inquiries, investigations, or reviews.
- Oversight agencies minimise the burden and potential risk of harm to individuals when performing or exercising a function, duty, or power.

F. Rating the relationship of the oversight agencies against the criteria

Oversight agencies are aligned in their high-level objectives and consistent with their statutory purpose

At a high level, the three oversight agencies are aligned in wanting to use their levers to improve the lives of children. We heard no evidence to the contrary.

Oversight agencies share an understanding of roles and responsibilities

The three oversight agencies have a strong understanding of their core roles and responsibilities. These are provided by legislation but codified in other documents like the Terms of Reference.

Further, the oversight agencies have actively worked together to discuss areas where roles and responsibilities are uncertain and determine an approach. We think this is an important step for a relatively immature system.

Oversight agencies communicate with each other through established, appropriate channels with appropriate frequency and clarity

Oversight agencies meet regularly and have set processes for sharing information. Outside of quarterly meetings they raise matters with each other on an "as needed" basis.

We understand agencies share notes following monitoring visits to develop a joint understanding of issues.

Agencies are also looking to leverage each other's powers to benefit the system as a whole. For example, Aroturuki Tamariki requested information relating to Oranga Tamariki funding (consistent with their powers) and then passed it on to the Commission to use in its advocacy. Aroturuki Tamariki is also looking at recommendations that the Ombudsman makes from investigations and complaints, and including these in its monitoring practice to see if they are being implemented and what impact they may have.

The "no wrong door" approach means agencies are regularly passing information to each other to ensure matters are dealt with by the most appropriate agency. Aroturuki Tamariki has a process in place to pass information about complaints to the Office of the Ombudsman, and has done so. They also have a good relationship in terms of feedback for the Ombudsman, working together to strengthen responses. This has been a work in progress as open sharing is a significant shift for the Ombudsman.

Oversight agencies could do more to coordinate public communications to improve public understanding and trust in the oversight system

As noted, oversight agencies hope that over time they will become to be seen as "the system", that is, a coherent group of agencies, each with clear objectives and levers, that work on related things.

There are areas in which they have coordinated public communications, for example, where all three oversight agencies have made aligned comments on a media issue.

Agencies have also taken steps to improve understanding of the oversight system, particularly with young people. This includes:

- Oversight agencies producing a joint explainer video on websites and social media (in multiple languages)
- Oversight agencies hosting material on their websites that references each other's roles
- Brochures being available, including at all Oranga Tamariki offices
- The Monitor working with VOYCE Whakarongo Mai and providing collateral
- The Ombudsman having worked with Oranga Tamariki to update its "My Rights My Voice" booklet with info on the oversight system which is provided to all children in care
- When monitoring, Monitor kaimahi take information on the oversight system with them and provide this to monitored entities.

Despite the efforts outlined above, through consultation, we heard from stakeholders that the oversight system was convoluted and difficult to understand from the outside. It is hard to establish trust where there is limited understanding. Generally, system understanding was highest amongst stakeholders that had met all three agencies. This is not a result of the three oversight agencies failing to work constructively together. However, the three agencies will need to continue to collaborate to present a united picture of the oversight system and encourage greater understanding of the system, and do this on a continuous basis rather than as a "one off" exercise.

The oversight system does not have relationships with most individual tamariki and rangatahi in the Oranga Tamariki system and often relies on staff at Oranga Tamariki or VOYCE to distribute material. It is important that the information is clear and available, particularly for tamariki and rangatahi.

RANGATAHI INSIGHTS

Rangatahi have very little or no knowledge of the oversight bodies

Most of the rangatahi we spoke to had very little or no knowledge of the oversight bodies before we spoke to them, and often rely on youth and residential workers for support. Rangatahi view VOYCE Whakarongo Mai as a trusted advocate and a key connector in the care system.

Oversight agencies are required to minimise the burden on monitored agencies when they are gathering information under this Act and carrying out preliminary inquiries, investigations, or reviews

We heard that the oversight agencies coordinate monitoring visits to the degree practicable, noting that oversight agencies have various monitoring roles under both the domestic regime and the OPCAT framework.

We have also heard that oversight agencies are becoming better at using their information request powers to benefit the oversight system as a whole by passing information between each other.

However, we have also heard that information requests from oversight agencies can be challenging for the agencies receiving the requests, particularly Oranga Tamariki. Agencies report that the three oversight agencies often ask for the same information. Yet the common duties of the oversight agencies include "to minimise the burden on agencies when they are gathering information under this Act and carrying out preliminary inquiries, investigations, or reviews". It has therefore been suggested that the oversight agencies could do more to coordinate information requests and share information amongst themselves to reduce the burden on agencies providing information.

We have sympathy for both sides of this issue. A lot of information is needed, particularly by the Monitor. For the most part, it has little choice but to request information from agencies. However, responding to (up to) hundreds of questions is resource-intensive, even given the Monitor is willing to be reasonably constructive around its requests and much of what it requests should be held by monitored agencies from self-monitoring to meet legal requirements or understand operational performance.

The three oversight agencies will remain the basis for the oversight system for some time. Therefore, the oversight agencies should have a sustained, focused effort to work together "to minimise the burden on agencies when they are gathering information under this Act and carrying out preliminary inquiries, investigations, or reviews", as the Oversight Act requires.

Oversight agencies collaborate to minimise the burden and potential risk of harm to individuals when performing or exercising a function, duty, or power

We are aware of oversight agencies sharing information to minimise the harm to individuals, for example, when the Monitor and Commission pass information to the Ombudsman to resolve complaints. Information flows of this nature will continue to evolve and become more efficient over time.

FINDINGS

3.2 The three oversight agencies have made a strong start to their working relationship since the current oversight arrangements were put in place. We have seen evidence of good collaboration, shared intent, and effective coordination.

3.3 Oversight agencies could build on a good basis to deepen their relationship and work together to solve challenges facing the oversight system as it matures.

G. Opportunities for improvement over time

We have identified some opportunities to improve the working relationship between the three oversight agencies as the system matures. A deeper relationship would benefit the oversight system.

Collaboration supports influence which supports effectiveness

The oversight system relies on influence

As set out elsewhere, the oversight system relies on influence. It is intended to be a monitoring regime, rather than a sanction-heavy regulatory regime. Therefore, the oversight system relies on the three oversight agencies performing their roles and collaborating effectively to maximise its influence. In other words, the job of the oversight system, particularly the Commission and Monitor, is to encourage decision makers to pursue improvements by publicly highlighting areas that can be improved. The Monitor does this through monitoring, bringing transparency to the state of play. The Commission can magnify the impact of this research by using the data and insights generated to inform its advocacy. The Ombudsman sits alongside these agencies, resolving and investigating complaints, and conducting self-initiated interventions largely focused on wider system improvement. The Ombudsman makes recommendations both to remedy issues for complainants and to improve wider policy and practice in the Oranga Tamariki system. Findings, recommendations, and data from complaints and other interventions are fed back to the other agencies.

The design of this system means that the effectiveness of the oversight agencies depends on the influence they can collectively exert.

Effective collaboration will maximise the influence of the oversight system

Optimised collaboration and deployment of the key functions of all agencies will allow the system actors to exert the most influence. For example, if the Monitor releases a report with adverse findings, the Commission can play a complementary role in advocating for improvements and the Ombudsman can look to resolve any relevant complaints and feed data back to the other agencies. Similarly, if the Commission advocates for improvements, the Monitor could voluntarily undertake a related review. If the Ombudsman makes recommendations to improve wider policy and practice, the Commission can raise awareness of this in its advocacy and the Monitor can consider in its monitoring whether the recommendations are being implemented effectively to produce change in the system.

We expect that with three agencies presenting a united front to stakeholders and the general public, the agencies have the best chance of maximising their influence. This is particularly true if the agencies can become more strategic in their collaboration over time. For example, any

patterns in complaints detected by the Ombudsman could generate action by the Commission and the Monitor to instigate upstream changes, allowing the oversight agencies to be proactive rather than reactive.

Improving stakeholder understanding

Through consultation, we heard from non-government stakeholders that the oversight system was convoluted and difficult to understand from the outside. This is not a result of the three oversight agencies failing to work constructively together. However, the three agencies will need to continue to collaborate to present a united picture of the oversight system and encourage greater understanding of the system on a continuous basis. The joint communications material noted above is a good start.

Alignment of engagement

To support improved stakeholder understanding, oversight agencies should look to make and take opportunities to collaborate when engaging external parties. Non-government stakeholders generally had lower understanding of the roles and responsibilities of the oversight agencies, particularly agencies they had not met. These parties would benefit from meeting all oversight agencies at the same time (or in quick succession). This would be useful in demystifying the system and helping information and queries flow to the right agency in the first instance (rather than rely on the "no wrong door" approach).

Alignment of information requests

We heard that oversight agencies are becoming better at using their information request powers to benefit the oversight system by passing information between each other. However, we also heard that information requests from oversight agencies can be challenging and resource-intensive to respond to.

The oversight agencies should maintain a constant focus on aligning their information requests to reduce the burden on stakeholders to the degree possible, noting the importance of monitoring.

Over time, we expect the systems and processes for information collection and sharing will become more efficient (both between oversight agencies, and between oversight agencies and monitored agencies). One way to do this would be to reduce the volume of requests through collaboration between oversight agencies, if possible.

FINDINGS

3.4 Effective collaboration will maximise the impact of the oversight system.

3.5 Oversight agencies should work together to improve stakeholder understanding of the system.

3.6 Oversight agencies should look to make and take opportunities to collaborate when engaging external parties.

3.7 Oversight agencies should maintain a constant focus on aligning their information requests to reduce the burden on stakeholders to the degree possible, noting the importance of monitoring.

LINE OF INQUIRY 4.

Is the Monitor effectively supported by agencies and their contracted partners?

SUMMARY

This section responds to the following question from the Terms of Reference:

- *Is the Monitor being effectively supported by agencies and their contracted partners in the Oranga Tamariki system to be able to prepare their monitoring reports under section 23 of the Oversight Act, and is there any evidence that the Monitor is being obstructed in performing their functions, duties, or powers under the Oversight Act?*

We found no evidence of intentional or malicious obstruction of the Monitor.

The Monitor has, however, reported three events of non-compliance with its requests to provide information by a specified date. In these instances, Oranga Tamariki was slow to provide data and information. These events of non-compliance can impact Aroturuki Tamariki's ability to fulfil its legislative requirements to review and publish reports under the Oversight Act. Delays in publication can mean that the data and the Monitor's findings are out-of-date and therefore less relevant.

These delays have been attributed to Oranga Tamariki undergoing a significant internal restructure in 2024.

Over time, we expect that Oranga Tamariki and other agencies will become better at providing information in a timely way to the Monitor. In some cases, this will require changes to information management and collection practices.

As noted above, the oversight agencies may be able to do more to align information requests to reduce the burden on monitored agencies.

A. The Oversight Act provides powers to enable Aroturuki Tamariki to fulfil its functions

To understand the points at which obstruction could occur, we first describe the process the Monitor undertakes to produce its key deliverables: its monitoring reports.

As set out earlier, Aroturuki Tamariki is legislatively required to prepare and publish reports under the Oversight Act. These include:

- a three-yearly State of the Oranga Tamariki system report (Section 22)
- an annual report on compliance with National Care Standards Regulations (Section 23)
- an annual report on outcomes for tamariki and rangatahi Māori, and their whānau (Section 24)
- reviews on any topic within their monitoring function at the request of the Minister responsible for the Monitor or the Chief Executive of Oranga Tamariki (Section 25), and
- reviews on the Monitor's own initiative on issues, themes, concerns, or areas of identified practice relating to the delivery of services or support through the Oranga Tamariki system (Section 26).

One example of the latter is the monitoring report that tracks the implementation of recommendations from Dame Karen Poutasi's report, *Independent Review of the Children's System Response to Abuse*. Aroturuki Tamariki gathered information and data from all agencies responsible for implementing the recommendations and released the first review in May 2024. The implementation progress of the recommendations is expected to be reviewed again 12 months after this initial review.

To support the Monitor to produce these reports, the Oversight Act provides powers. The Monitor has the power to require information (sections 45 – 47) and the power to enter premises for monitoring purposes (sections 33 – 36). We would consider obstruction to occur where agencies did not support the Monitor to do its job by providing information requested and/or granting entry to premises in a timely, responsive way.

Section 53(1) provides that the Monitor may report to the chief executive of a department or an agency, or to any Minister responsible for the department or an agency, if—

> (a) the Monitor considers there has been interference with the performance of their monitoring function under this Act
>
> (b) a chief executive of an agency has not provided a response to a final report of the Monitor within the time frame specified in section 30(3), or as extended under section 30(4)
>
> (c) any authorised staff member of the Monitor has been denied entry to premises under section 36 (other than in exceptional circumstances within the meaning of section 36(2))
>
> (d) an agency has not complied with a requirement to provide information under section 45
>
> (e) a child's or young person's caregiver has unduly delayed or denied access to the child or young person after being required to facilitate access under section 47.

WHAT DOES EFFECTIVE SUPPORT FOR THE REPORTING AND REVIEW REQUIREMENTS LOOK LIKE?

In our view, effective support from agencies and their contracted partners for the reporting and review requirements of Aroturuki Tamariki includes:

- open and clear lines of communication to facilitate quick and efficient information exchange
- being responsive to any queries or requests for information
- timely and unobstructed access to requested information and data
- accurate and complete data and information to support the integrity of the reporting and review requirements
- adhering to established standards, protocols, and legislative requirements to ensure consistency and compliance, and
- providing entry to premises without the Monitor needing to rely on its power to enter premises.

Behaviourally, we would expect to see:

- a professional distance that allows Aroturuki Tamariki to maintain objectivity and independence while having enough engagement to maintain healthy relationships
- clear boundaries and roles balancing information needs at an appropriate level of prescription and avoidance of micro-managing
- mutual respect, enabling both parties to work through the proper function of the system albeit from different perspectives, and
- an overall relationship dynamic that reveals a productive tension while avoiding an adversarial or overly cozy relationship.

B. The Monitor relies on information from other agencies to produce reports

Under section 45 of the Oversight Act, Aroturuki Tamariki has the power to require information from an agency that delivers services or support through the Oranga Tamariki system, and under section 47 the Monitor may require a caregiver to facilitate access to a child or young person. Aroturuki Tamariki collects both qualitative and quantitative data to inform its reporting.

- **Qualitative data** are collected from tamariki and rangatahi known to Oranga Tamariki; whānau of tamariki and rangatahi known to Oranga Tamariki; caregivers; Oranga Tamariki kaimahi; care and custody providers; kaimahi from other government agencies responsible for delivering services in the Oranga Tamariki system; strategic partners; and iwi and Māori providers and other providers delivering services and supports to tamariki, rangatahi, and whānau in the Oranga Tamariki system.

- **Quantitative data** are collected from the government agencies and providers that Aroturuki Tamariki monitors. The data requested include demographics, the size of the care population, responses to abuse or neglect, and complaints. Aroturuki Tamariki also request data on the National Care Standard Regulations.

C. Delays in information provision by Oranga Tamariki have resulted in non-compliance

As the Oversight Act came into force on 1 July 2023, not all reports required under the Act have been prepared or published yet (for example, the three-yearly *State of Oranga Tamariki System* report). Of the reports that have been published, or are close to being published, we have heard that there have been events of non-compliance. We view these compliance events seriously but in the context of a maturing monitoring and reporting arrangement. We have not encountered any evidence of deliberate or malicious obstruction.

Access to timely and complete data is the biggest barrier for Aroturuki Tamariki to fulfil its requirements

There have been events of non-compliance by Oranga Tamariki that Aroturuki Tamariki has reported to the Minister with responsibility for the Independent Children's Monitor and the Minister for Children.

Aroturuki Tamariki provided three examples of "interference or non-compliance" to Ministers which are outlined below.

Example 1: Delay in data and information requested for reports

To support the preparation of its annual report on compliance with the National Care Standards (NCS) Regulations, in past years the Monitor has issued an information request to Oranga Tamariki around April, for response around August of the same year. Until 2024, these requests have been for data and information on compliance with the NCS Regulations and for updates on actions Oranga Tamariki has committed to in responses to previous reports. This has fed into the Monitor's annual report on compliance with the NCS Regulations, *Experiences of Care in Aotearoa*, published in January or February of the following year. The Monitor has needed to make detailed information requests regarding compliance with the NCS Regulations as Oranga Tamariki did not have its own comprehensive self-monitoring report on compliance with these regulations.

When the Oversight Act entered into force, the Monitor's functions were extended to report annually on outcomes for tamariki and rangatahi Māori and their whānau (outcomes for Māori) under section 24 and, under section 22, to produce a three-yearly report on the state of the Oranga Tamariki system, due to be published in 2027.

The Monitor's information and data request to Oranga Tamariki in 2024 reflected these increased reporting requirements.

At the time of the information request, the Monitor was aware that Oranga Tamariki was entering a restructure. The Monitor sought and received an assurance from the Chief Executive of Oranga Tamariki that this would not impact the delivery of the requested data and information.

The Monitor's formal request for information on compliance with the NCS Regulations was sent on 3 May 2024, and the request for information for the report on outcomes for Māori was sent on 31 May. The content of the requests had been agreed with Oranga Tamariki staff prior to this. Responses to both requests were due on 19 August 2024.

On 15 August 2024 the Monitor was first advised that there might be a small delay in providing the information. On 21 August Oranga Tamariki advised that its ability to deliver the information request has been impacted by the loss of critical staff. Oranga Tamariki had provided most of the information on compliance with the NCS Regulations by 10 September and advised that the information for outcomes for Māori would be provided on 20 September, a month later than originally agreed.

With the data on NCS compliance being provided later than planned, the Monitor is not be able to provide ministers and agencies with its report on compliance with the NCS Regulations (*Experiences of Care in Aotearoa 2023/24*) this calendar year as it usually would. The *Experiences of Care in Aotearoa 2023/24* report will be provided to ministers and agencies in January 2025 and published in February 2025. This is slightly later than previous years, owing to the delay in the data being received from Oranga Tamariki.

ORANGA TAMARIKI SELF-MONITORING

Oranga Tamariki has some self-monitoring practices in place. These include:

- Each year the Monitor includes compliance tables in its *Experiences of Care in Aotearoa* reports which set out the information Oranga Tamariki has used for its self-monitoring. This continues to improve as Oranga Tamariki was able to provide more information via its Caregiver Information System in 2024 than it has in previous years.
- Each year for the past four years Oranga Tamariki has performed case file analysis (CFA) where it samples and reviews over 700 tamariki and rangatahi in care across key aspects of the National Care Standards. This involves applying a set of over 200 individual questions aligned to the requirements of the National Care Standards. The methodology was independently reviewed with commentary that it is as at least consistent with, if not exceeding best practice.
- The Monitor encouraged Oranga Tamariki to identify lead indicators and focus on improvements to these. In 2022/23, Oranga Tamariki identified 16 lead indicators as key areas of focus and published its own self-assurance report. For 2023/24, its self-assurance report was published as part of its annual report, and the number of lead indicators increased from 16 to 21. Of the 21, Oranga Tamariki had been achieving compliance for four, compliant most of the time for 12, compliant more than half the time for four, and compliant some of the time for one.

Example 2: Delay in data and information requested for monitoring visits

To support its monitoring visits, Aroturuki Tamariki requests information from Oranga Tamariki such as leadership contact details, site operational information, data regarding tamariki and rangatahi in care, and current local service providers.

On 24 May 2024, Aroturuki Tamariki contacted Oranga Tamariki requesting information by the end of July to support its upcoming monitoring in the Bay of Plenty. A partial response was received on 9 September after the monitoring visit had commenced. This meant Aroturuki Tamariki needed to rely on outdated information (from two years ago) to plan its visit, which impacted its ability to engage with the right people in a timely way. The information missing from the response was data on child safety measures such as reports of concern and measures of abuse and neglect.

Example 3: Delay in information requested on provider contract decisions

The Monitor has made several information requests to Oranga Tamariki for information on the decisions to reduce funding or end contracts with community providers.

A letter dated 30 July 2024 was sent to the Chief Executive of Oranga Tamariki requesting assurance that adequate transition plans are in place for the continued support of tamariki and whānau accessing services and plans to communicate with these organisations. This information was due on 12 August 2024 and partial responses were received on 16 and 20 August. A follow up letter was sent to the Deputy Chief Executive Enabling Communities and Investment requesting the outstanding information by 30 August to fulfil the request. The information was received on 11 September 2024.

The Auditor-General announced an inquiry into the procurement and contract management practices of Oranga Tamariki on 14 October 2024.

Ministers were advised

On 12 September 2024 relevant Ministers were advised of the following impacts and risks arising from these delays:

- Oranga Tamariki's regional information on its operation, and the providers it is working with, was not available to inform monitoring in Bay of Plenty resulting in planning being based on information from two years ago.
- The *Experiences of Care in Aotearoa 2023/24* report will be provided to Ministers and published later than usual.
- The production of the first annual report on outcomes for tamariki and rangatahi Māori and their whānau was delayed.

Delays in publishing mean the data and the Monitor's findings are older and reports may therefore appear less relevant.

FINDINGS

4.1 Access to complete and timely data from agencies, especially Oranga Tamariki, significantly impacts the ability of Aroturuki Tamariki to fulfil its monitoring function and legislative requirements. Without this data, oversight of the system is limited, potentially preventing or delaying the identification of systemic failures.

4.2 There are instances where Oranga Tamariki has been unable to respond to information requests in a timely way, obstructing the Monitor from fulfilling its core functions.

D. Oranga Tamariki attribute non-compliance to organisational restructuring in 2024

We view this justification in the context of the maturing monitoring system, however failure to meet information requests does rightly raise concerns about whether Oranga Tamariki has retained sufficient resource, systems and appropriate priority on supporting these accountability arrangements.

The review sought comment on matters described above from Oranga Tamariki. Its comments are summarised below:

- Oranga Tamariki is committed to providing complete, accurate and timely information to the Monitor in line with the Oversight Act. It has continuously sought to improve the scope and quality of the information provided since the Monitor's first *Experience of Care in Aotearoa* report in 2022.
- Oranga Tamariki has been transparent with the Monitor about its data limitations. It has worked collaboratively with the Monitor to minimise the impact on reviews, as well as communicate its plans to improve its data systems.
- Oranga Tamariki acknowledges the impact of the non-compliance incidents last year and how difficult that made it for the Monitor to perform its duties. It worked with the Monitor to minimise the impact of all three non-compliance incidents.
- The three non-compliance incidents cited in the report relate to information requests made in 2024. Last year was a year of considerable change for the organisation, making it an anomaly. There were no non-compliance issues in the years prior.
- Oranga Tamariki attributes the non-compliance incidents to the restructuring that occurred through 2024, particularly in key teams.
- The volume of information required by the Monitor is at scale and reflects the complexity of the environment that Oranga Tamariki operates in every day. For example, for this year's *Experience of Care in Aotearoa* report, Oranga Tamariki manually reviewed 705 cases for case file analysis; extracted several hundred fields of data for each of the 5,600 tamariki in scope; completed 70 fields of data for the Monitor's Agency Commitments table; provided more than 20 additional documents, reviews and other reports; and responded to several rounds of follow-up questions, clarifications and additional information requests from the Monitor.

- Oranga Tamariki considers that it has sufficient resource to meet requests for information across all three oversight agencies provided oversight agencies can find ways of working that "minimise the burden on [monitored] agencies when they are gathering information" as described under section 7 of the Oversight Act. This might include use of publicly available information, or ensuring information requests are predictable, standardised, and not duplicated across multiple oversight agencies. Oranga Tamariki will continue to dedicate "considerable" resource to ensure the Monitor is able to perform its duties and drive improvements to its data and information systems to ensure that, where possible, responses to data requests will be automated.

WHAT DOES A MATURING MONITORING ARRANGEMENT LOOK LIKE?

A maturing monitoring function will most commonly evolve through distinct phases.

Initially, a monitor can cast a wide net with broad data requests to establish comprehensive baseline understanding, even though this creates significant work for all parties. As the function develops, it moves through a learning phase where patterns emerge and monitors begin identifying truly crucial indicators, though some oversampling may persist. Following this, requests become more targeted and risk-based, with standardised templates and growing automation reducing ad hoc demands. Finally, in its mature state, the function achieves a streamlined approach where each data request has clear purpose, focusing on exception reporting and variance analysis, supported by sophisticated analytics that enable preventive monitoring.

This evolution reflects the monitor's growing understanding of what truly matters in oversight, balanced against the operational burden of data collection.

We note that as the monitoring relationship matures, Oranga Tamariki's obligation to self-monitor in accordance with the NCS Regulations will not change unless the Regulations are amended. We expect Oranga Tamariki's self-monitoring practices to continue to improve.

Concerns were raised about the data management system at Oranga Tamariki not being fit-for-purpose

Oranga Tamariki's data management system is outdated and difficult to use, significantly impacting the organisation's ability to manage and utilise data effectively, which can hinder decision-making processes and the delivery of services, including the provision of information to Aroturuki Tamariki.

Various organisations we interviewed, including care providers and iwi and Māori organisations, expressed concerns about data limitations within Oranga Tamariki. These concerns centred on the limitations of the data management system, data quality, and proactive data sharing, which could prevent the oversight bodies from being fully aware of systemic failures within the Oranga Tamariki system.

Aroturuki Tamariki also acknowledged that deficiencies in the Oranga Tamariki data management system contributed to the agency's ability to satisfy their information requests. However,

correctly, they did not consider that a reason to substantially change the nature or intent of those requests.

While there are data limitations, Oranga Tamariki could do more to service information requests

Delaying the provision of information until data management systems improve is not an option for either Oranga Tamariki or acceptable to the Monitor. First, if information has already been provided to one party it should be straightforward to provide to another party.

Second, chief executives of monitored organisations are required to monitor their own compliance under Regulation 86 of the Oranga Tamariki (National Care Standards and Related Matters) Regulations. This requires them to have systems in place for continuous improvement and utilise a system for self-monitoring that supports Aroturuki Tamariki to fulfil its monitoring role.

Under Regulation 87, the Chief Executive and an approved organisation with tamariki or rangatahi in care or custody must report to the Minister and Aroturuki Tamariki any findings of non-compliance with the regulations, identified areas of improvement and progress in improvement, and an action plan.

Aroturuki Tamariki has suggested that relevant data and information should therefore be readily available as the information is key to monitored agencies' understanding of their own performance and compliance with legal obligations, and part of their own monitoring and assurance processes. We do however understand that some of the limitations around the availability of data and information are due to inadequate data infrastructure at Oranga Tamariki and that it is challenging to resolve these issues urgently.

There is evidence that the relationship between the Monitor and Oranga Tamariki is starting to mature

Oranga Tamariki supplied data for 28 of the 122 quantitative questions asked for the Monitor's report on outcomes for Māori. The Monitor expected some of these gaps but other gaps were for information the Monitor had been told could be supplied.

The Monitor will continue to engage with Oranga Tamariki around how it can improve data for future years. As noted, delay in the provision of data and information for the Māori outcomes report has impacted on the timeline for completion of that report. However, the Monitor remains confident that the finalised report will be provided to Ministers and published before the end of the financial year, in accordance with its performance measures.

The Monitor has undertaken to continue to work with Oranga Tamariki to further streamline its information requests for next year where possible. Going forward, Oranga Tamariki may be able to develop its own self-monitoring, meaning the effort required to respond to the Monitor's information requests may be reduced, subject to the requirements of the Monitor.

FINDINGS

4.3 Obstruction is not deliberate or malicious but a product of circumstances at Oranga Tamariki.

4.4 Some data provision processes are still being refined. Over time, we would expect that the provision of data and information from agencies to the oversight bodies would become more efficient as the rhythms and content of reports are established and embedded.

E. Oversight agencies may be able to better work together on information requests

Under Section 7(2)(c) of the Oversight Act, a common duty of all of the oversight bodies is to minimise the burden on agencies when they are gathering information under the Act and carrying out preliminary inquiries, investigations, or reviews.

We heard a range of feedback from our engagements regarding information requests. This ranged from comments about the benefits of the predictability, and therefore manageability, of data requests, to concerns that the three oversight agencies can each request significant quantities of information and can ask the same, or similar, questions. We encourage oversight agencies to work together to the degree possible to reduce duplication in the information they request and minimise the burden on those receiving information requests.

F. We heard no evidence of obstruction with the Monitor entering premises

Sections 33 to 36 of the Oversight Act provide the Monitor with the power to enter premises in accordance with the Act if they reasonably believe it is necessary for the purpose of monitoring the Oranga Tamariki system. Aroturuki Tamariki must give written notice of the proposed entry but the notice does not need to explain the reason for entry.

An authorised staff member must not enter the premises if they have reason to believe that it may result in a child or young person being at risk of being harmed or a person in charge of the premises denies entry to the premises in "exceptional circumstances" (as defined in section 36).

We heard that Aroturuki Tamariki is effectively supported in carrying out its visits to premises for monitoring purposes. Aroturuki Tamariki advised that it has not been denied entry to a premise under Section 36 of the Oversight Act or experienced delayed or denied access to a child or young person under Section 47 of the Oversight Act. Monitored parties have been cooperative in providing access to facilities and Aroturuki Tamariki has not needed to rely on the power to enter premises to undertake its functions.

FINDINGS

4.5 We have seen no evidence of obstruction in regard to the Monitor entering premises in accordance with sections 33 to 36 of the Oversight Act.

LINE OF INQUIRY 5.

Is the current resourcing of the Monitor and Commission appropriate?

SUMMARY

This section of the report responds to the following questions in the Terms of Reference:

- *Are the Monitor and Commission operating effectively under the Oversight and Commission Acts respectively?*
- *Are the Monitor and the Commission appropriately resourced to efficiently and effectively discharge their functions, duties, and powers, and to support the resilience of the Oranga Tamariki system?*

Assessing the system oversight function for value for money is challenging when there has not yet been time for outcomes to be achieved or measured. In making our assessment, we have considered relevant factors such as the overall cost of the Monitor and Commission, evidence of duplicated functions or effort, and the degree to which data and information value is improving the way the oversight system participants work together to fulfil their functions.

We found no evidence the Monitor is under-resourced or operating inefficiently. We concluded that its current level of resourcing is probably about right.

We also found no evidence the Commission is operating inefficiently. Mana Mokopuna would benefit from having certainty over its funding, that is, baseline funding at a level that supports its operation. Historic baseline funding was recognised as being inadequate for this purpose. We identify that there are some areas where additional resourcing beyond its expenditure in FY24 could extend its reach beyond a "minimum viable level" against some of its functions, and/or support Mana Mokopuna to be better placed to respond to resourcing pressures when external events require it to move resources to react.

A. Introduction to this chapter

The Terms of Reference require us to consider:

- Are the Monitor and Commission operating effectively under the Oversight and Commission Acts respectively?
- Are the Monitor and the Commission appropriately resourced to efficiently and effectively discharge their functions, duties, and powers, and to support the resilience of the Oranga Tamariki system?

Consideration of these questions requires us to examine the link between the budgets of the oversight agencies, the outputs they produce, and the way they organise themselves to deliver outputs. By assessing these things, we are better able to form a judgement as to whether an organisation works efficiently and effectively and delivers value for money. Further, we can form a view on whether additional resourcing is required for it to deliver its functions to a reasonable standard.

In this chapter, we:

- outline the resourcing of Aroturuki Tamariki and Mana Mokopuna
- benchmark the resourcing of these agencies against international and domestic comparator agencies, and
- provide findings on the effectiveness of the operation and the adequacy of the resourcing of these agencies.

Determining value for money

We view an assessment of value for money against three key dimensions.

Table 6: Key dimensions of a value for money assessment

Value Dimension	Assessment
Alignment[10]	Understand how well the agencies efforts align to the things that matter most.
	Review current priorities and activity.
Delivery	Understand how well the agency delivered activities aligned to their mandate and priorities.
	Comparing agency resourcing and performance with similar organisations.
Value	Considering whether there is an evidence-based view of the value the agency delivers and opportunities to make tangible cost-savings and quantifiable efficiencies.

[10] An assessment of alignment is considered in the preceding analysis satisfying the Terms of Reference.

Value Dimension	Assessment
	Testing against options and scenarios that could reorient the agency to deliver the same or more, with less funding.

While we were not engaged to undertake a full value for money review, we used this framework to guide our analysis of the current resourcing approach for Aroturuki Tamariki and Mana Mokopuna. Both assessments were also informed by the relative immaturity of the current service delivery model and the recency of establishment of baseline funding for the agencies.

Our analysis focuses on delivery and value given our preceding analysis covers issues related to alignment.

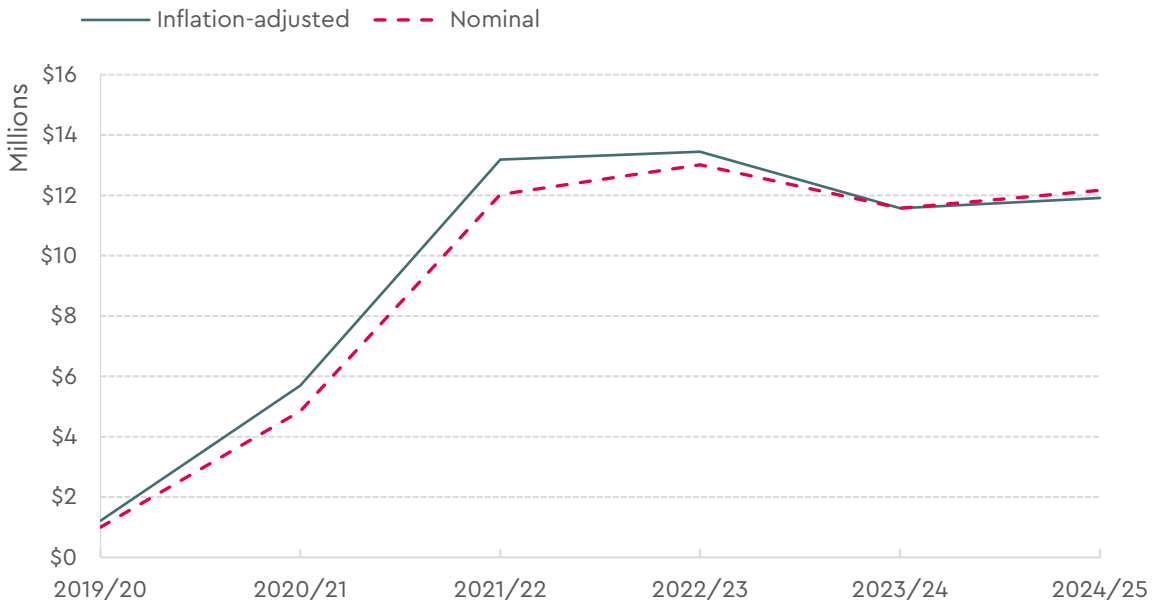
B. Resourcing overview of Aroturuki Tamariki

The Monitor's operating environment and funding have changed over time

Aroturuki Tamariki was established in 2019. Its initial role was to ensure compliance with the National Care Standards Regulations. In 2023, with the Oversight Act coming into effect, the scope of oversight for Aroturuki Tamariki expanded significantly, to include the monitoring role for the whole of the Oranga Tamariki system.

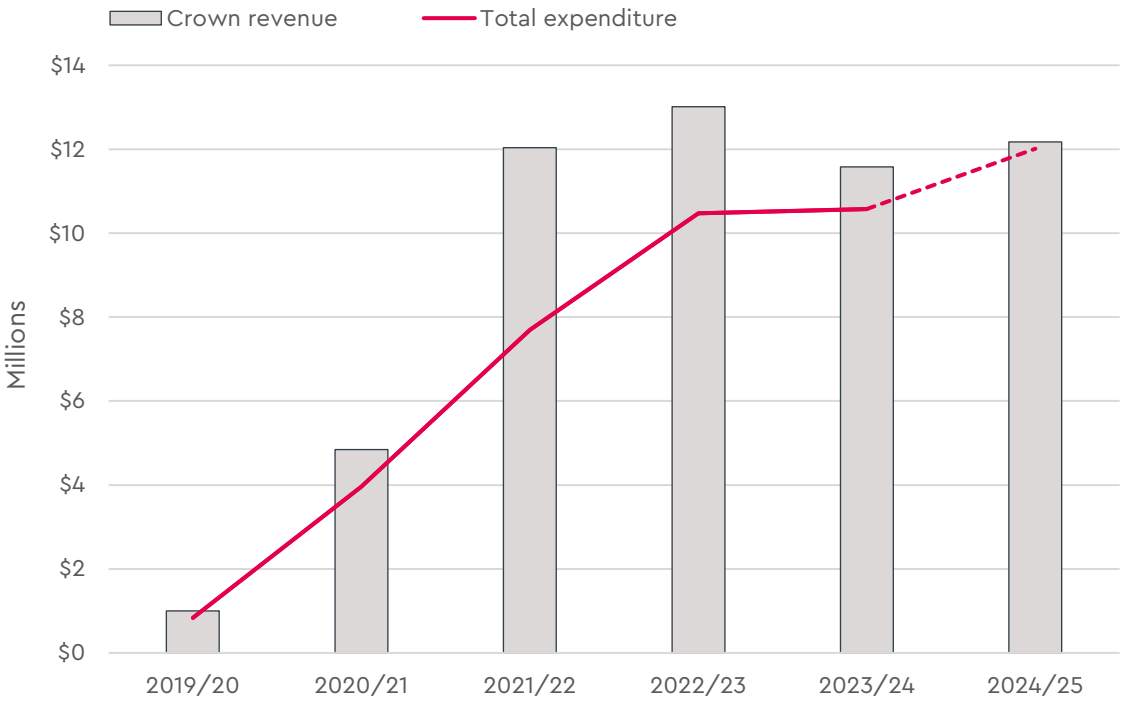
Since its establishment, funding for Aroturuki Tamariki has grown to an ongoing baseline of $11.368 million. Additional funding was provided across 2021/22 and 2022/23 to support the establishment of the Monitor as an independent departmental agency (see Figure 4), and $644,000 of underspends have been transferred into 2024/25 to avoid the need to seek additional funds in the future. A comparison of revenue to expenditure is reflected in Figure 5. Throughout its establishment and growth, underspends have occurred, which totalled 9% of Crown revenue provided to the Monitor in 2023/24. As a brand-new organisation, these underspends are not unexpected.

Figure 4: Crown revenue for the Monitor/Aroturuki Tamariki



Source: Annual Supplementary Estimates Reports of Ministry of Social Development and Education Review Office and MartinJenkins analysis using the StatsNZ CPI All Groups index. Base year for inflation-adjusted figures is 2023/24.

Figure 5: Revenue vs expenditure for the Monitor/Aroturuki Tamariki



Source: Annual Reports of Ministry of Social Development, Education Review Office, and information request to Aroturuki Tamariki

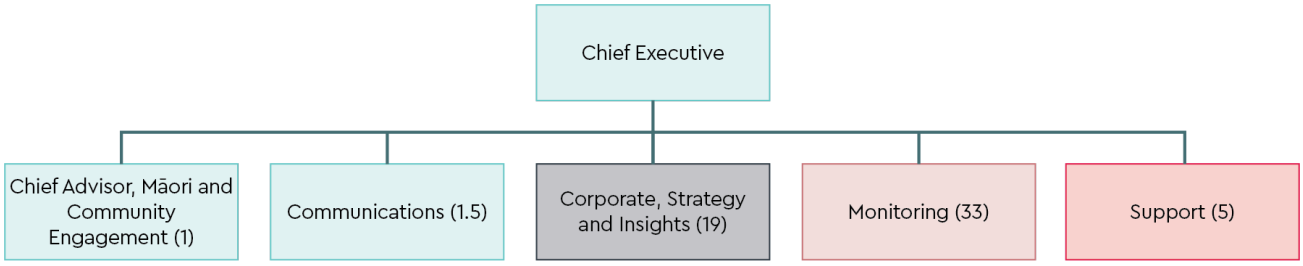
The Scope of Appropriation that funds Aroturuki Tamariki "is limited to provide independent monitoring of compliance with, and delivery of, the Oranga Tamariki system and related regulations and standards."

Performance measures state that Aroturuki Tamariki must prepare and provide final reports in line with the Oversight Act and complete monitoring visits to at least three regions annually. We note that Aroturuki Tamariki achieved all appropriation measures agreed for the 2023/24 year.

Staffing levels and organisational structure

Staff are the primary way in which Aroturuki Tamariki discharges its duties and meets its legislative requirements. The staffing structure comprises 60.5 FTE staff, including the Chief Executive, organised as shown below in Figure 6. Personnel costs accounted for 72% of the Monitor's operating expenditure in 2023/24, and it employed 56 FTE staff as at June 2024.

Figure 6: Aroturuki Tamariki organisation structure



The Monitoring team consists of just over half of those employed by the Monitor. This team is located across three cities (Auckland, Wellington, and Christchurch). The Monitoring team aims to see practice improvement, and for all agencies to work together to give tamariki and rangatahi the best opportunities. They are responsible for visiting each of their ten regions every three years. Each of these visits takes approximately 20 weeks, including the time to share findings with the community and the Oranga Tamariki system.

The Corporate, Strategy and Insights Team aims to deliver information and insights that drive improvements and better outcomes for tamariki and rangatahi experiencing the system. They are also responsible for managing corporate functions and producing accountability documents.

Aroturuki Tamariki reported that it has reviewed its back-office functions and concluded that removing any would compromise its ability to deliver its core functions.

C. Resourcing overview of Mana Mokopuna

Changes to operating environment and funding

A children's commissioner or commission has existed in some form since 1989, but the role and function have changed over time. The latest iteration, Mana Mokopuna, was established under the Commission Act as the successor to the Office of the Children's Commissioner.

The establishment of Mana Mokopuna marked a significant shift. Mana Mokopuna is currently structured with a Chief Children's Commissioner, a Deputy Chief Children's Commissioner and three commissioners. The Children's Commissioner has always had a mandate to cover all 1.2 million children and young people in New Zealand, but the creation of Mana Mokopuna provided explicit advocacy responsibility for care-experienced and custody-experienced rangatahi up to the age of 25 years.

This was part of the broader establishment of the new oversight structure which included the domestic (non-OPCAT) monitoring function, previously held by the Office of the Children's Commissioner, being transferred to Aroturuki Tamariki. No baseline funding was transferred with these duties. Mana Mokopuna retained its role as designated National Preventive Mechanism (NPM) under the Crimes of Torture Act 1989, allowing it to monitor places where tamariki and rangatahi are detained, ensuring they are treated with dignity and respect.

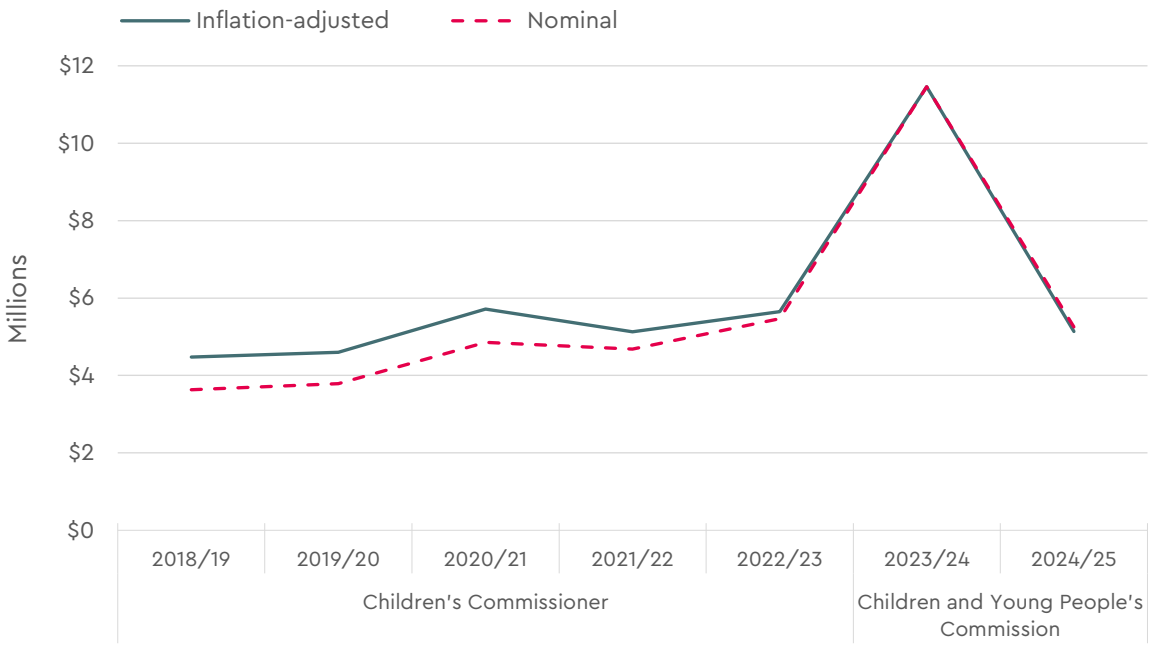
New funding was required to give effect to the Commission in its new form with its additional duties. Budget 2023, by way of a tagged contingency, provided the requested ongoing funding to support the Commission's new organisational model and enable it to deliver on its duties and functions under the Commission Act.

Mana Mokopuna has ongoing baseline funding totalling $3.157 million per year. This has been static since 2018/19, and supplemented by time-limited funding changes. An ongoing tagged contingency totalling $7.368 million per annum exists, which was set up to enable Mana Mokopuna to successfully deliver on its additional duties and functions under the new Act. In April 2024 the scope of this tagged contingency was expanded to include ongoing or one-off funding for Aroturuki Tamariki. Joint Ministers have approved $2.093 million for Mana Mokopuna to use in 2024/25. Subject to joint Ministers' decisions on the tagged contingency by 1 July 2025, there is a maximum of $10.525 million per annum (comprised of its baseline of $3.157 million and up to $7.368 million per year from the tagged contingency) that may be approved for Mana Mokopuna to discharge its duties. We consider that the use of tagged contingencies to deliver statutory functions is not a sustainable funding dynamic as it can create unnecessary uncertainty (and resulting management distraction), result in protracted administrative processes, and lower value scrutiny if left in place for too long.[11]

Crown Revenue provided 94% of total revenue in both 2022/23 and 2023/24. Figure 7 shows the revenue received for both the Children's Commissioner and the Children and Young People's Commission over time, in both nominal and real (inflation-adjusted to 2024) terms.

[11] Tagged contingencies are set aside at Budget for specific initiatives where further work is required before Cabinet will agree to appropriate the funding. Tagged contingencies are also used in circumstances where an initiative is commercially sensitive or negotiations have yet to take place, e.g., public sector wage negotiations. Tagged contingencies are charged against the operating allowance and included in the fiscal forecasts when they are established, so drawing the funding down does not impact the fiscal indicators or future Budget allocations. Unless otherwise agreed, tagged contingencies typically expire on 1 February the year after they were established. (Source: NZ Treasury, Guide to NZ Budgeting Practices 2024)

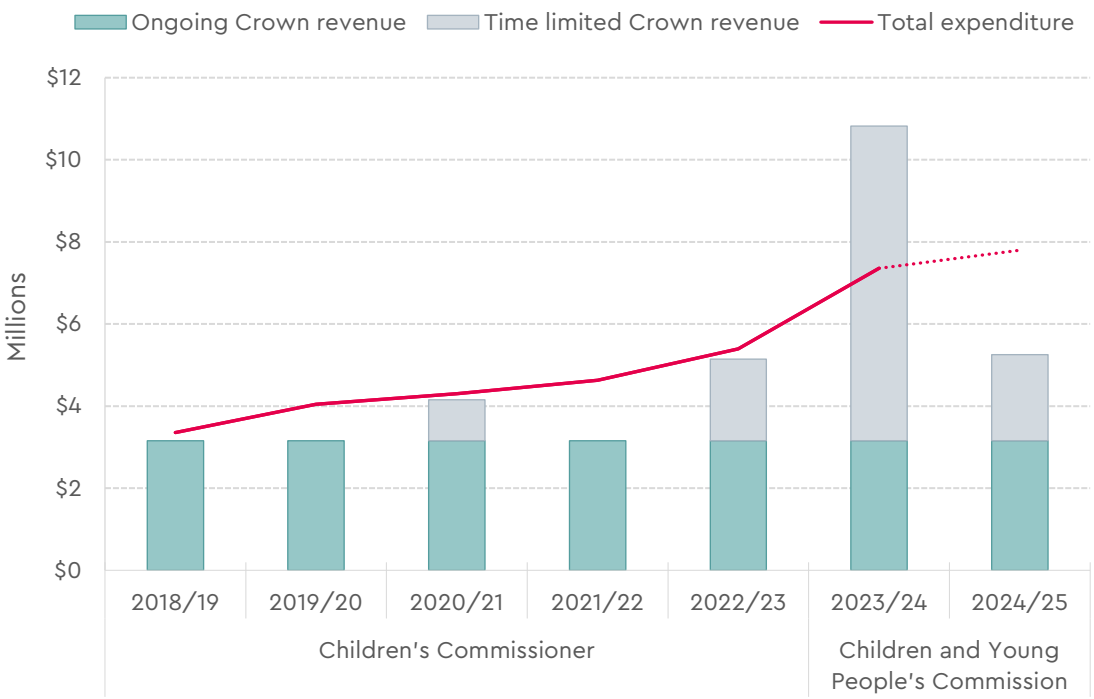
Figure 7: Total revenue for the Commission/Mana Mokopuna



Source: Annual Reports of the Commission and StatsNZ CPI All Groups index. Base year for inflation-adjusted figures is 2023/24.

Expenditure has either matched or exceeded revenue for the five years up to and including 2022/23, but a $4.103 million surplus was realised in 2023/24, primarily due to the funding being available for growth in employment that did not eventuate. The current cost to operate is about $8 million, and prior year surpluses are sufficient to fund the forecast 2024/25 operating deficit. Figure 8 below shows how expenditure compares with Crown revenue over time.

Figure 8: Crown revenue vs total expenditure (nominal dollars)



Source: Annual Reports

Projected 2024/25 expenditure is as provided by the Commission and based on its current annualised cost.

Staffing levels and organisational structure

Personnel costs account for more than 80% of the Commission's FY24 operating expenditure, with the balance primarily consisting of operating expenditure and project costs. Funding has allowed the Commission to fund about 37 FTE, organised to deliver across four primary outputs. The operating model proposed at the time of the current legislation coming into effect expected the Commission to grow to headcount of 64 FTE. The Commission paused the proposed FTE growth while the new Board was orientated and assessed the plans. The Board then decided not to proceed with the FTE increase in light of the uncertainty around the organisation's functions.

The four primary functions of the Commission, along with expenditure incurred for each in 2023/24, are shown in Table 7 below.

Table 7: Appropriation Outputs

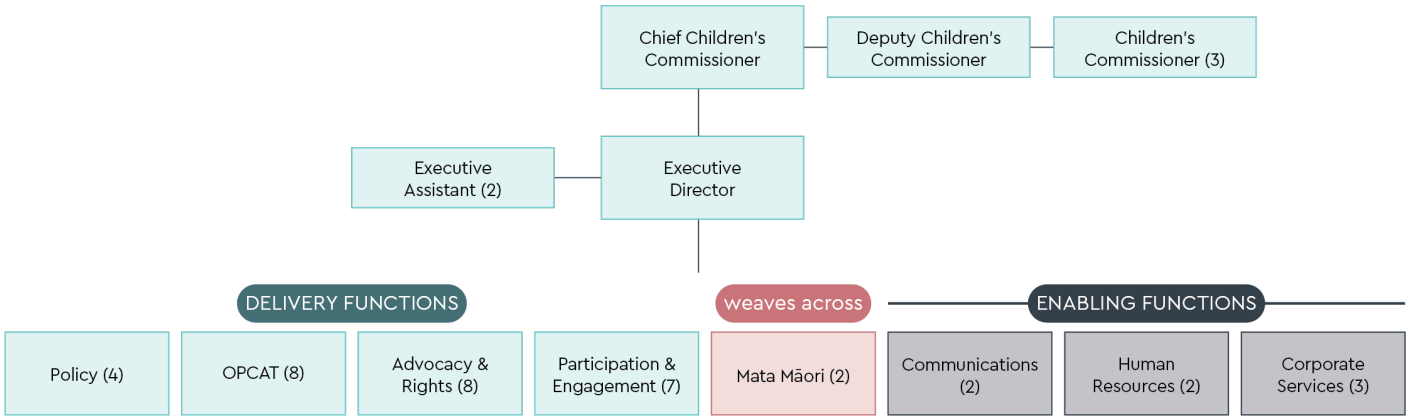
Output	Purpose/outputs	2023/24 Expenditure
Advocacy and rights	Conduct research, analysis, and provide advice on issues relating to mokopuna within the context of their whānau. Influence agencies and government departments to consider the needs of mokopuna in their policy advice and services.	$1.761 million

Output	Purpose/outputs	2023/24 Expenditure
Participation and engagement	Develop and implement mechanisms to hear from and collect the voices of mokopuna to better understand their lived experience and amplify their voices through advocacy and to inform public discourse on children's rights and wellbeing.	$1.534 million
Monitoring under OPCAT	New Zealand's mechanism for implementing the Optional Protocol to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).	$2.037 million
Guiding organisational strategy	Develop resources and tools to build organisational capability and enable kaimahi to perform effectively in their roles; provide analysis and methodology support across the tari; integrate Māori approaches (te ao Māori) into functions, and ensure the incorporation of Te Tiriti throughout mahi; influence public policy development relating to mokopuna that strengthens fulfilment of the Government's obligations under Te Tiriti o Waitangi and the Children's Convention; build and maintain relationships across the ecosystem of mokopuna lives, including with hapū, iwi, Māori organisations, community organisations and public sector agencies.	$2.024 million
Total		**$7.356 million**

Source: 2023/24 Annual Report

These appropriation outputs are delivered through an organisational structure organised around eight functions that report through to the Executive Director, reflected in the organisational chart below.

Figure 9: Mana Mokopuna Organisation Chart



D. Benchmarking against comparable organisations is of some value, noting there are no perfect comparators

To understand how Aroturuki Tamariki and Mana Mokopuna compare to other agencies, we conducted benchmarking analysis with international and domestic counterparts. Benchmarking is useful in understanding whether resourcing is optimal and whether agencies are operating efficiently and effectively. However, it is important to note that there are inherent limitations in this comparison due to the varying functions, operating models, and contexts in which these agencies operate. Differences in legal frameworks, cultural environments, and resource availability can significantly impact the way each agency functions, making direct comparisons challenging. This extends to the use of service contracts or shared service models, which affects FTE counts, and the allocation of costs (personnel cost if in-house or other operating expenditure if undertaken as an outsourced or shared service). We have not made allowances for these types of differences, which could impact the metrics used.

Comparison with international jurisdictions

There is no consistent model used across the world for monitoring, advocacy, or oversight of services to children. We have selected two different models to compare the Monitor and Commission against based on similarities in function and context: the Children and Young People's Commissioner Scotland and New South Wales's Office of the Children's Guardian.

Scotland has a similar advocacy and monitoring function, being the Children and Young People's Commissioner Scotland. The office is responsible for promoting and protecting the rights of children and young people up to 18 years of age, and care-experienced young people up to the age of 21. This represents approximately 1 million children and young people,[12] compared to 1.2 million in Aotearoa New Zealand. In the 2023/24 fiscal year, the office had net operating costs of £1.552 million (approximately NZD $3.3 million). It employed 14.7 FTE staff as of June 2023.

In Australia, New South Wales has the Office of the Children's Guardian, which serves a similar advocacy and monitoring function. This office is responsible for approximately 2 million children and young people aged 19 and younger.[13] For the 2023/24 fiscal year, the office had an appropriation totalling AUD $27.321 million (approximately NZD $29.736 million). It employed 277 personnel as of June 2024. However, the office operates somewhat differently, as it also generates revenue from the sale of services, which accounts for about half of its revenue. This additional revenue comes from regulating and administering worker screening checks to identify individuals who should be prevented from working with children, young people, and people with disabilities.

Aroturuki Tamariki and Mana Mokopuna fall between these two organisations in terms of both funding and FTE staff. The Commissioner Scotland, at 78%, allocates a similar proportion of its expenditure to personnel as Mana Mokopuna, at about 80%, but operates with a smaller workforce. The Monitor allocates 72% of its baseline to personnel. In contrast, the New South Wales Office of the Children's Guardian spends about 55% of its total revenue on employee expenditure, but maintains a larger workforce. About 28% of expenditure was incurred for

[12] Children and Young People Approach Introduction and Background - Police Scotland

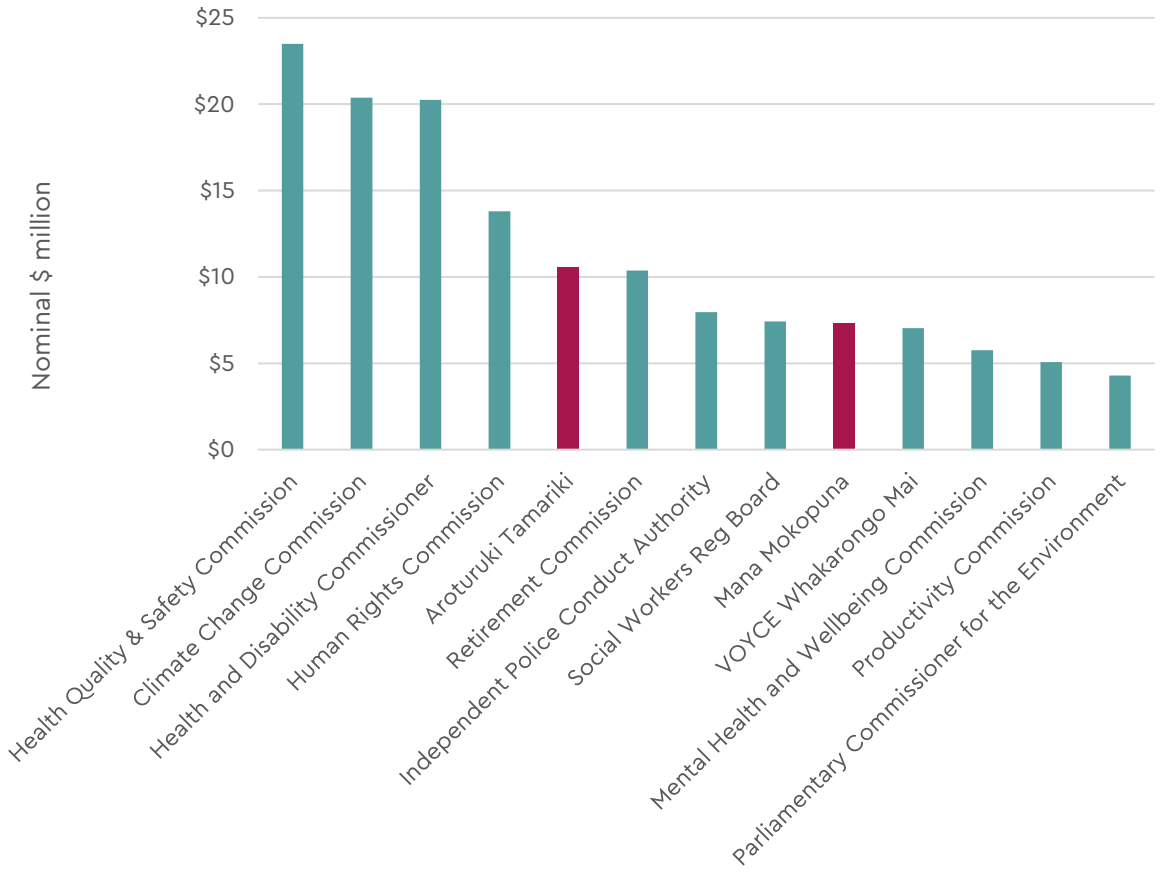
[13] Regional population by age and sex, 2023 | Australian Bureau of Statistics

services, namely providing the Working with Children Check, and National Disability Insurance Scheme Worker Check applications. These differences highlight the challenges in making direct comparisons to determine what is "appropriate" for New Zealand agencies. However, they also indicate that Aotearoa New Zealand is not an outlier in its approach to funding and staffing these agencies.

Comparison with national agencies

Figure 10 shows how much each of a range of New Zealand agencies spent in the 2023/24 year. Both Aroturuki Tamariki and Mana Mokopuna are in about the middle of the pack for our comparator group.

Figure 10: Operating expenditure in 2023/24 for some national comparator agencies



Source: 2023/24 Annual Reports

As Aroturuki Tamariki and Mana Mokopuna have different functions, they should each be compared to a subset of these comparator agencies. The following table differentiates between advocacy and monitoring as the primary purpose, noting that some agencies undertake both functions, especially those that are an NPM under OPCAT (Independent Police Conduct Authority and Human Rights Commission). The table also compares some key metrics, but there are limitations with this methodology, which are discussed above. Aroturuki Tamariki has a limited

pool of comparable organisations, so the narrative is based on a comparison against the full set of organisations.

As can be seen, Mana Mokopuna spends a greater proportion of its baseline on personnel costs and has a materially higher percentage of staff remunerated at more than $100,000 than all but one comparable organisation. However, its average salary per FTE is in line with the average. Aroturuki Tamariki also has a greater percentage of its workforce remunerated at more than $100,000 but has one of the lowest average salaries.

Table 8: Comparisons

	Crown Revenue FY2023/24 ($000)[14]	# FTE+/or people* June 2024	% expenditure spent on Personnel	Avg Salary/ Wage per FTE[15]	% of employees earning >$100k
Mana Mokopuna	**$10,824**	**37+**	**80%**	**$139,600**	**73%**
Comparator Average			**67%**	**$141,760**	**58%**
Mental Health and Wellbeing Commission	$5,359	19+	64%	$170,700	62%
Productivity Commission	$3,953	21*	75%	# FTE not disclosed	57%
Retirement Commission	$8,622	37*	50%	# FTE not disclosed	62%
Climate Change Commission	$18,433	88+	67%	$144,800	Not disclosed
Health Quality & Safety Commission	$18,167	81+	64%	$151,100	78%
Health & Disability Commissioner	$19,701	112+	67%	$115,400	34%
Human Rights Commission	$13,829	70*	75%	# FTE not disclosed	61%
Social Workers Registration Board	$2,363	42+	74%	$126,800	48%
Aroturuki Tamariki	**$11,728**	**56+**	**72%**	**$123,800**	**67%**
Comparator Average			**72%**	**$134,600**	**50%**

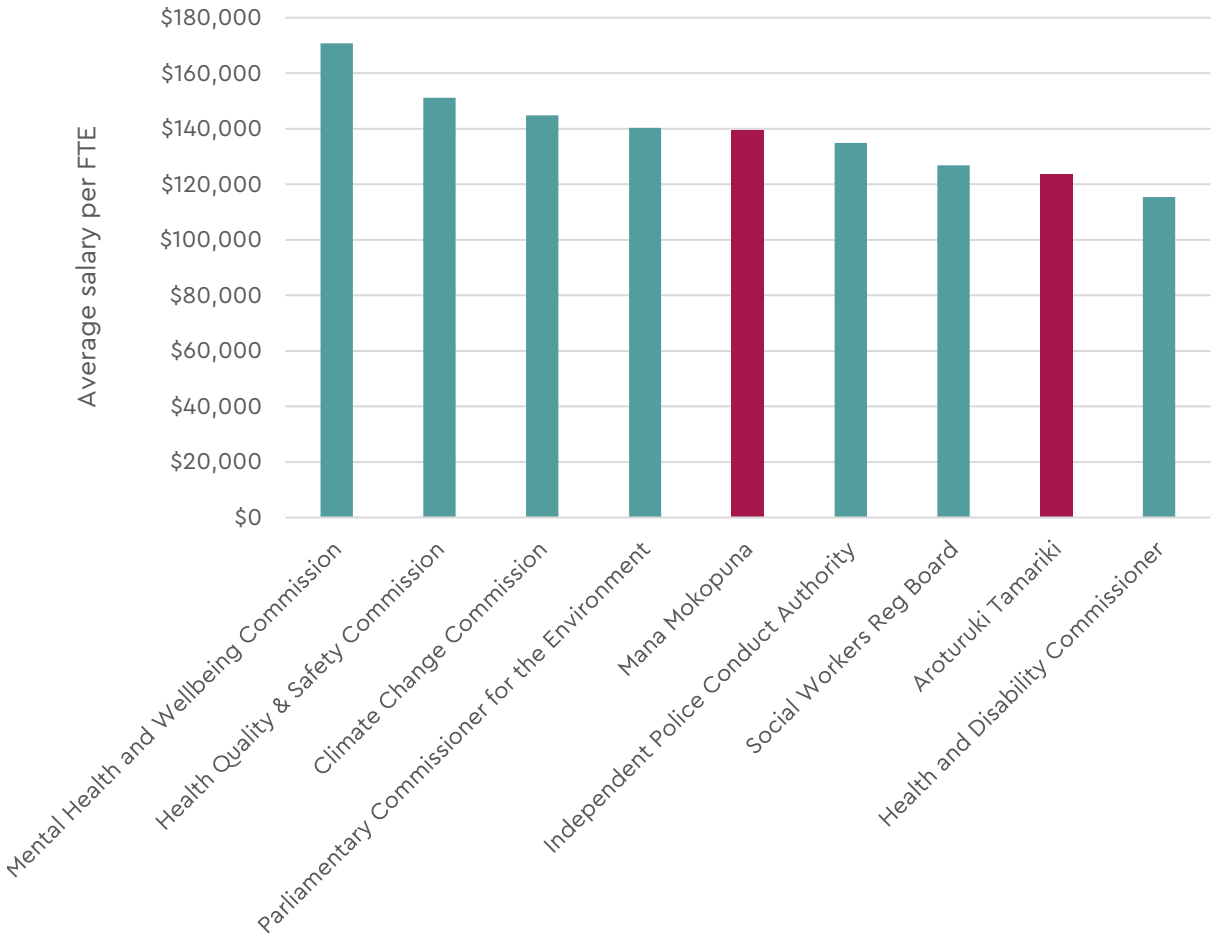
[14] Crown Revenue is not the only source of revenue for these comparator organisations, but has been provided as one reference point to show scale. The Social Workers Registration Board is the organisation with the largest component of non-Crown revenue, deriving nearly 50% of their revenue from other sources, including fees and levies.

[15] Calculated as the amount spent on salaries and wages divided by the average of 2022/23 and 2023/24 FTE where available, or headcount.

	Crown Revenue FY2023/24 ($000)[14]	# FTE+/or people* June 2024	% expenditure spent on Personnel	Avg Salary/ Wage per FTE[15]	% of employees earning >$100k
Parliamentary Commissioner for the Environment	$4,345	20+	65%	$140,300	Not disclosed
Education Review Office	$39,041	187*	71%	# FTE not disclosed	Not disclosed
Independent Police Conduct Authority	$6,742	46+	80%	$134,900	50%

Source: Annual Reports

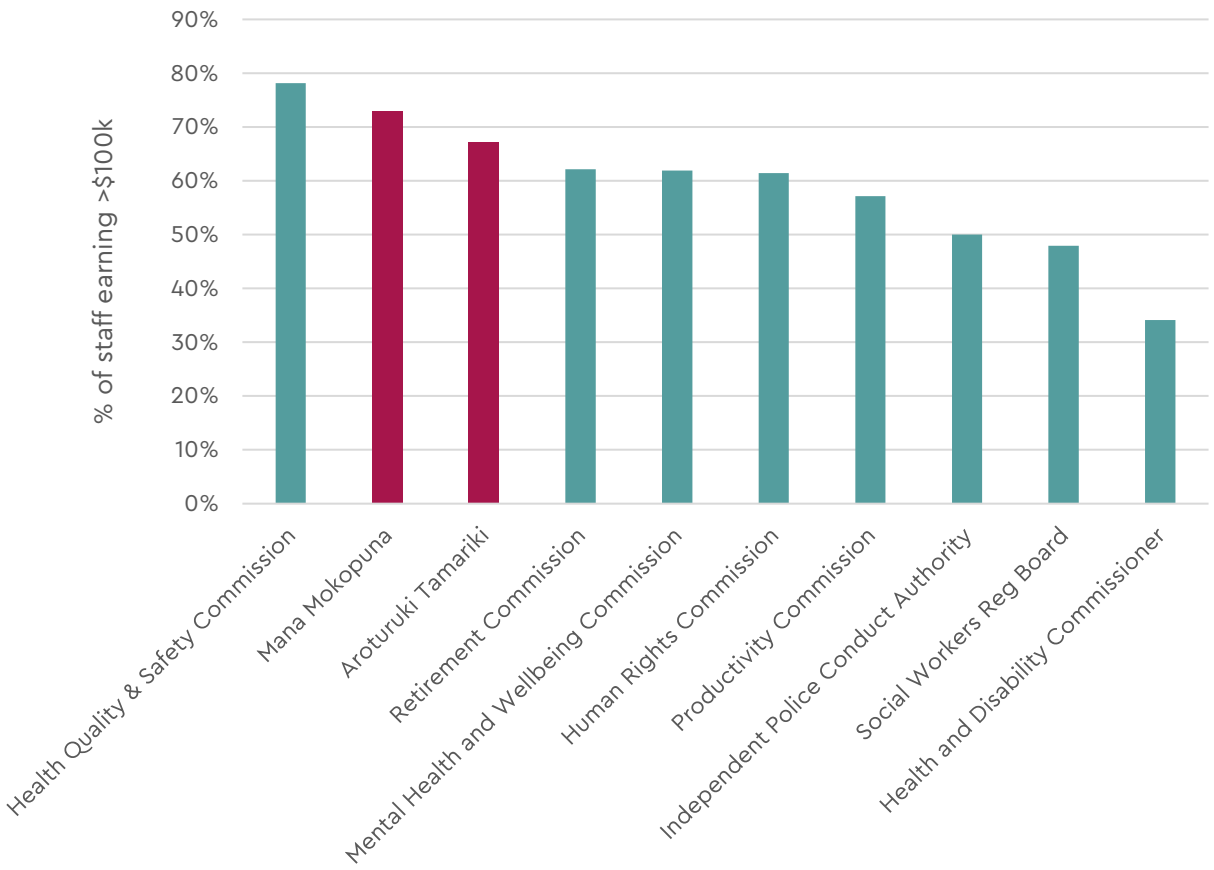
Figure 11: Average salary of comparator organisations



Source: Annual reports

Note that only those comparator organisations whose FTE numbers are known are displayed here.

Figure 12: Proportion of employees paid more than $100,000 in 2023/24



Source: Annual reports

Note that this analysis only reflects those organisations who disclosed both the number of staff earning more than $100,000 in 2023/24 and the number of staff (separate from FTE).

E. Aroturuki Tamariki

The operating expenditure of Aroturuki Tamariki in 2023/24 is broadly reasonable for efficient and effective operation

The cost incurred in 2023/24 to operate Aroturuki Tamariki does not seem unreasonable. Through our review, we found no evidence to suggest it is operating below a "minimum viable level", meaning it has the funding and resources required to effectively fulfil its mission and maintain basic operational standards. No material concerns were raised with the level of funding received by Aroturuki Tamariki through engagements undertaken in this review.

Current funding levels ensure Aroturuki Tamariki can continue to monitor the wellbeing of tamariki and rangatahi in Aotearoa New Zealand. Its budget allows it to meet regulatory requirements, support its staff, and deliver necessary services, indicating that it is not underfunded relative to its role. We would expect the Monitor to realise operating efficiencies with time, offsetting some future cost pressures.

The Monitor appears to be focussing staff and organisational efforts on delivering its legislative requirements. We found no evidence of "scope creep".

Aroturuki Tamariki has a greater percentage of its workforce remunerated at more than $100,000 compared with the other organisations we looked at (refer to Figure 12). However, it has one of the lowest average salaries (refer to Figure 11), in part due to the fact that about 50% of those earning more than $100,000 per annum are paid between $100,000 and $120,000.

The decision made by Aroturuki Tamariki to be spread over three locations increases some costs (such as office leases), but this decision has been made to foster community relationships, which are dependent on face-to-face meetings. Communities have clearly told them that "you can't monitor from Wellington" and must be in the community to build relationships. Given their requirement to visit regions, travel is expected to be a significant cost and was the second-highest cost per FTE across all comparator organisations in the 2023/24 year, after their host agency, the Education Review Office.

No functions are underfunded but the Monitor, like any organisation, could achieve more with more resourcing

In our engagements with Aroturuki Tamariki, it stated that additional funding would naturally enable more monitoring and increase the amount of Māori and stakeholder engagement that was possible. However, it is both our view and the view of Aroturuki Tamariki that the organisation is able to sufficiently meet its legislative requirements and purpose with the current level of funding it receives.

FINDINGS

5.1 The Monitor is appropriately resourced to fulfil its functions.

5.2 The Monitor operates efficiently and effectively.

5.3 The Monitor performs well against our value for money framework:

- Agency effort is **aligned** to the things that matter most – monitoring and producing reports.
- The Monitor **delivers** activities aligned to its mandate and priorities.
- Its **resourcing is reasonably comparable** to similar organisations.
- Opportunities to reduce cost would likely result in lower quality or timeliness of outputs.

F. Mana Mokopuna

Mana Mokopuna would benefit from having adequate baseline funding and greater financial certainty

As set out above, Mana Mokopuna received relatively low funding for years before a tagged contingency provided access to a significant increase that was not fully taken. Mana Mokopuna now operates at a level well above its historic baseline, as is appropriate given its changed

functions. However, only the baseline funding is currently certain, with the remainder of Mana Mokopuna's ongoing funding held in the tagged contingency, which is subject to further decisions from joint Ministers and able to be accessed by Aroturuki Tamariki.

Budgetary uncertainty makes advocacy more challenging for Mana Mokopuna (even if it is performing well in this context). In the course of the review, different ways to achieve funding certainty were raised with us, including a suggestion that the Chief Children's Commissioner adopt the legal form of an officer of Parliament. This is discussed in the first line of inquiry. In any event, funding certainty can be achieved without changing the legal form of the organisation.

FINDINGS

5.4 Mana Mokopuna would benefit from having certainty over its funding, that is, enduring baseline funding at a level that supports it to fulfil its statutory functions and duties.

The operating cost for 2023/24 seems reasonable

The ideal level of funding for the Commission is more subjective than for the Monitor. The Monitor has clear deliverables in its reports and an established process for producing them. Determining the right level of funding for advocacy functions in the oversight system is less clear.

Through our review, we found no evidence to suggest Mana Mokopuna was operating below a "minimum viable level". That suggests it has adequate funding and resources to effectively fulfil its mission and maintain basic operational standards.

It is important to note we looked at the expenditure of Mana Mokopuna in 2023/24 which included additional funding over and above the baseline funding. This level allows the organisation to advocate for tamariki and rangatahi, meet regulatory requirements, support its staff, and deliver necessary services. Existing baseline funding of $3.157 million is less than half of that required to operate their current cost structure.

Throughout our engagements, most people we spoke to considered Mana Mokopuna had sufficient resources to effectively deliver its core functions.

FINDINGS

5.5 Historic baseline funding was inadequate for Mana Mokopuna to perform its functions to a minimum viable level. Funding to allow for this is closer to 2023/24 levels of expenditure.

Mana Mokopuna operates effectively with the total resources it currently has

Mana Mokopuna seemed focused on delivering its functions. We saw no evidence of "scope creep", or functional duplication.

As can be seen from figures in this chapter, Mana Mokopuna spends a greater proportion of its baseline on personnel costs, and has a materially higher percentage of staff remunerated at more than $100,000 than all but one comparable organisation. This is a result of the current

organisational structure being implemented in a transition period where more senior specialist roles and manager positions were created and filled. Further, the current remuneration framework was implemented in this period. All roles in the organisation were reassessed by Mana Mokopuna following a period in which funding had been static and legacy issues needed to be addressed. It is important to note the average salary per Mana Mokopuna FTE is in line with the average across comparator agencies.

When compared by output, the Commission's total expenditure appears broadly appropriate. For comparison, VOYCE Whakarongo Mai, which provides independent advocacy for care-experienced tamariki and rangatahi, had an appropriation of $6.4 million in 2023/24. This is much higher than the Commission's expenditure of $1.8 million on its output to advocate for 1.2 million children and young people (as defined in the Commission Act).

Of note is that the Mana Mokopuna Communications Team consists of only two positions. This seems small for an advocacy organisation, taking into account public speaking engagements, media statements, and newsletters. We make further comments on this below.

Corporate functions could realistically be outsourced, but this would not guarantee material financial savings so is not considered further.

FINDINGS

5.6 Mana Mokopuna expended $7.356 million in 2023/24, which is broadly consistent with the funding required to fulfil its functions.

5.7 Mana Mokopuna operates efficiently and effectively with the total funding it currently has.

5.8 Mana Mokopuna performs well against our value for money framework:

- Agency effort is **aligned** to the things that matter most, noting that the reactive nature of its operating environment means priorities can change quickly, requiring resourcing trade-offs to be made
- The agency **delivers** activities aligned to its mandate and priorities
- Its total resourcing (baseline and contingency funding) is reasonably **comparable to similar organisations**, with differences being explainable
- Opportunities to **reduce cost would result in lower quality** or timeliness of outputs.

Mana Mokopuna operates in a reactive environment which creates resourcing pressures

The nature of the Commission's work means that it needs to react to external events. This could involve reacting to political announcements, the work of other oversight agencies, events within the Oranga Tamariki system, the need to support a child or young person to engage with agencies to facilitate the resolution of issues, or other matters. Even its performance measures involve an element of reactivity. For example, it can commit to producing a number of submissions but external events might mean it greatly exceeds or fails to meet any target. In

other words, there could be many consultation processes to submit on or very few. It is out of the control of Mana Mokopuna.

Responding to the events of the day occupies staff who are unable to focus on strategic, proactive advocacy. A more strategic focus could come with time as the system matures, however it also could be accelerated by additional resource that is focused on more strategic issues impacting children and young people.

FINDINGS

5.9 Some degree of the Commission's work will always be reactive. Reacting to external events can have significant implications for resource allocation, and often requires trade-offs.

There are areas where resourcing above 2023/24 levels of expenditure could enable Mana Mokopuna to deliver beyond a "minimum viable level"

We have heard that the Government wants the Commission to be a strong and vocal advocate.

While the Commission is working efficiently with the funding it has, there are areas where more funding would enable it to fulfil its functions beyond a minimal viable level. We identified a range of areas where additional resources could help the Commission deliver more than a "minimum viable" reflection of its functions, particularly when reacting to external events requires resourcing trade-offs. In particular:

- **Section 20(c):** Supporting a child or young person to engage with agencies to facilitate the resolution of issues. Under the status quo, a small number of children or young people obtaining the support of Mana Mokopuna to engage with agencies can create significant resource pressure which can require Mana Mokopuna to redirect resources from other functions. Additional funding would enable Mana Mokopuna to support children and young people to engage with agencies to facilitate the resolution of individual issues and more generally (for example, in relation to education, health, or cases of discrimination or access to justice issues) without creating resourcing trade-offs.
- **Section 20(i):** Inquiring generally into, and reporting on, any systemic matter, including (without limitation) any legislation or policy, or any practice or procedure, that relates to or affects the rights, interests, or wellbeing of children and young people. By definition, an inquiry is not a business-as-usual activity. Commencing an inquiry requires a team to be established, either from new resources or by reallocating resources. Additional funding would enable Mana Mokopuna to more effectively use inquiries and reporting to champion systemic, policy, and practice changes.
- **Section 21(b):** Monitoring the application of the Children's Convention by departments and other instruments of the Crown and making reports to the United Nations. With increased funding, Mana Mokopuna could increase its capacity and capability to monitor this. This is critical for identifying problems that require immediate attention and for understanding long-term trends in wellbeing. Enhanced monitoring would also help determine which changes and advocacy efforts are most effective.

- **Section 22(c):** Modelling and promoting best practice in children's and young people's participation through the Commission's engagements with children and young people. With increased funding, Mana Mokopuna could tap into a wider array of expertise, encompassing lived experiences and diverse backgrounds, cultures, and circumstances. This is particularly important for its extended advocacy role for care-experienced and custody-experienced rangatahi aged between 18 and 25 years, who require a different approach compared to younger, non-care-or-custody-experienced tamariki.
- **Section 22(e):** Providing support and advice to any person, body, or organisation carrying out engagement with children and young people to better hear their views and uphold their rights. With increased funding, Mana Mokopuna could enhance their specialised strategic communication and education capabilities to raise awareness and provide comprehensive education on children's rights, particularly within its oversight role.

Stepping beyond functions and into general needs:

- Some of the Commission's platforms are dated and may warrant modernisation to assist access. For example, mokopuna can contact the Commission for support via a phone line which is open from 9am to 4pm on weekdays. Modern engagement methods like a chatbot and text service could result in greater reach through a more child-and-young-person-centred channel.
- Increasing capacity and capability to allow the organisation to be more strategic as the system matures may also enable the Commission to more effectively engage across government, both to educate government agencies on children's rights and relevant legal obligations, and to monitor the application of children's rights to inform advocacy (without duplicating the functions of the Monitor). This includes the ability to take a more strategic approach to communications. For the avoidance of doubt, the organisation will still need react to events of the day as part of its business-as-usual activities. Operating at a minimum viable level means Mana Mokopuna service reactive needs as a priority, but has limited capacity to take a strategic view.

It is worth noting that the Commission Act provides a purpose, principles and functions that oblige the Commission to advocate for all children. The Commission includes a strong focus in its work on all children, alongside meeting its legislative requirements to focus on children in care, mokopuna Māori, and those experiencing disadvantage, as those children and young people are often those with the highest need for advocacy at the systemic level. Agencies performing similar functions elsewhere in the world dedicate resource to understanding the views of all children and representing them as their advocate. If the Commission is intended to advocate for all children, resource to this end would be necessary.

FINDINGS

5.10 There are certainly areas where additional resourcing would allow the Commission to deliver its functions beyond a "minimum viable level", particularly in a context where reacting to external events necessitates moving resources and making trade-offs in outputs.

LINE OF INQUIRY 6.
Optional Protocol to the Convention Against Torture (OPCAT)

SUMMARY

This section responds to the following question in the Terms of Reference:

- *With respect to the Commission's designation as a National Preventive Mechanism under the Crimes of Torture Act 1989 for the purposes of the Optional Protocol on the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which entity within the oversight system would you view as best placed to perform this designated function to the greatest effect?*

We concluded that, on balance, there should be no change to the current designation of a National Preventive Mechanism (NPM) under OPCAT for places of detention for children and young people. We concluded that the current arrangement, in the current oversight system, is the most appropriate.

Throughout the review we heard a range of views for and against designating each of the oversight agencies as the National Preventive Mechanism under OPCAT. As well as those views, we considered international expectations for designating NPMs under OPCAT.

Ultimately, we think the case for change is weak, because alternatives to the status quo have major drawbacks. We have given greater weight to the option that supports greater confidence in the oversight system.

We considered a range of alternatives in arriving at this conclusion.

Stakeholders in favour of the Monitor being designated as the NPM argue that benefits of scale and efficiencies could be realised through its monitoring visits also being used for monitoring against domestic obligations. We examined this issue and concluded that it would not work well in practice and that the benefits could have been overstated. For example, the Monitor would need to ring-fence the OPCAT function to meet international requirements, which would reduce potential benefits of scale. Further, responsibility in one entity for the two different regimes could present a risk of contradictory monitoring reports from the same entity due to the different reporting standards.

The Ombudsman would be a credible alternative were it not for some key factors. First, the Ombudsman does not provide an expert member in child rights. Further, the disproportionate size of the scope of what would be the Ombudsman's designation could disrupt the balance of the NPM group, and the benefits of New Zealand's multi-party NPM arrangement.

We find that retaining the Chief Children's Commissioner as the designated NPM is likely to garner more confidence in the system, given that the Commissioner has specialist expertise in both child rights and international human rights standards, operates at "arm's length" from government, and is well-positioned to advocate in support of international human rights.

It will be important to continue to manage perceptions of a conflict within the Commission between advocacy and monitoring. However, this tension is managed

under the status quo, and can continue to be managed by demonstrating that, as with other NPMs, the Commission has processes that ensure that its advocacy work is done after monitoring reports are completed.

A. OPCAT is an international human rights treaty that is part of the international human rights framework

What is the international human rights framework?

The United Nations set common standards for human rights with the adoption of the Universal Declaration of Human Rights in 1948. It has since adopted a set of international human rights treaties, which are used to discuss and apply the human rights of the Universal Declaration. The Universal Declaration of Human Rights and the nine core human rights treaties are the instruments of the international human rights framework.[16]

The principles and rights set out in the treaties become legal obligations of the States that choose to ratify them. The framework also establishes legal and other mechanisms to hold governments accountable if they violate human rights.

What is OPCAT?

OPCAT is an international human rights treaty that has been ratified by New Zealand, and therefore New Zealand governments have an obligation under international law to give effect to it

The Optional Protocol to the Convention against Torture (OPCAT) is a supplementary treaty to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). OPCAT was created to support practical implementation of the international standards provided for in CAT through establishing "a system of regular visits to places of detention carried out by independent expert bodies in order to prevent torture and other forms of ill-treatment".[17] OPCAT combines an international body (the UN Subcommittee on Prevention of Torture) with an obligation for each State Party to establish or designate its own complementary preventive mechanism, called National Preventive Mechanisms (NPMs).[18]

Unlike other human rights treaty processes that deal with violations of rights after the fact, OPCAT is primarily concerned with preventing violations. It is based on "the premise, supported by practical experience, that regular visits to places of detention are an effective means of preventing torture and ill-treatment and improving conditions of detention."[19]

OPCAT is currently ratified in 94 countries, with 78 NPMs.[20]

16 The Core International Human Rights Instruments and their monitoring bodies | OHCHR

17 Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment | OHCHR, Article 1

18 Guide for the Establishment and Designation of NPMs (2006) | APT, page 2.

19 Monitoring-Places-of-Detention-2019-2020.pdf, page 21.

20 OPCAT Database | APT

The OPCAT international and domestic system

At the **international level**, OPCAT provides for an international preventive body, called the Subcommittee on Prevention of Torture.[21] OPCAT envisages that the Subcommittee and NPMs will exchange information and collaborate; this includes the Subcommittee providing advice and technical assistance for NPMs, and recommendations and observations to States Parties. The Subcommittee has a mandate to visit places where people are deprived of their liberty by the States Parties to the Protocol and to make recommendations concerning the protection of these persons.

At the **national level**, States Parties to OPCAT must create or designate an independent NPM for the prevention of torture. In New Zealand, the Minister of Justice makes the designations. Through gazetting, a designated entity is provided with all the functions and powers needed to perform the role of an NPM.

States have considerable flexibility in selecting the NPM model to use, in order to ensure the arrangement is appropriate for their context. Arrangements can include establishing a single specialised body for this purpose, designating an existing entity, or designating multiple entities who work together to form a system of monitoring.[22] Article 18 of OPCAT also requires that when States Parties are deciding on designations, they give "due consideration" to the Paris Principles,[23] which are a set of minimum standards that national human rights institutions[24] must meet in order to be considered credible and to operate effectively.

Aotearoa New Zealand has chosen a multi-body NPM model. A diverse range of agencies are designated as NPMs to carry out functions established under Articles 1 and 3 of OPCAT.

Figure 13 sets out the OPCAT system and how it is applied in New Zealand.

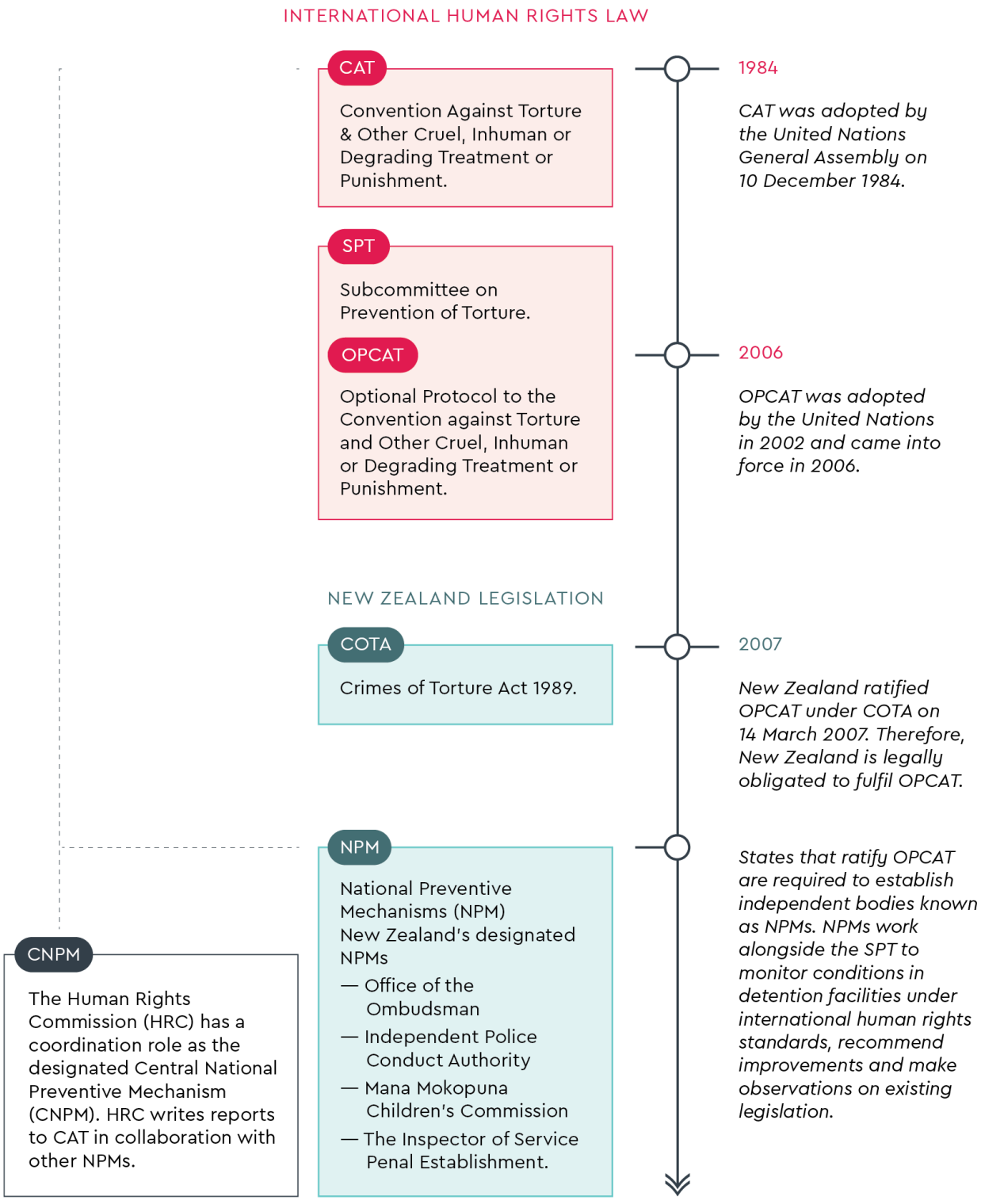
21 Guide for the Establishment and Designation of NPMs (2006) | APT, page 11.

22 NPM Toolkit | APT

23 https://www.ohchr.org/en/instruments-mechanisms/instruments/principles-relating-status-national-institutions-paris

24 https://www.ohchr.org/en/countries/nhri

Figure 13: International and domestic OPCAT provisions



A good-practice monitoring approach, based on the articles of OPCAT, is set out in internationally accepted guidance from both the United Nations[25] and the Association for the Prevention of Torture (APT).[26]

OPCAT entails monitoring under international human rights standards

OPCAT monitoring is carried out against international standards that the relevant country has ratified. For some jurisdictions, OPCAT monitoring provides oversight in the absence of domestic standards. For others, the role of an NPM is to question and challenge the domestic standards.

Under OPCAT, international and national bodies work together to carry out regular visits to places of detention. The purpose of these visits is to "regularly examine the treatment of persons deprived of their liberty",[27] and "help State Parties to achieve compliance with international human rights norms and standards".[28] OPCAT monitoring, as mandated in Articles 4 and 19, is therefore approached "from a point of view of advancing human rights of persons deprived of liberty."[29]

OPCAT monitoring is a preventive system

OPCAT monitoring visits are not simply inspections. NPMs are required to consider detention as a system that interacts with social and economic factors (for example, education, poverty, and discrimination). NPMs are expected to consider not only whether an institution is acting as it should, but also whether the system is acting as it should.

Guidance from the APT on the concepts that underpin OPCAT include that the preventive nature of visits "distinguishes them in purpose and methodology from other types of visits that independent bodies may carry out to places of detention" in that they are "proactive, part of a forward-looking and continuous process of analysing detention in all its aspects".[30] Visits are repeated to enable a constructive and ongoing dialogue with detainees and authorities, to chart progress or deterioration of conditions over time, to provide a general deterrent through the continuous possibility of outside scrutiny, and to protect detainees and staff from any reprisals for cooperating.

The preventive system operates through the advocacy and educative function, which is a key component of the OPCAT monitoring mandate. This means that part of the OPCAT role is to advocate for and educate about the standards and practices that prevent issues within the monitored areas.

OPCAT monitors make repeated visits, both announced and unannounced

Good-practice preventive monitoring requires different types of visits to monitored facilities over several days, to build relationships. Without this, children can be under-monitored. An effective

25 NPM_Guide_EN.pdf

26 Guide: Establishment and Designation of National Preventive Mechanisms

27 NPM_Guide_EN.pdf, page 6.

28 Guide for the Establishment and Designation of NPMs (2006) | APT, page 26.

29 Guide for the Establishment and Designation of NPMs (2006) | APT, page 28.

30 Guide: Establishment and Designation of National Preventive Mechanisms, page 30.

programme of preventive visits, as recommended by the APT, includes a mix of in-depth visits, ad-hoc visits, and continuous monitoring.[31]

In-depth visits are comprehensive and aimed at producing a detailed analysis of the detention system to identify root causes of cases of torture or inhumane treatment. These visits involve interviews with many detainees and can last from one to several days. **Ad-hoc visits** occur between in-depth visits to follow up on recommendations and ensure detainees have not faced reprisals. Ad-hoc visits are unpredictable, can be triggered by specific incidents or to investigate particular themes, and are generally shorter, conducted by smaller teams. **Continuous monitoring** involves frequent visits, often by community-based volunteers, to maintain a regular presence in detention facilities. Sometimes continuous visiting can also be recommended by the NPM as an interim measure. Combining these three types of visits helps ensure a thorough and effective monitoring system for places of detention.[32]

NPMs must have the power to make unannounced visits. NPMs use these in response to indications of significant concern, or to follow up on the implementation of recommendations where announcing visits in advance could give the opportunity for masking a lack of changes (for example, if the issue is the staff ratio on night shifts). Unannounced visits can be used sparingly. Research indicates that unannounced visits have a bigger impact on outcomes when they are provided for by law, rather than being left to operational practice.

NPMs must maintain strict confidentiality

NPMs should not have additional functions that could lead to potential conflicts of interest, such as handling complaints or prosecutions.[33] To manage potential conflicts of interest, it is essential that NPMs with conflicting functions clearly separate their OPCAT function from the rest of the organisation, and implement processes and policies, such as strict data controls, that prevent any overlap or conflicts.

Under Article 21, all "confidential information collected by the NPM shall be privileged". Confidentiality ensures that detainees can feel comfortable openly communicating with a NPM, and therefore NPMs can successfully fulfil their role as monitor.[34]

OPCAT monitoring includes an advisory function

Under Articles 4 and 19, NPMs are expected to carry out visits with a "view to strengthening, if necessary, the protections" of people in detention, and "aim to improve" their treatment and conditions of detention, as assessed against international standards. This includes:

- a "continuous dialogue" between the NPM, detaining agencies, and the State about improving conditions, based on the NPM recommendations
- making and following up on recommendations to authorities at all levels, from individual facilities to the State, making recommendations to the relevant authorities to establish

31 Guide for the Establishment and Designation of NPMs (2006) | APT, page 30.

32 Guide for the Establishment and Designation of NPMs (2006) | APT, page 30 – 32.

33 NPM_Guide_EN.pdf, page 16.

34 Guide for the Establishment and Designation of NPMs (2006) | APT, page 61.

effective measures to prevent torture and ill-treatment, and to improve the conditions of detention of all people deprived of liberty

- contributing to State Parties reports or making their own reports to international human rights mechanisms, and following up on those recommendations
- engaging with international human rights bodies, including reporting to CAT and under the Universal Periodic Review.[35] This requires NPMs to have some understanding of the international human rights system, and engagement mechanisms.
- proactively reviewing existing and proposed legislation and initiating proposals for new legislation to provide observations or system improvements before issues arise.

OPCAT requires that a designated NPM have:

- **Independence**, where the State guarantees the independence of NPMs and their personnel. This is a legal obligation of States Parties. This includes the entity mandate, and operational and functional independence.
- **Expert members**,[36] where the individual NPM member holding the designation should personally have the expertise and experience necessary for the effective functioning of the mechanism. That person should also select a team with relevant expertise and experience, and with the diversity of background, capability, and professional knowledge necessary to support the NPM member to fulfil their mandate.

NPMs are expected to work together

While the organisations that have the NPM mandate work in different jurisdictions with different population groups, they all examine and inspect places where people are deprived of their liberty. Therefore, co-ordination is important at both a technical and strategic level, in order to maximise the impact of the NPMs.

Where a state designates multiple bodies as NPMs, there "must be some means of communication and coordination between the mechanisms to ensure all places of detention may be visited, and to generate State-wide analysis and recommendations."[37]

FINDINGS

6.1 New Zealand has ratified OPCAT, which created a legal obligation to comply with the provisions of the Treaty. OPCAT sets out specific requirements and standards for selecting and operating an NPM, and these are relevant when considering which organisation or organisations are best placed and would be most effective as designated NPMs.

35 The Universal Periodic Review (UPR) is a unique mechanism of the Human Rights Council that calls for each UN Member State to undergo a peer review of its human rights records every 4.5 years. The UPR provides each State the opportunity to regularly: (i) report on the actions it has taken to improve the human rights situations in their countries and to overcome challenges to the enjoyment of human rights; and (ii) receive recommendations – informed by multi-stakeholder input and pre-session reports – from UN Member States for continuous improvement.

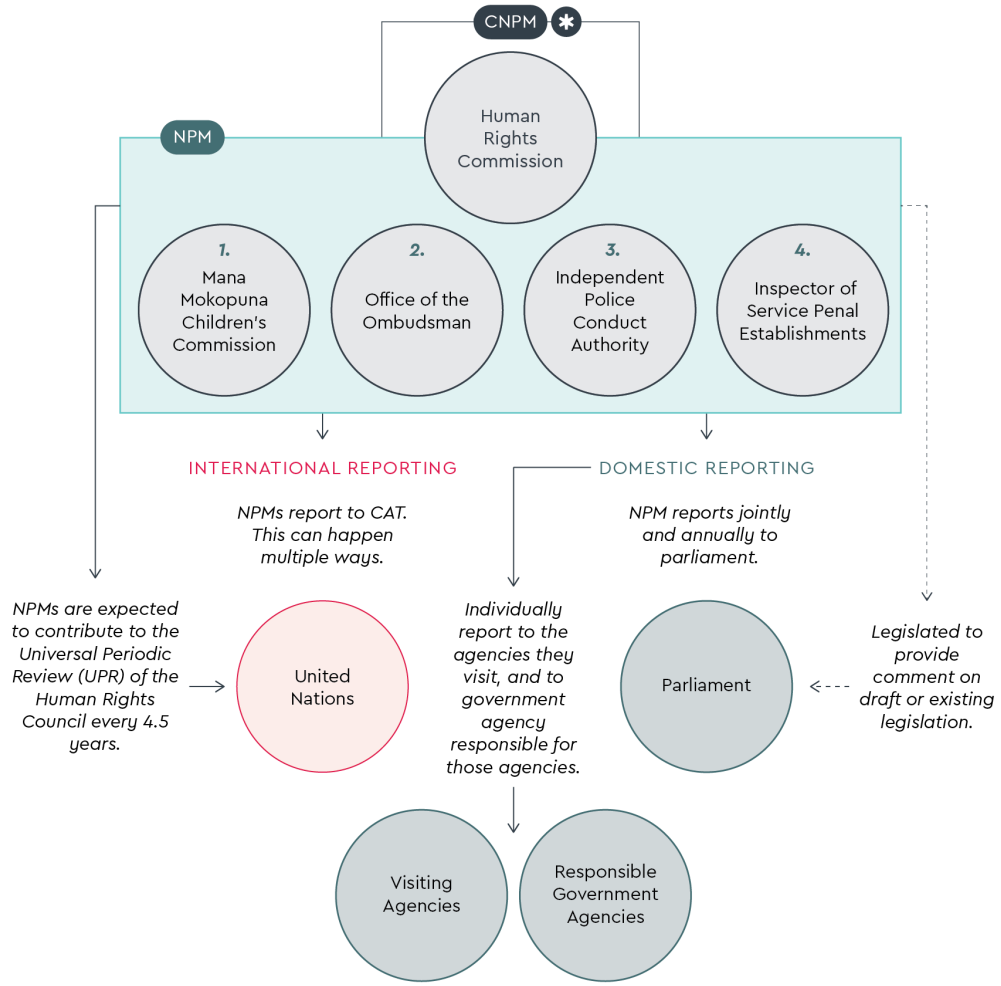
36 https://www.ohchr.org/sites/default/files/Documents/Publications/NPM_Guide_EN.pdf, page 17

37 Guide: Establishment and Designation of National Preventive Mechanisms, page 16.

B. OPCAT in New Zealand

CAT was ratified by New Zealand in 2007, and OPCAT on 14 March 2007. The Crimes of Torture Act 1989 (COTA) gives effect to OPCAT. Through gazetting, a designated NPM is provided with the functions and powers required to carry out the role of an NPM.

Figure 14: NPMs in New Zealand



Allocated designations for each NPM

1. Mana Mokopuna	Care and protection and youth justice residences established under s364 of the Oranga Tamariki Act 1989 Community-based remand care homes Health and disability places of detention established specifically for mokopuna Youth forensic units Child and adolescent mental health units Community based remand care homes, iwi remand homes	2. Ombudsman	People in prison or custody Department of Corrections Immigration facilities Health and disability places of detention Privately run aged care facilities Residences established under s114 of the Public Safety (Public Protection Orders Act 2014) Mothers with Babies Units (MBUs) in Women's prison Court cells
3. IPCA	Police cells People in the custody of the New Zealand Police Court cells	4. The Inspector	People held in New Zealand Defence Force detention facilities

CNPM role includes

- Publishing of the NPM annual report
- Coordinating NPM policies and procedures
- Maintaining an online workspace for NPM institutions to share information
- Convening regular meetings of the NPM
- Assisting with NPM monitoring
- Organising training activities
- Liaising with the SPT

Overview of New Zealand's current NPM designations

New Zealand has chosen to establish a multi-body NPM system, to gain the benefits of diversity and collective expertise.

The same entities have been designated as NPMs since New Zealand ratified OPCAT. However, their designations have evolved, with changes to address gaps in the monitoring system and to eliminate overlaps. Figure 14 shows the current designations for each of the NPMs.

Notably, Mana Mokopuna and the Ombudsman have each been given wider responsibilities. The mandate of Mana Mokopuna has increased significantly because of its relevant expertise in the rights of tamariki and rangatahi and in engaging with them, and because of its recognised expertise in monitoring places of detention to prevent harm. Mana Mokopuna has always held the OPCAT NPM designation for children and young people since New Zealand became a party to OPCAT and the NPM designations were made.

The increase in the Ombudsman's responsibilities has mainly been because of gaps in the original designations. For example, aged care facilities were not previously included, and the Ombudsman, with its previous OPCAT role, was seen as best placed to take this on. In contrast, the responsibilities of the other two NPMs, the IPCA and ISPE, are relatively narrow.

Appendix 5 provides a comprehensive timeline of the changes in New Zealand's OPCAT designations.

WHAT DOES AN EFFECTIVE OPCAT DESIGNATION LOOK LIKE IN NEW ZEALAND?

New Zealand must determine the entity in the oversight system that is best placed to perform the NPM role for children and young people to the greatest effect. We identified key considerations to inform our analysis of the choices and trade-offs, and ultimately our findings. These considerations are drawn from:

- the provisions of OPCAT, and the guidance provided by the United Nations and the Association for the Prevention of Torture[38]
- the 2007 Cabinet paper that sought agreement to the original designations, and
- insights from our review of documents and our interviews.

These considerations are set out below. We give greatest weight to the first five.

- **Functional independence provided by law** – Is the functional independence of a potential NPM provided by law?
- **Operational and financial autonomy** – Does a potential NPM have operational and financial independence, free from interference from Ministers?
- **Expert member** – Can a potential NPM provide an individual who personally has the expertise and experience need to undertake the designation effectively, thus meeting the

[38] https://www.apt.ch/

OPCAT requirement for an "expert member" who can also appoint a team with diverse professional backgrounds and experience?

- **Accommodation of OPCAT designation alongside an entity's statutory purpose and functions** – Would the OPCAT designation complement the purpose and functions of a potential NPM? This is important to ensure that domestic legislation does not compromise the ability of the NPM to undertake the OPCAT designation effectively. For example, if an entity is required to have a "prima facie" case before it can take action on a matter, this may restrict its ability to undertake proactive monitoring under OPCAT.
- **OPCAT designation does not cause unmanageable conflicts** – An OPCAT designation could create actual or perceived conflicts with the domestic functions and approach of an entity. Unless an NPM is being established as a new entity with the sole purpose of monitoring under OPCAT, it is likely that some risk of functional conflict may exist between OPCAT responsibilities and other responsibilities. It is therefore important to identify actual and perceived conflicts, and to consider the degree of risk that this might lead to and how effectively the risks could be managed. Significant risks could include situations where the effectiveness of either or both regimes might be compromised by the conflict. Other risks may be managed through efficiency trade-offs between the two regimes, for example through separating some domestic functions from OPCAT monitoring.
- **System efficiency** – How would a potential NPM designation affect system efficiency? For example, could a potential designation:
  - reduce the monitoring burden within the Oranga Tamariki system where detaining agencies are monitored separately under OPCAT and domestic National Care Standards?
  - improve role clarity between the three entities in the Oversight System, which has been identified elsewhere in this review as an area for continuous improvement?
  - deliver resource efficiencies in the delivery of the OPCAT function?
- **Scale of change within an entity** – What change (for example, in resourcing) would be needed to enable a potential NPM entity to carry out the role?
- **Scale of change for the NPM group in a multi-body NPM designation** – New Zealand has established a multi-body NPM. NPM agencies work together as required under OPCAT to gain the benefits of diverse experience and collective expertise. To support this arrangement, decisions about the best designations should take into account the extent to which a potential designation:
  - provides a unique contribution to the diversity of experience and expertise of the group, and
  - contributes to the effectiveness of the NPM group in working together.

An additional factor we considered throughout the analysis was whether the amount of effort involved in the change needed for a particular designation would outweigh the benefit of that change, given that broader change may result from the response to the Royal Commission of Inquiry.

C. There are mixed views on the best arrangements for the OPCAT designation in New Zealand

Some stakeholders believe that there is potential for greater system efficiency

Over time, duplication of places of inspection in NPM designations has reduced. However, the NPM designation for children and young people does result in some duplication of visits to places of detention between Mana Mokopuna and Aroturuki Tamariki in the Oranga Tamariki system. The two entities coordinate the timing of planned visits, but there has been at least one instance where an unannounced visit by the NPM coincided with a planned visit by Aroturuki Tamariki.

We heard the suggestion of a "contracting" type model for creating system efficiencies, where Aroturiki Tamariki would perform the monitoring function for both the NPM and the Oranga Tamariki oversight system. In this model, Aroturuki Tamariki would pass the results of the NPM monitoring back to the NPM – Mana Mokopuna – for them to make conclusions and recommendations. This option was offered to reduce the monitoring burden and potential confusion of roles for staff and rangatahi being monitored.

While this option may have system efficiencies at the technical and capability levels, the monitoring for the Oranga Tamariki system and the NPM system would still need to be done by completely separate teams within the agency, as we heard that the types of monitoring done are quite different and separate teams would be necessary to mitigate conflicts of interest between the different standards. Ultimately, this would not generate efficiencies but rather require significant effort in moving the monitoring function from Mana Mokopuna to Aroturuki Tamariki.

There were mixed views on the perceived tension between the role of advocacy and monitoring

Some interviewees believed that the statutory purpose of Mana Mokopuna to advocate for children and young people is in inherent conflict with investigating impartially under OPCAT. Two interviewees referred to historical instances where they believed that advocacy and the OPCAT monitoring function had not been adequately separated.

Interviewees who did not think that advocacy and monitoring were in conflict argued that advocacy is an extension of monitoring and is equally founded on the impartial gathering of information, data, and evidence. The combination of monitoring and forms of advocacy in one entity is not unique to Mana Mokopuna: it exists in other independent Crown entities such as the Human Rights Commission and the Mental Health and Wellbeing Commission.

In interviews, all NPMs and APT noted that the OPCAT function required an impartial approach to gathering information and evidence, but that once the monitoring is completed, the subsequent advice, reporting, and recommendations, and the follow-up on implementation with detaining agencies, government departments, and States Parties, constitute a form of advocacy. OPCAT monitoring is therefore also about promoting human rights standards, and the roles of monitoring and advocacy are mutually reinforcing.

One interviewee thought that the NPM advocacy role could be seen as broadly similar to the Commission's other functions but could be an actual or perceived conflict for the Monitor with its responsibility to monitor against domestic standards.

We heard that there are differences between the nature of monitoring under the Oversight Act and preventive monitoring under OPCAT

While monitoring under OPCAT and National Care Standards both require impartially gathering information and evidence, OPCAT preventive visits are required to take a system view and start from the point of advancing the human rights of persons deprived of liberty. This is different in nature to the form of monitoring undertaken by Aroturuki Tamariki in that NPMs determine what it means to comply with New Zealand's international obligations ratified under OPCAT and other international human rights Treaties. In a joint memo by the three oversight agencies[39] it was noted that the questions asked of staff and rangatahi in places of detention by Mana Mokopuna and Aroturuki Tamariki "*may look similar but are asked in ways that elicit information only pertinent to their different functions and reporting requirements. There are clear differences in monitoring approaches given each agency's different foci*".

Some thought that the nature of monitoring done by Aroturuki Tamariki was not sufficiently broad to fulfil the NPM designation. However, the NPM designation would empower Aroturuki Tamariki to monitor under international standards, to make unannounced visits, and to make recommendations under OPCAT. To meet international good practice for OPCAT independence, a ring-fenced OPCAT unit could be established within Aroturuki Tamariki to ensure that monitoring under the two regimes was done separately, and confidentiality preserved between the two regimes. This would however most likely require separate visits to places of detention and so erode some of the potential benefits.

Some interviewees further commented that there may be risks to both regimes if a single entity monitors places of detention in the Oranga Tamariki system under two different regimes. Separate monitoring reports would be needed, creating the risk of contradictory reports being produced by a single entity.

Resourcing for optimal visits is a challenge for some

APT recommends that NPMs are well resourced to meet their OPCAT requirements. However, the guidance notes that in reality, "the overall number of visits an NPM will be able to conduct will depend on the financial and human resources allocated to it by the State."[40]

The resourcing of Mana Mokopuna to fulfil its OPCAT obligations has been a point of concern for some. Further, this funding is not secure. As discussed in the previous chapter, the Commission relies on tagged contingency funding to fulfil all its functions.

The NPM's written submission to the CAT Committee on its 7th periodic review of Aotearoa New Zealand under CAT was filed on 12 June 2023, ahead of the CAT Committee's review in Geneva in

[39] Memo: monitoring responsibilities of the three oversight agencies (Ombudsman, Mana Mopkopuna, Aroturuki Tamariki), page 2.

[40] Guide: Establishment and Designation of National Preventive Mechanisms, page 30.

July 2023.[41] The submission outlined that while funding was sufficient to "undertake the minimum requirements to be compliant with the OPCAT mandate," it does not allow for other preventive activities, including thematic work, educative, or advisory functions.

In our engagements, we also heard that additional resource could be advantageous in strengthening and growing the education of children's rights with both kaimahi and mokopuna in places where mokopuna are deprived of their liberties.

NPMs are seen to be working well together

We saw good evidence that the current NPMs are working well together.

Designations align with the areas of expertise of each member

While the entities designated as NPMs have not changed since establishment, the places of inspection have evolved over time to fill gaps, reduce overlaps and now align with the areas of expertise of each NPM member.

Collaboration between NPMs is both valued and valuable

In accordance with OPCAT requirements, current NPMs have worked together since 2007, and accessed the benefits of New Zealand's multi-body NPM. Interviewees provided examples of ways of working together that add value to their individual designations through sharing and growth, identifying thematic issues and joint reporting.

For example, Mana Mokopuna recently collaborated with the Independent Police Conduct Authority (IPCA) during a visit to the Rotorua police custody unit (a remand centre). Rotorua remand facilities house a higher number of tamariki and rangatahi, and Mana Mokopuna OPCAT staff contributed their child-centred expertise to the monitoring, complementing the IPCA's own expertise. Additionally, Mana Mokopuna has engaged in joint presentations with the Inspector of Service Penal Establishments, further strengthening their collaborative efforts.

The IPCA and ISPE expressed their appreciation for the larger NPMs and of the Central NPM in supporting them with capacity challenges for national and international reporting and commenting on draft or existing legislation. In particular, Mana Mokopuna's leadership in addressing complex human rights challenges was highlighted, along with their leadership in fostering collaborative and constructive relationships centred around te Tiriti o Waitangi.

Any change to the current designation would require significant effort to establish, and this may not be the right time

Most interviewees noted that any change will take time and resource to establish and implement and should be considered in any decision to change the designation both for the entities, and for the NPMs as a group.

[41] 2022/23 Annual report of activities under the Optional Protocol to the Convention against Torture (OPCAT) | Mana Mokopuna, page 5.

Some NPMs noted that they are a well-established group that has taken time to build, and that it would take time to get a new entity up to speed. This would be compounded by the fact that they do not meet regularly. This could impact the effectiveness of OPCAT monitoring. Even if the impact is only temporary, this may cause harm. Given this, there should be a strong case for change to take this step.

As noted elsewhere in this report, further system change is likely to be contemplated in response the recommendations in the report from the Royal Commission of Inquiry into Abuse in Care.

FINDINGS

6.2 There are different views on the best arrangements for the OPCAT designation in New Zealand.

D. Assessing the key factors for the best designation across the three oversight bodies

The table overleaf considers which entity within the oversight system is best placed to be designated NPM and perform the function to the greatest effect. It draws on the considerations described in the grey box earlier in the chapter.

It uses the following colour coding system to demonstrate the degree to which an agency meets the requirements of the criteria.

Key

GREEN	**Meets requirements**
AMBER	**Partly meets requirements**
RED	**Does not meet requirements**

Table 9: Analysis of how well oversight agencies are placed to be designated NPM

	Mana Mokopuna	*Aroturuki Tamariki*	*Ombudsman*
Able to meet the standards for designation under OPCAT			
Functional independence – legislative mandate required for an NPM	• The Oversight Act allows for additional powers and functions to be undertaken. • Is provided with the legislative mandate of an NPM through gazetting by the Minister of Justice.	• The Oversight Act allows for additional powers and functions to be undertaken. • Can be provided with the legislative mandate of an NPM through gazetting by the Minister of Justice. • Could be designated responsible for visits to all places of detention for children and young people.	• The Oversight Act allows for additional powers and functions to be undertaken. • Is provided with the legislative mandate of an NPM through gazetting by the Minister of Justice. • Could be designated responsible for visits to places of detention for children and young people.
Operational and financial autonomy	Is an independent Crown entity which: • Cannot be subject to Ministerial direction in the operation of its mandate. • Is independent of the Executive branch in decision-making and operations. • can determine its own spending priorities (noting its funding is set by Ministers).	• Is currently a unit within a government department, and does not meet this requirement. • A bill before Parliament proposes to establish Aroturuki Tamarki as an independent Crown entity. If this eventuates, Aroturuki Tamariki would have the same operational and financial independence as Mana Mokopuna and this would provide greater functional independence. Hence, we have coloured the line both amber and green.	• Has the highest order of operational independence as an Officer of Parliament, where Parliament makes law, authorises expenditure and holds the Executive to account. • Budget set by Parliament so not subject to Ministerial decision-making. It is a separate budget and the Ombudsman can determine their own spending priorities within this.
Expert Members	The role of the Chief Children's Commissioner brings expertise in child rights and the international human rights framework. Has experience in monitoring places where children and young people are detained – youth justice residences, care and protection residences under Oranga Tamariki, youth justice community remand homes and youth mental health facilities.	Expert Member depends on the individual appointed to the designation. The entity has expertise in monitoring Oranga Tamariki places of detention for children and young people, but not in custody or health. Experience in these wider sectors could be built over time.	The role of the Ombudsman brings: • expertise in impartial investigations and reporting. • knowledge and experience of breadth of government institutions. • experience in the international human rights framework. • knowledge of children's interests and needs.

	Mana Mokopuna	*Aroturuki Tamariki*	*Ombudsman*
Alignment of requirements across the two regimes			
OPCAT designation can be accommodated alongside the entity's statutory purpose and functions without too great an extension	Already monitors and makes recommendations under international human rights standards in its statutory responsibility to monitor New Zealand under the United Nations Convention on the Rights of Children. In accordance with OPCAT guidelines on designations, is regarded as a national human rights institution by the UN Committee on the Rights of the Child.	An extension to monitoring places of detention for children and young people in other sectors would not be too great under the Monitor's statutory purpose in Section 13 of the Oversight Act 2022.	Fits with the Ombudsman's statutory functions as outlined in Section 13 of the Ombudsman Act 1975 to investigate any decision or recommendation made or any act done or omitted relating to any matter of administration.
OPCAT designation does not cause unmanageable conflicts under the domestic regime	Mana Mokopuna also has an advocacy function and supports children and young people in the resolution of issues with agencies. This can create a perception that Mana Mokopuna will not investigate places of detention impartially. Mana Mokopuna ring-fences the OPCAT function operationally, and follows the practice of all NPMs to advocate only on thematic matters arising from OPCAT monitoring, and only after reports are publicly available.	The OPCAT designation would require Aroturuki Tamariki to monitor the Oranga Tamariki system under two regimes which provide different standards and expectations. Whilst the two monitoring functions could be undertaken separately through a "ring-fenced" OPCAT function, they would still be operating under a single entity. This could risk undermining both reporting regimes through potential differences in reports from one entity. It could also provide some risks for Aroturuki Tamariki if it became aware of a matter under one monitoring function that could not be communicated to the other, for example if a matter would trigger an unannounced visit under OPCAT.	The Ombudsman's functions include: • a children's complaints system. • investigations on other matters in places of detention. Any perception of conflict is managed by establishing the OPCAT function as a separate "ring-fenced" function, meeting the standard in APT guidance for managing actual and perceived conflicts.
OPCAT in Aotearoa New Zealand			
System efficiency	The designation means that Mana Mokopuna undertakes visits to places of detention in the Oranga Tamariki system as well as Aroturuki Tamariki. Whilst relationships have been built which support understanding of the different	Would bring all monitoring of Oranga Tamarki places of detention under one entity, providing a single point of engagement for monitored organisations. Would likely not reduce the need for two separate visits as the different monitoring regimes would still need to operate separately. The arrangement would	The current situation where two different entities conduct monitoring visits to Oranga Tamariki residences would not be changed. There would be no reduction in confusion or improvement to the "monitoring burden".

	Mana Mokopuna	*Aroturuki Tamariki*	*Ombudsman*
	monitoring regimes, visits by two different entities can cause confusion and add to the "monitoring burden".	be unlikely to produce significant efficiencies or reduce the load in conducting visits.	
Scale of change (entity)	Removal of the OPCAT function would likely place pressure on Mana Mokopuna's cost structure.	Introducing a new preventive monitoring function would require: • Establishment of a new ring-fenced OPCAT team that meets OPCAT requirements of a preventive monitoring function. • Growing knowledge and capability of places of detention for children and young people in custody (youth justice residences, community remand homes, mothers with baby units in women's prisons), and in health (youth mental health facilities).	Is already an NPM, with experience of monitoring under OPCAT, and has previously held designations to visit places of detention for children and young people. Could include the designations in the existing ring-fenced OPCAT team, and build capacity and capability for child-centred monitoring. As an Officer of Parliament, the Ombudsman makes appointments independently of the public service, and any steps to move the OPCAT function from Mana Mokopuna to the Ombudsman could be more complex than moving the team within the public service.
Scale of change for the NPM group in a multi-body NPM designation	No change	Would require incorporating a new entity and building understanding of OPCAT and how to work together.	The balance of knowledge and perspective in the NPM groups is seen to work well. This would potentially be disrupted if the Ombudsman took on the designation as the group would be dominated by one entity, with two small "satellites".
Timing of change	Broader change will be considered in response to the Royal Commission of Inquiry into Abuse in Care, and the proposed Care Safe Agency. Change in an NPM designation now could still require further change in a short period of time. In this context, an important consideration is whether the case for change is significant enough, or whether it is best to consider the most appropriate NPM designation when the detail of any other relevant changes are known.		

Summary of analysis

There are potentially functional benefits of scale for the Monitor performing the OPCAT monitoring function, but making one entity responsible for both reporting regimes would introduce risks and potentially new inefficiencies

While Aroturuki Tamariki could be provided with all the powers required for OPCAT monitoring, it would need to undertake OPCAT as a separate, ring-fenced function, so the monitoring burden would not be reduced, and theoretical efficiency gains would not be fully realised. In relation to places of detention in the Oranga Tamariki system, responsibility in one entity for the two reporting regimes could present a risk of a single entity producing different, potentially contradictory, conclusions about the same place of detention.

The Ombudsman would be a credible alternative but does not provide an expert member in child rights, and the balance of the NPM group would be disproportionate

The Ombudsman's designation as an NPM could be extended to include places of detention for children and young people, although the monitoring burden would not be reduced as OPCAT would need to remain a separate function to manage conflict of interest with investigations and the children's complaints system. Appointing the Ombudsman would provide an experienced NPM but could diminish the value of the multi-party NPM in important ways. For example, the Ombudsman does not provide an expert member on children's rights. This option would also change the balance of the group of NPM agencies, creating a system with one dominant party and two smaller ones.

Mana Mokopuna provides an expert member in child rights and international engagement, and the perceived conflict between advocacy and monitoring can continue to be managed

Mana Mokopuna provides an expert member in monitoring places of detention for children and young people. They also bring expertise in the human rights approach which is core to OPCAT. Whilst the Human Rights Commission as the CNPM also brings this expertise, it is not party to the practical work of NPMs through joint visits and identification of thematic issues arising from monitoring. The perceived conflict of Mana Mokopuna's advocacy purpose is currently managed by ensuring that advocacy as an NPM is only undertaken once monitoring is complete. This approach can be continued. The relationship between advocacy and OPCAT monitoring can also be a point of regular discussion with the Ministry of Social Development as the Crown entity monitoring agency to ensure this is appropriately applied.

There are potentially broader changes ahead which may impact on NPM designations, so any change now should be of significant value

Broader change may be considered in response to the Royal Commission of Inquiry into Abuse in Care. In this context, an important consideration is whether there is significant value in changing

an NPM designation. If not, it may cause less disruption to consider any impact on NPM designations when the detail of other changes is known.

FINDINGS

6.3 No material issues with the current arrangements were found, and the case for change under current system settings is weak. On balance, the existing OPCAT National Preventive Mechanism designation of places of detention for children and young people is the most effective arrangement.

6.4 There are potential functional scale benefits for the Monitor in undertaking OPCAT monitoring. However, we do not expect these would be fully realised because:

- the Monitor would need to ring fence the OPCAT function to meet international requirements so the monitoring burden would be unchanged and this would reduce the benefits, and
- responsibility in one entity for the two different reporting regimes could present risks.

6.5 The Ombudsman would be a credible alternative, were it not for some key factors, namely:

- the Ombudsman does not provide an expert member in child rights, and
- the disproportionate size of the Ombudsman's designation could disrupt the balance of the NPM group, and the benefits of New Zealand's multi-party NPM arrangement.

6.6 Retaining the designation with the Chief Children's Commissioner is likely to garner more confidence in the system given the specialist expertise in both child rights and international human rights standards. However, perceptions of a conflict between advocacy and monitoring are important to continue to manage.

Appendix 1: Terms of Reference: Independent Review of the Oversight of Oranga Tamariki System Act 2022 and Children and Young People's Commission Act 2022

Purpose

1. This document sets out the Terms of Reference to conduct an independent review of the legislation that sets out the oversight of the Oranga Tamariki system, as commissioned by the Ministry of Social Development.

Background and context

Background

2. The Oranga Tamariki system is responsible for providing services and support to children, young people, and their families and whānau under, or in connection with, the Oranga Tamariki Act 1989. The system includes agencies such as Oranga Tamariki – Ministry for Children; New Zealand Police; the Ministries of Health, Social Development, Education, and Justice; Department of Corrections; and these agencies' contracted partners.

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

    3.1 the Children and Young People's Commission (the Commission), a new independent Crown entity replacing the Office of the Children's Commissioner, broadly responsible for advocating for all children and young people in New Zealand, and

    3.2 the Independent Children's Monitor (the Monitor), a departmental agency responsible for monitoring the Oranga Tamariki system.

4. In addition, the Oversight Act made enhancements to the Ombudsman's functions, including by extending their jurisdiction to investigate complaints about support and services provided by care or custody providers.

Upcoming changes in the oversight system

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

    5.1 transforming the Monitor from a departmental agency hosted by the Education Review Office into an independent Crown entity with a small, part-time board, and

5.2 reverting the Commission to a single Commissioner by disestablishing the Board (but maintaining its independent Crown entity status).

6. These changes are intended to ensure the entities involved in the oversight of the Oranga Tamariki system are truly independent and autonomous from government, have clearly defined roles and responsibilities, and ensure children and young people have a clear, visible advocate.

Objectives

7. The Oversight Act and Commission Act require the responsible Minister to arrange for an independent review of each Act within three years of commencement. The reviews will be undertaken this year to align with the above changes planned for the Monitor and the Commission. This will give stakeholders an opportunity to have a say in how they think the oversight of the Oranga Tamariki system is working and how it could be improved.

Scope

Minimum requirements

8. The review will be guided, at a minimum, by the statutory requirements outlined in Section 58 of the Oversight Act and Section 38 of the Commission Act, which are outlined below:

Section 58 of the Oversight Act:

1. The Minister must arrange for an independent review of the operation and effectiveness of this Act and the operation of the Monitor under this Act.
2. The review must consider—
    a. whether the functions, duties, and powers set out in this Act give effect to the purpose of this Act; and
    b. whether the Monitor is—
        i. working effectively with Ombudsmen and hapū, iwi, and Māori organisations; and
        ii. being effectively supported by agencies and their contracted partners in the Oranga Tamariki system, and whether there is any evidence that the Monitor is being obstructed in performing their functions, duties, or powers under this Act; and
        iii. appropriately resourced to efficiently and effectively discharge their functions, duties, or powers under this Act and to support the resilience of the Oranga Tamariki system; and
    c. whether any amendments to this Act are necessary or desirable; and
    d. any other matters that the Minister considers appropriate, after consulting the Monitor, the Chief Ombudsman, and other Ministers of the Crown with relevant portfolios, as necessary.
3. The review must commence no later than 3 years after the commencement of this Act.
4. The findings of the review must be reported to—

a. the Minister; and

b. the Minister responsible for the Monitor; and

c. the Minister responsible for administration of the Oranga Tamariki Act 1989; and

d. as far as they relate to Ombudsmen, the House of Representatives.

5. The Minister must present a copy of the report on the review to the House of Representatives as soon as practicable after receiving the report.

Section 38 of the Commission Act

1. The Minister must arrange for an independent review of the operation and effectiveness of this Act and the operation of the Commission under this Act.

2. The review must consider—

a. whether the functions, duties, and powers set out in this Act are supporting the Commission to give effect to the purpose of this Act; and

b. whether the Commission is working effectively with hapū, iwi, and Māori organisations; and

c. whether any amendments to this Act are necessary or desirable; and

d. any other matters that the Minister considers appropriate, after consulting the Commission and other Ministers of the Crown with relevant portfolios, as necessary.

3. The review must commence no later than 3 years after the commencement of this Act.

4. The findings of the review must be reported to the Minister.

5. The Minister must present a copy of the report on the review to the House of Representatives as soon as practicable after receiving the report.

The operation and effectiveness of both Acts

9. Are the Oversight Act and Commission Act operating effectively?

10. Are the Monitor and Commission operating effectively under the Oversight and Commission Acts respectively?

Functions, duties, and powers

11. Do the functions, duties, and powers set out in the Oversight Act give effect to the Act's purpose "to uphold the rights and interests and improve the well-being of children and young people who are receiving, or have previously received, services or support through the Oranga Tamariki system and promote the effectiveness of that system by:

11.1 setting out the functions, duties, and powers of the Monitor; and

11.2 giving the Ombudsman additional duties and powers when dealing with matters that may fall under the Ombudsmen Act 1975 and that relate to services or support delivered by—

11.2.1 Oranga Tamariki, and

11.2.2 care or custody providers

11.3 creating a framework for the Monitor and the Ombudsmen to work together in a comprehensive, cohesive, and efficient way and to consult one another and share information, as appropriate"?

12. Could the oversight system as a whole, and the Monitor in particular, benefit from any additional powers focused on enforcing compliance, additional powers of entry, and creating practical outcomes from their reporting?

13. Do the functions, duties, and powers set out in the Commission Act give effect to the Act's purpose to establish the Commission "to promote and advance the rights, interests, and participation of children and young people and to improve their well-being (without limitation) within the context of their families, whānau, hapū, iwi, and communities"?

Optional Protocol on the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment monitoring function

14. With respect to the Commission's designation as a National Preventive Mechanism under the Crimes of Torture Act 1989 for the purposes of the Optional Protocol on the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which entity within the oversight system would you view as best placed to perform this designated function to the greatest effect?

Effectively engaging with relevant stakeholders

15. Is the Monitor working effectively with the Ombudsman, hapū, iwi, and Māori organisations, as required in the Oversight Act?

16. Is the Commission working effectively with hapū, iwi, and Māori organisations?

17. Are the Commission and Monitor working effectively with each other, and with the Ombudsman?

Amendments to the Commission and Oversight Acts

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

Specific considerations for the review of the Oversight Act

19. Is the Monitor being effectively supported by agencies and their contracted partners in the Oranga Tamariki system to be able to prepare their monitoring reports under section 23 of the Oversight Act, and is there any evidence that the Monitor is being obstructed in performing their functions, duties, or powers under the Oversight Act?

20. Are the Monitor and the Commission appropriately resourced to efficiently and effectively discharge their functions, duties, and powers, and to support the resilience of the Oranga Tamariki system?

Out of scope

21. The following issues are out of scope of the review:

21.1 Role and functions of Oranga Tamariki – Ministry for Children, including recent changes to the Oranga Tamariki Act 1989.

21.2 Any functions, duties, or powers of the Ombudsman that are not set out in the Oversight Act, and independent decisions and operations of the Ombudsman. The

constitutional position of the Ombudsman as an Officer of Parliament and statutory restrictions on accessing material held by them mean that a Ministerial review cannot examine their decisions and operations.

21.3 The decisions relating to, and timing of, the Minister's proposed legislation to increase the independence of the Monitor and establish a single Commissioner for the Commission.

Process for the review

22. The reviewer should consider:

    22.1 past feedback, particularly in relation to what children and young people have said they wanted; for example, Select Committee feedback during previous changes to the oversight of the Oranga Tamariki system, to mitigate the risk of re-engaging young people on the same topics, creating engagement fatigue, and

    22.2 recommendations from other relevant reports; for example, the Royal Commission of Inquiry into Abuse in Care, and the United Nations Convention on the Rights of the Child Concluding Observations.

23. Engagement should be conducted during the reviews, where practical within the timeframe, with key stakeholders in the Oranga Tamariki system, including organisations that represent children and young people, children and young people themselves, and with hapū, iwi, and Māori organisations.

24. Māori voice should be sought early, and channels of communication continued throughout engagement, especially given that the oversight entities' ability to work with hapū, iwi, and Māori is a consideration in the reviews mandated by the Acts, and the disproportionate number of Māori engaged with the Oranga Tamariki system.

25. The reviewer should work with the Ministry of Social Development to connect with an engagement expert who has experience and connections to be able to engage sensitively, in age-and-stage-appropriate ways, with:

    25.1 children and young people, particularly those with care-experience,

    25.2 tamariki and rangatahi Māori,

    25.3 Pacific children and young people, and

    25.4 disabled children and young people.

26. The reviewer should also close the feedback loop and provide the people they engaged with a summary of the review, and where possible, have the opportunity to confirm their views have been captured correctly.

Reporting findings

Commission Act

27. The reviewer will provide a draft report on findings to the Ministry of Social Development, Commission, Monitor, and Ombudsman through the review period.

28. A final report is to be sent to the Minister for Social Development and Employment, as the responsible Minister, and the Minister of Justice as far as they relate to Optional Protocol on

the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, no later than January 2025. It is also to be sent to the Commission, Monitor, and Ombudsman.

29. The Minister for Social Development and Employment will present the final report to the House of Representatives as soon as practicable.

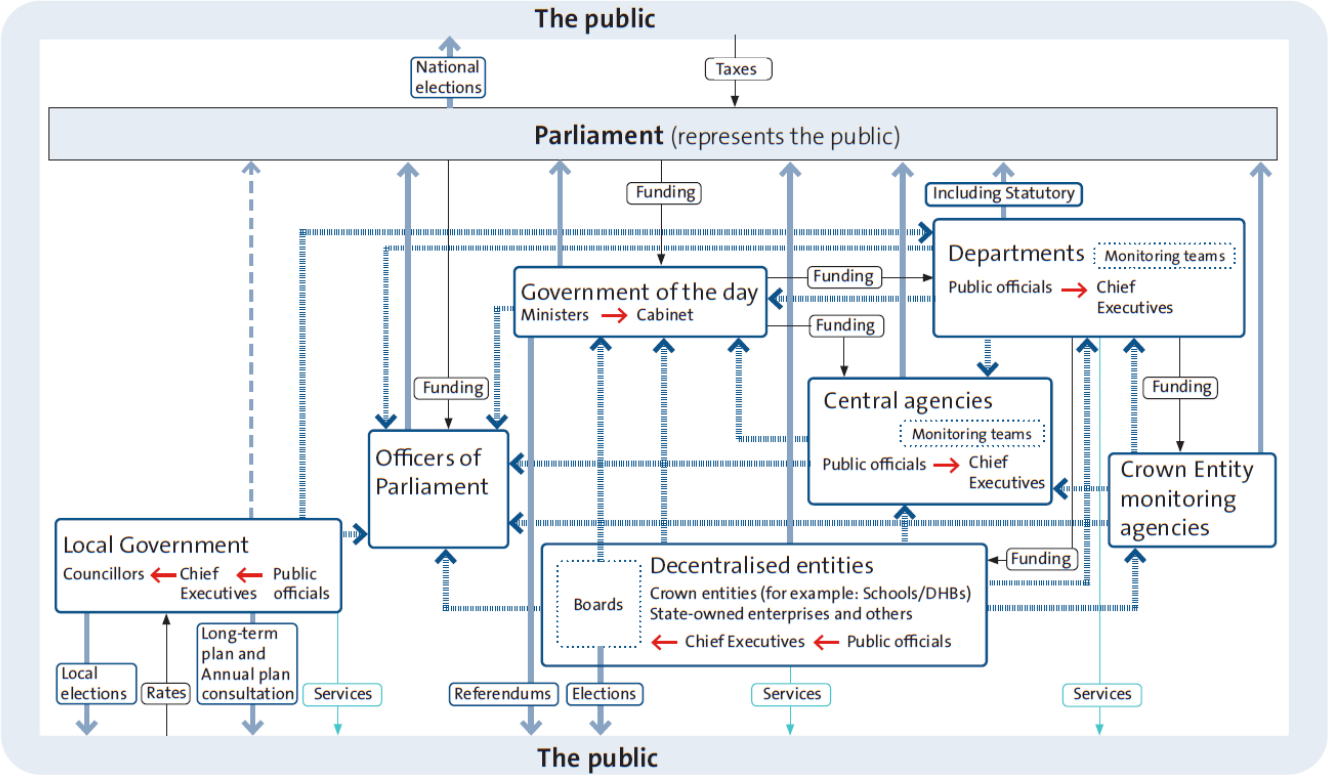
Oversight Act

30. The reviewer will provide a draft report on findings to the Ministry of Social Development, Commission, Monitor, Ombudsman, and Oranga Tamariki through the review period.

31. A final report is to be provided to the Minister for Social Development and Employment (as the Minister responsible for the Oversight Act and the Monitor), the Minister for Children (as the Minister responsible for administration of the Oranga Tamariki Act 1989), and the Speaker of the House as far as they relate to the Ombudsman, no later than January 2025. It is also to be sent to the Commission, Monitor, and Ombudsman.

32. The Minister for Social Development and Employment will present the final report to the House of Representatives as soon as practicable.

Appendix 2: Public Accountability System



Accountability relationships key

– public accountability relationships that indirectly connect with the public through Ministers and Parliament

– public accountability relationships that directly connect with Parliament or the public

(The dotted line shows Local Government's additional accountability relationship with Parliament.)

Services and funding key

– funding flows

– services to the public

Appendix 3: Engagement summary

This engagement summary first describes what we heard from agencies and stakeholders, and then describes what we heard from children and young people.

We interviewed a mix of agencies and stakeholders

We conducted 16 interviews with government agencies (referred to as "agencies" in this summary), and seven care providers, nine iwi and Māori organisations, and four organisations that represent children and young people (collectively referred to as "stakeholders" in this summary) to gather insights across the six lines of inquiry.

A list of agencies and stakeholders interviewed can be found at the end of this summary.

Stakeholders were well informed about the broader context of the care and protection system

All stakeholders emphasised the importance of a comprehensive accountability framework noting different reasons including previous system failures, the power imbalances facing children in care, the long-term impact of care quality on children's lives, and the gap in oversight for rangatahi transitioning out of care. Stakeholders we spoke to noted a lack of children's voices in legislative process and a lack of focus on children's rights within the care system.

Stakeholders wanted to understand how the review would align with the Royal Commission of Inquiry into Abuse in State Care and in the Care of Faith-based Institutions, as well as the government's response. Stakeholders were also concerned about the repeal of Section 7AA of the Oranga Tamariki Act 1989 in so far that it raises concerns about the reduced accountability that Oranga Tamariki would have directly to tamariki and rangatahi Māori, and their whānau. Concerns about termination of contract for services by Māori providers were also raised.

Lines of inquiry and key themes

Line of inquiry 1: Operation of the Acts, and the functions, duties, and powers of oversight bodies

Questions

- In your view, do the functions, duties and powers (and principles and objectives) under the Act allow the Monitor/Commission to deliver on the purpose of the legislation?
- What, if anything, could make the Acts work more effectively?

Key themes

System integration: Agencies and stakeholders recognised that the oversight system is new and evolving, requiring more time to fully integrate. They emphasised the importance of continuously monitoring outcomes to ensure the system's effectiveness over time.

Monitoring focus: Oranga Tamariki observed that the monitoring function has a narrow focus on specific agencies, particularly Oranga Tamariki itself, and the need for the oversight system to address broader systemic issues.

Impact and agency accountability: Stakeholders expressed strong views about the lack of visible impact within the care system, particularly concerning Oranga Tamariki, and that the system "lacks necessary teeth" to hold agencies accountable, with the current mechanisms for accountability not being fully utilised.

Compliance and stakeholder accountability: Care providers voiced frustrations about compliance requirements, particularly the consequences they face if they fail to meet standards. This frustration is contrasted with a perceived lack of accountability for other agencies, such as Oranga Tamariki.

Delays in responses: Stakeholders noted unacceptable delays in agency responses, with tamariki and rangatahi often experiencing long waiting times for their concerns to be addressed.

Legislation gaps: Some stakeholders viewed the current legislation as setting minimum standards but lacking adequate focus on outcomes for tamariki, rangatahi, and whānau, although others (agencies) viewed outcomes as being within the scope of the Acts. Some perceived that the oversight bodies are focused on reactive issues rather than prevention and wider outcomes.

Proposed legislative enhancements: Suggestions included strengthening the powers of Aroturuki Tamariki by introducing enforcement powers akin to a regulatory regime, and creating a role similar to an Ombudsman for Children. Some stakeholders voiced that Section 14 of the Oversight Act lacks a clear directive, and that clearer guidelines and principles within the legislation could help ensure the needs of tamariki and rangatahi Māori, and their whānau, are adequately addressed.

Role of the Ombudsman: Questions were raised about the role of the Ombudsman relating to the ability to focus on children's rights and whether the Ombudsman is the right place for complaints, given the focus on Children's rights and the capacity of the Ombudsman.

Independence and transparency: We heard strong concerns and emphasis of the ability of the Aroturuki Tamariki and Mana Mokopuna to be truly independent. For example, a shift away from having a named Children's Commissioner was considered a dilution of advocacy for children and whānau. Agencies also noted the effectiveness of the system requires transparency, which has been an historical problem.

Role clarity and system coordination: We noted a lack of clarity and confusion about the roles of the oversight bodies, their collaborative processes, and the mechanisms ensuring effective oversight. There was a call for a more integrated approach among oversight bodies to ensure that reports are acted upon, there is accountability for failures, feedback loops are in place to enable two-way communication, and policy- and decision-making includes all stakeholders (including rangatahi and other experts). There was also a suggestion for joint reporting to help avoid duplication and confusion.

Role of VOYCE Whakarongo Mai: Children and young people we spoke to often asked how the role of VOYCE Whakarongo Mai fits into the system.

Line of inquiry 2: Oversight bodies work with hapū, iwi, and Māori organisations

We observed that the perspectives of iwi and Māori organisations are shaped by a broad, intergenerational context. This includes their roles as Treaty partners, providers of diverse social services, and their accountability to iwi, hapū, whānau, and tamariki. Iwi and Māori possess well-established and nuanced views on accountability, where the wellbeing of tamariki is intrinsically linked to the wellbeing of whānau, hapū, and iwi. Iwi and Māori providers told us they are developing their own practices and standards of care to meet the needs of their communities.

Questions

- Do you have any observations about whether Aroturuki Tamariki and Mana Mokopuna are working effectively with hapū, iwi, and Māori?
- How could the engagement of these agencies be improved?

Key themes

Engagement variability: There are varying levels of engagement with the oversight system among iwi and Māori organisations, with some having close relationships with oversight bodies and others having minimal interaction, resulting in some confusion about roles and processes. We also heard concerns about oversight bodies engaging more heavily with Māori providers in some regions, emphasising the importance of ensuring iwi are engaged. Additionally, it was noted that preference should be given to regions with higher levels of need. It was noticed that the focus has been more inwards (standing up organisations), than outwards although this was expected.

Quality of engagement: Where engagement had occurred, it was reported to be of high quality – respectful, aligned with tikanga, and purposeful.

Need for greater collaboration: Overall, iwi and Māori organisations expressed a desire for more meaningful collaboration with oversight bodies at all levels, including with whānau. They recognised that a collective effort is needed to enhance the relevance of the Oversight system and its agencies to Māori at every level (iwi, hapū, whanau).

Proposals for improvement: The proposal for a Māori Commissioner was considered as a step towards improving the Oversight System, but it was noted that multiple options are required.

Line of inquiry 3: How the Monitor, Commission, and Ombudsman work together

Questions

- How is the relationship working between these three parties?
- What would an optimal relationship look like? What could strengthen the current relationship?

- Do the agencies have a shared sense of roles, responsibilities, and objectives?

Key themes

System complexity: Stakeholders perceived the current system as overly complex and convoluted, making it difficult for tamariki, rangatahi, and whānau to navigate and access necessary support. The "no wrong door" approach doesn't appear to be translating well to stakeholders and there was a desire for more clarity and better access to information about the roles of the oversight bodies. Stakeholders noted young people often lack awareness about their rights and the avenues available for making complaints.

Lack of cohesiveness: Stakeholders shared limited observations of the oversight bodies working together, and pointed to a need for a more cohesive approach that includes all stakeholders to ensure the rights of tamariki and rangatahi are prioritised over the oversight bodies' individual purposes and addresses systemic issues.

Monitoring challenges: Stakeholders voiced that the system is heavily monitored, which can be challenging for staff and children in care and can act as a financial barrier for new providers, including iwi and Māori to enter the care system.

Effectiveness of the Ombudsman: We heard uncertainty about the Ombudsman's effectiveness in addressing children's rights issues, given the specialist skills needed.

Coordination and management of functions: Agencies viewed the coordination and management of the advocacy and monitoring functions as generally effective but noted risks of duplication of effort, particularly around stakeholder engagement and emphasised the need to streamline processes and manage resources more efficiently.

Line of inquiry 4: Is the Monitor effectively supported by agencies and their contracted partners?

Questions

- What observations do you have about effective support for the Monitor?
- What, in your view, are the impacts of that support?
- What observations do you have about any obstructions?

Key themes

Data and information exchange: The majority of stakeholders expressed concerns about the exchange of data and information, inconsistent quality assurance approaches, and poor communication, all of which hinder effective monitoring. Specific concerns were voiced about Oranga Tamariki's ability to provide timely and quality data and information. Oranga Tamariki acknowledged these limitations and are working on improvements.

Burden of data and information requests: Oranga Tamariki noted the need to refine and agree on the practicalities of requests over time, including volume and frequency, citing overlap in the information requests from different oversight bodies, particularly Aroturuki Tamariki and Mana Mokopuna.

Data quality: Stakeholders noted that improved qualitative and quantitative data are required for the oversight bodies to have a more fulsome view of the system.

Line of inquiry 5: Is the current resourcing of the Monitor and Commission appropriate?

Question

- Are the Monitor and Commission appropriately resourced to fulfil their functions, duties and powers?

Key themes

Resourcing levels: Overall, we heard that the level of resourcing for oversight bodies appears to be adequate, although most stakeholders did not have strong views. Some felt that more resources were needed, particularly for community engagement.

Need for skilled practitioners: Stakeholders expressed strong views about the need for skilled practitioners, particularly in policy. They made specific points including the need for a Māori Children's Commissioner, a complaints system with specialist skills in children's rights, and the importance of having named commissioners.

Caution about new model: Caution was voiced about the new model of the five children's commissioners, including the role of the Chief Children's Commissioner, with frequent references to the previous model under Andrew Becroft.

Line of inquiry 6: Optional Protocol to the Convention Against Torture (OPCAT)

Questions

- What factors should be considered when designating an NPM?
- What observations can you make about how the NPM system is working currently?
- What are the benefits or challenges of where the current designation for children and young people in places of detention, and why?
- What are the benefits or challenges of designating a) the Ombudsman or b) Aroturiki Tamariki as the NPM for places of detention for children and young people, and why?

Key themes

System differences. We heard differences between the nature of monitoring under the Oranga Tamariki Act and the preventive nature of monitoring under OPCAT

Different standards and expectations across the two regimes:

OPCAT monitors under international human rights standards, and the Oversight System under National Care Standards. OPCAT requires domestic and international reports with recommendations, following up on recommendations with detaining agencies, and an advisory

role including reviewing existing and proposed legislation. OPCAT requires sufficient independence of NPMs, and expert members.

Different views on the best arrangements: If Aroturuki Tamariki was designated the NPM, this could reduce the monitoring burden on the Oranga Tamariki system. Some saw a conflict between advocacy under the Commission Act and monitoring under OPCAT, and others saw advocacy as part of the NPM role once monitoring was completed. Some were concerned that the NPM group would become unbalanced if the Ombudsman were designated.

Scale of change: We heard that the scale of change to establish a new NPM would be significant, and may pose risks at least in the short-term.

List of agencies and stakeholders engaged

Stakeholder type	
Government agencies	Oranga Tamariki (and Ministerial Advisory Group), New Zealand Police, Ministry of Social Development, Ministry of Education, Department of Corrections, Health New Zealand, Human Rights Commission, Privacy Commissioner, Independent Police Conduct Authority, Education Review Office, Inspector of Service Penal Establishments, Ministry of Justice
Care providers	Social Service Providers, Barnardos Aotearoa, Open Home Foundation, New Zealand Council of Christian Social Services, CCS Disability Action, Pact group, Key Assets
Iwi and Māori organisations	Te Iwi o Ngāti Kahu Social Services, Te Tohu o te Ora o Ngāti Awa, Te Rūnanga ō Te Ātiawa ki Te Upoko ō te Ika, Te Rūnanga o Ngāti Toa, Ngāti Porou Oranga, Te Whānau o Waipareira, Roopu a Iwi Trust, Taumata Kōrero (Taamaki Makaurau), Ngāti Pāoa
Organisations that represent children and young people	Save the Children, Children's Rights Alliance, Oranga Tamariki Youth Advisory Group, VOYCE Whakarongo Mai

We interviewed 30 children and young people with experience in the Oranga Tamariki system

During the review, we spoke to 30 children and young people (rangatahi) who have experience in the Oranga Tamariki system, including members of the Oranga Tamariki Youth Advisory Group and members of the VOYCE Whakarongo Mai Youth Council (Ōtautahi). Rangatahi were referred by care providers and youth-led groups.

Our approach was based on four key areas of inquiry:

1 How well rangatahi understand the Oranga Tamariki system

2 Where rangatahi seek support, and their understanding of the role of oversight agencies

3 Exploring trust and the values that matter for rangatahi

4 Exploring a future state.

How well rangatahi understand the Oranga Tamariki system

Rangatahi have a good understanding and good knowledge of the Oranga Tamariki system. This draws on their interactions with a wide range of people and organisations across the care system.

Who rangatahi interact with within the care system

Rangatahi interact with a range of care professionals, agencies, and services across the care system, including:

- social workers, youth workers, and transitional workers
- residential teams and team leaders
- police, courts, and Judges
- schools, and residential schooling
- clinicians, well-stop therapists, and psychiatrists
- the Boys & Girls Institute
- Oranga Tamariki
- foster families, and
- their own whānau.

Common challenges that rangatahi face within the care system

We heard that rangatahi experience many common challenges relating to their rights, interests, and well-being within the care system. These include:

- not being listened to, getting no or slow responses when they raise issues, or getting disingenuous responses
- a lack of communication and information sharing, or incorrect information
- being made to wait unreasonably, or people using avoidance tactics
- inconsistency
- feeling disconnected or excluded from Care Plans or processes
- lack of planning around transitioning out of the care system
- not enough contact and visits from social workers
- some rangatahi feel they are being treated as troublemakers or other negative stereotypes of rangatahi in care
- being treated like toddlers, rather than young adults
- a lack of natural justice
- a lack of transparency about decision making
- being forgotten about, and

- being made to feel guilty, being blamed.

Where rangatahi seek support, and their understanding of the role of oversight agencies

Rangatahi often rely on youth and residential workers for support. All rangatahi we spoke to had heard of VOYCE Whakarongo Mai. They saw VOYCE as a trusted advocate and a key connector in the care system.

Their understanding of the oversight agencies

Most of the rangatahi we spoke to had very little or no knowledge of the oversight agencies before we spoke to them. A small number had heard of the Children's Commissioner and the Independent Children's Monitor. A small number had experiences with the Ombudsman. Rangatahi involved in youth representative groups had the most knowledge, although even this was patchy.

Some of those who had engaged with an oversight agency about an issue did not see what the outcome was or were not told what the outcome was. They saw no examples of oversight agencies working together.

Rangatahi had a good understanding of the concept of accountability and agreed that the functions of the oversight agencies were extremely important and directly related to their wellbeing. They would have liked to have known more about the role of the oversight agencies from the start of their interaction with the care system. They also wanted to ensure other children and young people had access to important information about their rights and about who can support them.

Exploring trust and the values that matter for rangatahi

The rangatahi we spoke with talked about the different elements of trust and about the values that are important for them and their wellbeing. There were many shared values:

- supporting the rights and voices of rangatahi
- being reliable, and doing what you say you are going to do
- building genuine relationships
- being honest and giving straight answers
- being transparent with processes and information
- responding promptly
- keeping rangatahi informed about when they can go home and supporting them to maintain their relationships with their whānau
- being fair, and showing respect
- the importance of cultural identity, whakapapa, and belonging, and

- the importance of care and service providers being skilled professionals who can provide high standards of care.

Exploring a future state

Rangatahi envision a future oversight and accountability system that is focused on the needs of the children and young people in the care system and built on fairness and trust.

They emphasise the need for clear, easily accessible information and communication about oversight agencies and their roles and how the oversight system supports their wellbeing.

Rangatahi want to be involved in improving the Oranga Tamariki system. Youth representatives emphasised the importance of oversight bodies being independent and having the right mix of expertise and representation and sufficient resources.

"Superpowers" that we heard are needed in the Oranga Tamariki system

1 Listening

2 Taking action

3 Speed

4 Truth.

Appendix 4: Minor legislation proposals raised with MartinJenkins

MartinJenkins comments on possible amendments to the Oversight of Oranga Tamariki System Act raised with MartinJenkins

Section of Act	Summary issues and suggested amendments raised with MartinJenkins	MartinJenkins comment
1 Title	Some parties consider that the name of the Act should describe the role and scope of the Monitor: to monitor the system of services and providers and how well they individually and collectively improve the outcomes for children. While the Monitor's primary focus is Oranga Tamariki and care providers, the Monitor's role is also monitoring the intersection with other systems, which would include *how* kids come to be known by Oranga Tamariki (for example, health practitioners, teachers, and other parties proactively informing Oranga Tamariki). Hence it was suggested the reference to Oranga Tamariki be changed to reflect a broader focus.	We do not consider the title of the Act needs to change to improve the effectiveness of the operation of the Act. The "Oranga Tamariki system" is defined in section 9 of the Oversight Act. If changes are made to the way the system is described that could instigate changes to the title of the Act.
3 Overview	One party suggested that technical changes are needed to reflect the fact that the Monitor has now been established. The party suggested that 3(2)(a)(v), which relates to requiring the Monitor to make reasonable efforts to enter into arrangements with hapū, iwi, and Māori organisations, should be deleted. Entering into arrangements is wider than those partnerships/Māori. It is unclear that this will enhance or add to the Monitoring functions. The party suggested section 3(3)(a)(ii), which relates to requiring the Monitor to make information rules relating to the collection, use, and disclosure of information by the Monitor, is deleted. The party argued this is unnecessary as it does not add anything beyond the requirements of the Privacy Act.	Section 3 is an overview of the Act. Changes to section 3 should only be driven by changes to other sections, not the reverse.

Section of Act	Summary issues and suggested amendments raised with MartinJenkins	MartinJenkins comment
5 Principles	This section provides that *a person who performs a function or duty or exercises a power under this Act must have regard to—* *(a) the well-being, interests, and voices of children, young people, and their families and whānau:* *(b) the best interests of children and young people:* *(c) the perspectives of children and young people:* *(d) the need to respect and uphold the rights of children and young people in New Zealand law (including their rights in New Zealand law that are derived from the United Nations Convention on the Rights of the Child or the United Nations Convention on the Rights of Persons with Disabilities):* *(e) the importance of relationships and connections of children and young people with their families, whānau, hapū, iwi, and communities.* A party suggested that (a) – (c) be amalgamated.	PCO can advise on the best way to capture the policy intent in drafting.
7 Common duties	Section 7(2)(a) provides that the common duties of the Monitor, the Ombudsman, and the Children and Young People's Commission include— *to work together in a comprehensive, cohesive, and efficient way with each other, including by consulting and co-ordinating with each other and sharing information, as appropriate:* A party suggested that this statement could be simplified – perhaps to; "work constructively in an efficient way"?	PCO can advise on the best way to capture the policy intent in drafting.
7 Common duties	One party suggested section 7 could be made more specific to give clearer directions for oversight entities to: • seek comments from the other two entities in their reports, to be included in their reports, including to: – provide additional commentary and analysis from that entity's perspective; and – to indicate (where appropriate) if a specific entity will be taking responsibility for actioning a specific issue related to the original	We consider these matters better left to operational policy rather than specified in legislation.

Section of Act	Summary issues and suggested amendments raised with MartinJenkins	MartinJenkins comment
	report (e.g., the Commission may signal it is considering preparing a report to the Prime Minister based on the findings in a report by the Monitor, the Ombudsman may indicate that it is starting an investigation based on the findings in a report by the Monitor); • periodically meet with each other and that this information is publicly available; • consider thematic joint reporting on thematic issues; • include rights-centred analyses in their reports; • agree that one of the entities should take responsibility for coordinating the Oversight System, including for example by running an Oversight System website or to lead work regarding raising awareness with the public about the System as a whole.	
8 Interpretation	Suggest that the following definitions be included in this section: • "Other agencies" • "Other systems" • "Serious Harm" • "Publish"	PCO can advise on the best way to capture the policy intent in drafting, including on where terms are best defined. Some of these terms are defined in other sections. "Other systems" is defined in section 13(4). "Serious harm" is defined in section 14AA of the Oranga Tamariki Act 1989. It is not clear to us that "other agencies" or "publish" need to be defined here. A need may arise from other policy decisions.
9 Meaning of Oranga Tamariki System	Currently this section provides: *(1) In this Act, unless the context otherwise requires, Oranga Tamariki system means the system that is responsible for providing services or support to children, young people, and their families and whānau under, or in connection with, the Oranga Tamariki Act 1989.* *(2) For the purposes of this Act, the Oranga Tamariki system—* *(a) applies to the delivery of services or support by agencies or their contracted partners within the system; and*	PCO can advise on the best way to capture the policy intent in drafting.

Section of Act	Summary issues and suggested amendments raised with MartinJenkins	MartinJenkins comment
	(b) includes (without limitation) the delivery of health, education, disability, and other services by those agencies or contracted partners within the system. One party suggested the definition could be clearer.	
13 Monitor's objectives and 14 Monitoring function	These sections set out the Monitor's objectives (primarily to carry out objective, impartial and evidence-based monitoring), and the Monitor's functions (primarily to monitor the performance of the Oranga Tamariki system in the context of its interface with other systems). A party suggested these sections be combined into one clear provision. The party suggested: • Truncating the objectives section into one clear opening statement, such as: "The objectives of the Monitor are to carry out objective, impartial, and evidence-based monitoring, and provide advice." • Then consider bringing aspects of the functions in section 14 into section 13 **Specific comments received from one party on section 13:** • Section 13(1)(a) is confusing and then repeated in section 14. • Section 13(1)(c) should perhaps instead of referring to "support public trust and confidence in the Oranga Tamariki system" refer to increased transparency • Section13(1)(e) refers to the objective to "support an understanding of specific aspects of the Oranga Tamariki system and its interface with other systems" – this is confusing and could be clearer. • Section 13(1)(f) which refers to the objective to "support informed decision making" should be elevated in the objectives and should make clear that this includes anyone making decisions, government as well as social workers. Perhaps consider adding "government decision making and responses to the Monitor." It was suggested that section 13 could read:	PCO can advise on the best way to capture the policy intent in drafting.

Section of Act	Summary issues and suggested amendments raised with MartinJenkins	MartinJenkins comment
	The objectives of the Monitor are to carry out objective, impartial, and evidence-based monitoring, and provide advice to support informed government decision making and responses to the Monitor. *The Monitor should also seek to: [list of secondary objectives].* It was suggested that the definition of other "other systems" in section 13(4) should be moved to section 8 with the other definitions. Section 13(4)(b) defines "other systems" as services or support provided by agencies or their contracted partners, or the performance or exercise of statutory functions or powers, that aim to address the risk factors that increase the likelihood of a person's involvement in the statutory care and protection system or youth justice jurisdiction under that Act. It was suggested that "section 13(4)(b) is unnecessary as it belongs in the interpretation section – and will make the objectives much cleaner". It was suggested that the definition of "Oranga Tamariki System" and definition of "Other Systems" are confusing. **Specific comments on section 14:** Section 14(1) provides: "The function of the Monitor is to monitor the performance of the Oranga Tamariki system in the context of its interface with other systems." A party suggested that "in the context of its interface with other systems" be reworded to say: "including its interface with other systems".	
15 Tools and monitoring approaches	One party suggested that it is unusual to have this level of detail in the legislation and that the detail was added as Oranga Tamariki insisted that the Monitor's broader practice operate consistently with the National Care Standards regulations. It was suggested that: • sections 15(1) ,15(3), 4(a) and 4(b) seem appropriate aspects to retain and the other aspects of the section are not necessary. • sections 15(2)(b) and (c) are already covered by section 13(2) and (3). • section 15(3) might be better placed in section 13.	PCO can advise on the best way to capture the policy intent in drafting. We agree that some aspects of this section seem very prescriptive. However, we do not believe that they decrease the effectiveness of the operation of the Act.

Section of Act	Summary issues and suggested amendments raised with MartinJenkins	MartinJenkins comment
18 Collaboration with Māori Advisory Group	It was suggested that in section 18(2) references to an "Internet site" might be changed to "an organisational annual report" or by reference to "publish" which should be defined and included in the interpretation section.	There are several comments of this nature. Requiring the Monitor to publish information on the internet creates an impetus to provide information on a more regular and accessible basis. Whether this proposal is adopted or not will have little impact on the effective operation of the Act. Regardless, given the requirement is for the Monitor to "demonstrate annually" there seems little harm in allowing this to be done through the annual report rather than on an "Internet site".
19 Arrangements with hapū, iwi, and Māori organisations	It was suggested that section 19 (1)(b), which relates to information sharing, goes into the information sharing provisions later in the Act.	PCO can advise on the best way to capture the policy intent in drafting.
21 Monitor must have code of ethics relating to engagement	It has been suggested that: • References to regulations in section 21(3)(b) can be removed as regulations have not been made. • Reference to Internet site can be removed and the section can instead just refer to "publication".	We see no harm in retaining regulation making powers that are not being used currently. We see value in requiring the Monitor to publish its code of ethics online so it is readily available to interested parties.
25 Requests for reviews	It was suggested that: • with the Monitor becoming an independent Crown entity section, 25(1) and (2) should be removed. • "Police" and "Minister responsible for the Monitor" into section 25(3), meaning the Monitor "may" carry out a review on any topic within their monitoring function at the request of these agencies.	We think the Minister having the power to request a review is a useful feature to maintain. However, a review at the Minister's request must not interrupt the Monitor's broader (statutory) work programme. We understand the intention is to maintain these sections. The design of this feature needs to be worked through. Section 25(2) may provide adequate protection. We do not consider the suggested amendments to section 25(3) necessary as the Monitor can carry out reviews of their own initiative (section 26) which could include adopting suggestions from others.

Section of Act	Summary issues and suggested amendments raised with MartinJenkins	MartinJenkins comment
30 Responses to final reports	This section provides that the Chief Executive of an agency that is the subject of any final report of the Monitor must prepare a response in writing to that report. The response must be provided to the Monitor, the Minister responsible for the Monitor, and the Minister responsible for the administration of the Oranga Tamariki Act 1989. There are currently two different timeframes provided for Chief Executive response: a 35-working day timeframe for reports prepared under sections 22, 25, and 26, and 20-working day timeframe for responding to reports prepared under section 23 and 24. One party suggested: • the 35-working day timeframe is too long • the reference to different timeframes is confusing • It would therefore be helpful to amend all timeframes to 20-working days but allow for exceptions on a case-by-case basis. The rationale for the 35-working day timeframe being too long is the agencies the report is about have received and commented on at least one draft of the report already at this stage and therefore know what it is likely to say. Further, section 27 requires that agencies are given "reasonable opportunity" to comment on reports, so there should be no concern around truncating the timeframe for response.	A shorter timeframe may have some benefits in encouraging timely responses and maintaining momentum for continuous improvement. Costs to monitored agencies may be limited as the Monitor is required to give monitored agencies a "reasonable opportunity" to comment on a draft report (section 27). It was suggested that agencies could start formulating their responses at this stage. The Minister responsible for the Monitor may extend the time frame for providing a response if a final report of the Monitor makes findings relevant to multiple agencies and the Minister responsible for the Monitor considers that a multi-agency response is desirable. We can see the trade-off between encouraging a swift response to a report and giving agencies adequate time to develop a considered response. After considering the trade-off, we are inclined to keep the current timeframes. The 35-working day timeframe applies to reports that have the potential to be larger and/or more complex than the other reports. We would not want agencies to rush their responses to reports and commit to actions that were less targeted or effective than optimal. It is important to note the bill introduced in 2021 originally stipulated a timeframe for response of 60-working days. The current timeframes are significantly reduced from that timeframe, reflecting careful consideration of the need for a response to be both swift and considered.
31 Publication of final reports and responses	Section 31 provides for the publication of final reports and responses: *(1) The Monitor must publish a copy of a final report prepared under section 22, 23, 24, 25, or 26 and any response to a final report prepared under section 30—* *(a) on an Internet site maintained by or on behalf of the Monitor; and*	We agree the legislation should provide for "early" publishing where practicable. We cannot see a reason this timeframe should be provided in regulations when timeframes for other parts of the process are provided in the Act, although we note providing timeframes in regulations makes them easier to change in the future.

Section of Act	Summary issues and suggested amendments raised with MartinJenkins	MartinJenkins comment
	(b) within the time frame specified in regulations made under section 57. The timeframe for publication is set out in clause 9(2) of the Oversight of Oranga Tamariki System Regulations 2023 which provides that the Monitor must publish a copy of the final report and the response to the final report no later than 10 working days after the date on which a response falls due under section 30(3) or (4). It was suggested that the timeframe for publication be set in primary legislation and to ensure that if the Monitor receives the response early, the Monitor can publish early.	However, PCO can advise on the best way to capture the policy intent in drafting.
32 Duty to protect individuals' privacy in relation to reports	One party suggested this section does not add anything beyond the requirements of the Privacy Act and could therefore be removed.	This section provides reassurance to parties affected by the Oversight Act. It therefore provides some benefit and no cost to retain.
42 Information to be proactively provided to Ombudsman	Section 42 of the Oversight Act deals with the proactive provision of categories of information that Oranga Tamariki and Care or Custody providers must provide the Ombudsman. The purpose of this section is to assist the Ombudsman in considering matters that fall under the Ombudsmen Act 1975. The Ombudsman has been working with Oranga Tamariki and those agencies have developed a phased approach to the provision of this information (including the Ombudsman working with Oranga Tamariki first before engaging with Care or Custody providers). Oranga Tamariki has identified problems in collecting some categories of information that define a critical or serious incident (section 42(4) of the Oversight Act). It was suggested that: • Oranga Tamariki should be expected to improve their information gathering capability where it is necessary to collect information that is important for effective oversight • MartinJenkins engage with Oranga Tamariki on the feasibility of some of these categories of information.	Oranga Tamariki should be resourced to remove any barriers to implementing section 42 as intended.

Section of Act	Summary issues and suggested amendments raised with MartinJenkins	MartinJenkins comment
46 Consent required to collect information from child or young person	One party suggested this section is overly prescriptive and should be removed.	This section provides reassurance to parties affected by the Oversight Act. It therefore provides some benefit and no cost to retain.
47 Duty of caregiver to facilitate access to child or young person without undue delay	One party suggested that: • It is unclear if this section is of any additional use over and above that which is outlined in section 20 concerning engagement by monitor. • If this stays, it be placed in section 20.	It is useful to retain the intent of this section in some form. PCO can advise on the best way to capture the policy intent in drafting.
48 Disclosure of information	Aroturuki Tamariki has a practice of issuing 'share back documents' to the people it meets with during its monitoring activities. It does this: • in accordance with recommendations in the Data Protection and Use Policy; and • to enable those the Monitor has heard from to use the information at the earliest opportunity, without needing to wait on the Monitor's formal reports. Final reports (those listed in the Oversight Act) can ultimately be published in accordance with the Act up to twelve to eighteen months after the Monitor's visits to local communities. The share back documents reflect what the Monitor has heard from specific segments of the community and involved agencies and providers, such as tamariki and rangatahi, their family or whānau, caregivers, Oranga Tamariki, and the Police. One party recommends that section 48 be amended to better reflect and support the Monitor's practice. The party suggested that not only could section 48(1)(f) be clearer, but the requirement for the non-personal information to be "included in materials proposed to be published" seems to be unnecessarily restrictive. The party proposed amending section 48(1)(f) to make its intention clearer, and adding a further situation in section 48(1) in which non-	We consider share backs to be good practice. The law should thereby accommodate the practice.

Section of Act	Summary issues and suggested amendments raised with MartinJenkins	MartinJenkins comment
	personal information can be shared that clearly covers the provision of share back documents, without a requirement for future 'publication'.	
49 Monitor's information rules	The Monitor has developed information rules. It was suggested this provision is not needed in legislation because the provisions of the Privacy Act and specific disclosure permissions are sufficient.	The Monitor has developed information rules. It would incur costs in updating these rules and if the requirement to have rules was removed it could incorporate the provisions into operational practice. However, these rules provide some reassurance to affected parties and it would cost little to keep.
50 Content of information rules	Similarly, it was suggested this could be deleted as the Monitor can be guided by the Privacy Act.	
51 Sharing of information between Monitor and Ombudsman	It has been suggested that there needs to be an information sharing provision to cover off sharing between the Commission and Monitor.	Section 33 of the Commission Act provides: *The Commission, the Monitor, and an Ombudsman may share information with each other if the provider of the information believes either or both of the following apply:* *(a) the sharing of the information would minimise the burden on individuals and agencies:* *(b) the sharing of the information would assist the Commission, the Monitor, or an Ombudsman in the performance of their functions, duties, and powers.* We agree that it is unusual that the information sharing provisions are divided across Acts. However, this provision should cover information sharing needs.
55 Monitor must notify certain matters	This section provides that: *The Monitor must notify the person (or persons) prescribed by regulations made under section 57(1)(a) if the Monitor becomes aware of any non-compliance with national care standards regulations or any other matter that places a child or young person in care or custody at immediate risk of suffering, or being likely to suffer, serious harm.*	We understand the intent of the suggestion but consider the change unnecessary.

Section of Act	Summary issues and suggested amendments raised with MartinJenkins	MartinJenkins comment
	One party suggested this provision be amended to be simplified and broadened by removing the words "with national care standards regulations" and "in care or custody".	
56 Referral of matters	Section 56 of the Oversight Act (and section 35 of the Commission Act) set out how the Commission, Monitor and Ombudsman may consult with, and refer matters to, one another, or other agencies or bodies (in accordance with "no wrong door" approach) in relation to any enquiry, complaint or concern received from an individual. While it is implied that the information must be shared with the receiving agency for the purposes of consultation under section 56 or 35, one party suggested that these sections could be amended for additional clarity. For example, a similar consultation and referral provision is set out in section 21A of the Ombudsmen Act 1975 in relation to an Ombudsman's consultations with the Privacy Commissioner. This section states: *"...for the purposes of any such consultation, an Ombudsman may disclose to the Privacy Commissioner such information as the Ombudsman considers necessary for that purpose."* Similar wording (with appropriate modifications) could be incorporated into section 56 of the Oversight Act and section 35 of the CYPC Act.	This is a minor and technical change that could be useful in some circumstances.
57 Regulations	One party considered section 57(1)(a) unnecessary as it does not think the "who" needs to be specified in regulations. That party considers that 57(1)(b), (c) and (d) are not needed as Cabinet already decided these did not need to be regulated. Further, with regard to 57(1)(c) which relates to how often the code of ethics should be reviewed, this is already covered in 21(3)(b). The decision not to regulate who should be consulted on the code of ethics was made by Cabinet on the basis that an earlier Cabinet decision already directed this, and so putting this in legislation was superfluous [CAB-19-MIN-0687 and SWC-22-MIN-0255 refers]. However, with the Monitor moving to an independent Crown entity, consideration might be given to who should be consulted on the Code of Ethics when this is	We consider it harmless to retain the ability to make Regulations.

Section of Act	Summary issues and suggested amendments raised with MartinJenkins	MartinJenkins comment
	reviewed, as the Monitor won't be subject to Cabinet decisions as an independent Crown entity in the same way it is as a departmental agency, so that could provide some assurances that when the Monitor reviews its Code of Ethics it consults the groups that Cabinet previously specified? One party considers references to publishing on an "Internet site" (section 57(1)(g)) should be reframed to require "publication" which could include mentioning in an annual report.	
60 Section 2 [of the Official Information Act 1982] amended (Interpretation)	When the Oversight Act came into force, the definition of 'official information' was amended to exclude certain classes of information. In particular, section 60(2) of the Oversight Act provides that the definition of 'official information' does not include: • information contained in any correspondence or communication that has taken place between an Ombudsman and any public service agency, Minister of the Crown, or organisation and that relates to— – an agency delivering services or support to children and young people through the Oranga Tamariki system and the performance or potential performance of functions under the Ombudsmen Act 1975, whether or not an investigation is or was notified by an Ombudsman under that Act: – the provision of guidance by an Ombudsman under section 40 of the Oversight Act, other than information that came into existence before the commencement of the process to give such guidance; and • information provided by an Ombudsman to the Independent Monitor of the Oranga Tamariki System (the Monitor) under section 51 of the Oversight Act. These exceptions to the definition of official information enable a confidential channel for engagement and sharing of information between Oranga Tamariki, care or custody providers, the Monitor, and others in the Oranga Tamariki system (for the purposes of the Ombudsman's statutory oversight functions and role).	This is a minor and technical change that could be useful in some circumstances.

Section of Act	Summary issues and suggested amendments raised with MartinJenkins	MartinJenkins comment
	This has the benefit, for example, of enabling the Ombudsman to resolve complaints and concerns from individuals, children and young people more informally and quickly. Previously, the Ombudsman would have needed to initiate a formal investigation under the Ombudsmen Act to trigger the same protections (a formal investigation by the Ombudsman also triggers certain exclusions to the Privacy Act 2020). For consistency, the one party suggested that: • the exception to the definition of official information is extended to include information provided by an Ombudsman to the Children and Young People's Commission (the Commission) under section 33 of the Commission Act; and • the same exceptions (listed above in section 60(2) of the Oversight Act and including information that the Ombudsman shares with the Commission) are made and inserted in section 29 of the Privacy Act 2020.	

MartinJenkins comments on possible amendments to the Children and Young People's Commission Act 2022 raised with MartinJenkins

Section of Act	Summary issues and suggested amendments raised with MartinJenkins	MartinJenkins comment
20 Function relating to promoting interests and well-being of children and young people	It was suggested that the Commission would be more effective and influential if it had an explicit function to legally advocate for children's rights through the judiciary. One party recommended recommend that section 20 be amended to include additional functions to: • *on its own application to a Court or Tribunal, intervene in proceedings on children's issues;* • *on its own application to a Court or Tribunal, issue a statement on particular children's issues;*	Under section 20(j) of the Commission Act, a function of the Commission is to promote the interests and well-being of children and young people by presenting reports to proceedings before any court or tribunal that relate to the Children's Convention or to the rights, interests, or well-being of children generally and presenting reports on such issues to the court or tribunal, at the request of— • the court or tribunal; or • counsel representing any party to the proceedings; or

Section of Act	Summary issues and suggested amendments raised with MartinJenkins	MartinJenkins comment
	• *lodge complaints with the Ombudsman and other complaint mechanisms internal to agencies, for example complaint processes within OT, MSD, MOE, INZ (MBIE) etc.* • *commence proceedings of its own on children's issues, including on a representative basis, in courts of general jurisdiction and specialist tribunals like the Waitangi Tribunal, the Human Rights Review Tribunal and the Immigration Protection Tribunal. This also includes judicial review proceedings and proceedings under the Declaratory Judgments Act 1908;* • *advance individual complaints to the UN through the Optional Protocols, including for UNCROC [the Children's Convention], ICCPR and UNCAT.*	• counsel representing any child who is the subject of the proceedings; or • counsel assisting the court or tribunal. The submission notes: *"...the ability to take individual complaints through Optional Protocols is predicated - in a practical sense - on the ability to also commence legal proceedings. This is because domestic remedies must be exhausted before an international competent body gains jurisdiction, and this necessarily includes first appealing the matter to the Supreme Court. It follows that any entity/individual intending to take an individual complaint to the UN must also have the ability to engage the domestic court system, otherwise that power would be rendered somewhat redundant."* Further: *"The recommendations above are linked to the need for greater actionability and enforceability of children's rights in general. As discussed earlier in this paper, children's rights and interests currently protected in domestic law are not co-extensive with children's rights enshrined in UNCROC [the Children's Convention]. Additionally, it is often only children with significant resources who are able to access their rights in court. Having the Commissioner as legal advocate will help curb these issues."* Parties can take legal cases to uphold the rights of children under New Zealand domestic law. The suggested expansion of the Commission's functions seems to be predicated on a desire to allow the Commission to take complaints to the UN, which in turn is predicated on New Zealand "incorporating" the Children's Convention. We consider this outside our Terms of Reference as set out below.

Section of Act	Summary issues and suggested amendments raised with MartinJenkins	MartinJenkins comment
21 Function relating to promoting and advancing rights of children and young people	One party recommended that recommended that section 21 be amended to provide: • *greater clarity on authority to coordinate, monitor and hold government agencies to account by including powers to:* – convene periodic CMG-DCE meetings, determine the duration and frequency of those meetings, and set the agenda of those meetings, to the extent reasonable for the purposes of the Act and its functions under s 21; and – set publicly releasable reporting and implementation planning requirements for any government agency (including agencies that may be within and without the CMG-DCE participants) regarding the compliance with and implementation of UNCROC [the Children's Convention], and any issues indicated in Concluding Observations and General Comments from the Committee on the Rights of the Child. • *greater clarity on authority to advance the application of children's rights, including under UNCROC [the Children's Convention] by including powers to:* – establish and oversee a national implementation strategy for children's rights, including by reference to indicators based on UNCROC [the Children's Convention], which is to be periodically updated (say every 3 years), and which may include the eventual legislative incorporation of UNCROC [the Children's Convention] and other international instruments like UNDRIP, and which adequately accounts for and complements other national strategies like the Child and Youth Wellbeing Strategy; – undertake periodic global reviews of domestic legislation, policies, national strategies and plans to provide a snapshot of the current State compliance with UNCROC [the Children's Convention] and progress with implementing UNCROC [the Children's Convention], and to utilise CMG-DCE meetings to monitor and facilitate coordination between these strategies; and	In our view, the suggested suite of amendments go beyond the scope of this review. The suggested amendments require: • government to commit to fully "incorporate" the Children's Convention in domestic legislation • government to commit significant resourcing across agencies to enable monitoring, reporting and coordinating across a framework that does not seem to be used currently. There may well be good reasons for government to give greater weight to the Children's Convention in domestic law. There may be good reasons for government to give greater weight to the Children's Convention in domestic law. But in doing so, significant questions would need to be considered, such as: • What is the role for existing monitoring frameworks if the Children's Convention is to be used? • How much additional value would New Zealand get from using a Children's Convention lens given the range of policy work underway across portfolios that is already consistent with the Children's Convention? • What is the cost of establishing an implementation strategy for UNCROC, and the bureaucratic infrastructure to report, plan, monitor, and coordinate implementation across agencies? • What additional resourcing would be required in relevant agencies to support this bureaucratic infrastructure and give effect to any policy changes required by giving greater weight to UNCROC? This issue affects many agencies and portfolios and is thus beyond the scope of our Terms of Reference which focus on the Oversight Act and Commission Act.

Section of Act	Summary issues and suggested amendments raised with MartinJenkins	MartinJenkins comment
	• *conduct inquiries regarding specific Articles under UNCROC [the Children's Convention].* – greater clarity to promote rights-centred capacity within the other oversight entities by including powers to: – advance and promote children's rights-centred approaches in the other oversight entities; and – issue statements as to rights breaches reflected in reports published by the other oversight entities.	
35 Referral of matters	Section 35 of the Commission Act (and section 56 of the Oversight Act) set out how the Commission, Monitor and Ombudsman may consult with, and refer matters to, one another, or other agencies or bodies (in accordance with "no wrong door" approach) in relation to any enquiry, complaint or concern received from an individual. While it is implied that the information must be shared with the receiving agency for the purposes of consultation under section 35 or 56, one party suggested that these sections could be amended for additional clarity. For example, a similar consultation and referral provision is set out in section 21A of the Ombudsmen Act 1975 in relation to an Ombudsman's consultations with the Privacy Commissioner. This section states: *"...for the purposes of any such consultation, an Ombudsman may disclose to the Privacy Commissioner such information as the Ombudsman considers necessary for that purpose."* Similar wording (with appropriate modifications) could be incorporated into section 56 of the Oversight Act and section 35 of the Commission Act.	This is a minor and technical change that could be useful in some circumstances.

MartinJenkins comments on possible amendments to the Oversight of Oranga Tamariki System Regulations 2023 raised with MartinJenkins

Section of Act	Summary issues and suggested amendments raised with MartinJenkins	MartinJenkins comment
5 Notifications under section 55 of Act	It was suggested: • The content of this regulation be moved to primary legislation • The reference to "constable" be removed.	In regard to the former, PCO can advise on the best way to capture the policy intent in drafting. In regard to the latter, we consider it useful for Police to be notified.
6 Matters that must be contained in State of Oranga Tamariki system report	This regulation provides for matters that must be contained in the State of Oranga Tamariki system report, as follows: (1) The State of the Oranga Tamariki system report prepared by the Monitor under section 22 of the Act must, at a minimum, contain a report on the following matters: *(a) the number of children and young people who have received services or support under the Oranga Tamariki Act 1989; and* *(b)compliance with the Oranga Tamariki Act 1989, national care standards regulations, and other regulations made under that Act; and* *(c) the quality and impact of service delivery by Oranga Tamariki or approved providers; and* *(d) the performance of the duties of the chief executive of Oranga Tamariki set out in section 7AA of the Oranga Tamariki Act 1989 and an assessment of outcomes being achieved for Māori children and young people and their whānau in relation to compliance with that section; and* *(e) how the services or support provided under the Oranga Tamariki Act 1989 interface with other systems and Ombudsmen; and* *(f) how the Oranga Tamariki system is supporting disabled children and young people, including (without limitation) a report on the provision of reasonable accommodations to ensure inclusive care of disabled children and young people; and*	In regard to the suggested amendment to clause 6(1)(b), PCO can advise on the best way to capture the policy intent in drafting. In regard to the suggested amendment to clause 6(1)(c), the Regulation pertains to the Oranga Tamariki system and therefore we consider the current wording to be reasonable. Clause 6(1)(d) could be amended to reflect the repeal of section 7AA of the Oranga Tamariki Act 1989. In regard to the suggested amendment to clause 6(1)(e), PCO can advise on the best way to capture the policy intent in drafting. We consider it reasonable to retain clause 6(1)(i) in its current form. We consider it reasonable to retain clause 6(1)(j) in its current form.

Section of Act	Summary issues and suggested amendments raised with MartinJenkins	MartinJenkins comment
	(g) areas of good practice and areas for improvement in relation to services or support provided in the Oranga Tamariki system; and *(h) any complaints received by Oranga Tamariki in relation to the performance of duties of the chief executive of Oranga Tamariki under the Oranga Tamariki Act 1989, including (without limitation) –* *(i) the numbers of complaints received:* *(ii) the procedures followed to resolve the complaints:* *(iii)whether and how those complaints have been resolved; and* *(i) the efficacy of practice by Oranga Tamariki, as required under section 17(1)(c) of the Oranga Tamariki Act 1989, to inform persons who have made a report of concern whether that report has been investigated and whether any further action has been taken; and* *(j)any identified incidents of abuse or neglect found to have occurred in care or custody, and the procedures followed to resolve those incidents.* *(2) The report must contain specific information or results relating to the matters set out in subclause (1)(f) for Māori disabled children and young people.* The following amendments have been suggested: • 6(1)(b) should be removed and replaced with "a report on compliance with the Oranga Tamariki Act 1989 and regulations made under that Act" • 6(1)(c) Police should be added so that the Monitor can look into the quality of service delivery by Oranga Tamariki, Police or approved providers. Suggest that the words "under the Act" are added. • 6(1)(d) Replace regulation 6(1)(d) with: (d) an assessment of outcomes being achieved for Māori children and young people and their whānau. • 6(1)(e) could be better worded. • 6(1)(i) suggest this be removed as it seems an odd example of what might be included.	

Section of Act	Summary issues and suggested amendments raised with MartinJenkins	MartinJenkins comment
	• 6(1)(j) can be removed as it is already contained in the Care Report every year.	
8 Matters that must be contained in annual report for Māori children and young people and their whānau	These regulations include the minimum requirements for the annual report on outcomes for Māori children and young people and their whānau prepared by the Monitor under section 24 of the Act. With the repeal of section 7AA there needs to be amendments to this clause.	PCO can advise on the best way to capture the policy intent in drafting.
9 Time frame for publishing Monitor's final reports and responses to final reports	This regulation provides the timeframe for publishing the Monitor's final reports and responses to final reports: *(a) a final report prepared by the Monitor under section 22, 23, 24, 25, or 26 of the Act; and* *(b) a response to the final report prepared by the chief executive of the relevant agency under section 30 of the Act.* *(2) The Monitor must publish a copy of the final report and the response to the final report no later than 10 working days after the date on which a response falls due under section 30(3) or (4).* One party suggested this information be provided in primary legislation.	PCO can advise on the best way to capture the policy intent in drafting. The timeframes for agencies to respond to the Monitor's reports were initially to be provided in regulations but were moved to primary legislation at Select Committee stage of the Oversight of Oranga Tamariki System and Children and Young People's Commission Bill. The current placement of this timeframe in regulations may be an artefact of earlier drafting.

Appendix 5: Timeline of OPCAT designation changes

2007: Ratification of OPCAT

Designation of NPMs:

- **Ombudsman**: Oversaw prisons, health and disability detention, immigration facilities, youth justice residences, and care and protection residences.
- **NZDF Visting Officers**.[42]
- **IPCA**: Monitored individuals in police custody.
- **Children's Commissioner**: Focused on youth justice and care residences, sharing responsibilities with the Ombudsman. **Rationale**: The joint designation ensured that the Ombudsman could act as a "last resort"[43] to address any gaps in the Children's Commissioner's powers.
- **Human Rights Commission**: central national preventive mechanism.

March 2018: Updates to Monitoring Jurisdictions

Clarifications and Additions:

- **Aged Care Facilities**: Monitoring responsibilities clarified to fall under the Ombudsman. **Rationale:** Previous gap under OPCAT.
- **Court Facilities**: Jurisdiction for monitoring court cells assigned to both the IPCA and the Ombudsman. **Rationale**: Court cells are managed by the Ministry of Justice, but detainees are typically in police or corrections custody.
- **Persons in Transit**: Added to the Ombudsman's jurisdiction to cover individuals not in traditional prison settings. **Rationale**: This change addressed a potential oversight for prisoners in transit.
- **Civil Detention Facilities**: Inclusion of residences under the Public Safety Act 2015 in the Ombudsman's jurisdiction. **Rationale**: These facilities are civil detention centres, necessitating specific monitoring under OPCAT.

April 2018: Reallocation of Responsibilities

Changes in Oversight:

- **Youth Justice and Care Residences**: Removed from the Ombudsman's jurisdiction, transferring full responsibility to the Children's Commissioner. **Rationale:** Greater alignment to the Children's Commissioners capabilities and alignment to role.

[42] Note: this is effectively the same role as the current 'The Inspector of Service Penal Establishments' but the title has been updated.

[43] Administrative and Legislative Change Required to Implement the Optional Protocol to the Convention Against Torture Cabinet Paper, MoJ< 30 September 2004, page 35.

- **Youth Health and Disability Facilities**: Added to the Children's Commissioner's responsibilities, while the Ombudsman retained oversight of all health and disability facilities. **Rationale:** Greater alignment to the Children's Commissioners capabilities and alignment to role.
- **Youth Units in Prisons**: Added to the Children's Commissioner's jurisdiction. **Rational:** Greater alignment to the Children's Commissioners capabilities and alignment to role.

2020: Extension of Mana Mokopuna OPCAT Designation

Inclusion of New Facilities:

- **Community-Based Remand Care Homes**: The designation was extended to include these homes and health and disability places specifically for children and young people, such as youth forensic units and child and adolescent mental health units under Mana Mokopuna's designation.

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