



# Cabinet

## Minute of Decision

---

*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

---

### Paper One - Arrangements for the Monitor of the Oranga Tamariki System

**Portfolio**                      **Social Development and Employment**

On 10 May 2021, following reference from the Cabinet Social Wellbeing Committee, Cabinet:

#### Background

- 1        **noted** that in March 2019, Cabinet agreed:
  - 1.1      that the system of independent oversight for the Oranga Tamariki Act 1989 and children's issues should be strengthened in three core areas;
  - 1.2      to new primary legislation to bring together the oversight functions;
  - 1.3      that the Ministry of Social Development (MSD) be appointed the independent monitor of Oranga Tamariki from 1 July 2019, with the intent that the function be transferred to the Office of the Children's Commissioner (OCC) once a robust monitoring function is established and a new legislative framework is in place;

[CAB-19-MIN-0113]
- 2        **noted** the companion paper entitled *Paper Two – Oversight of the Oranga Tamariki System and Children and Young People's Commission Bill: Further Policy Decisions* attached under SWC-21-SUB-0059;

#### The role of the Children's Commissioner

- 3        **noted** that further advice from officials highlights that, due to the policy objectives and specific context surrounding advocacy and monitoring within the Oranga Tamariki system, the independent advocacy functions and the monitoring functions should not be combined in one organisation;
- 4        **rescinded** the decision referred to in paragraph 1.3 above to transfer the independent monitoring function to the Office of the Children's Commissioner;

**Balancing trust and confidence of Ministers and the public, and the operation of monitoring**

- 5 **agreed** that a Statutory Officer, with responsibility for the functions, powers, and duties of the Monitor as set out in the Oversight of the Oranga Tamariki System and Children and Young People's Commission Bill (the Bill), lead a new departmental agency hosted by the Education Review Office (ERO);
- 6 **agreed** that a new departmental agency for monitoring be established under the Public Service Act 2020;
- 7 **authorised** the Minister for the Public Service and Minister for Social Development and Employment to make decisions about the name of the departmental agency, commencement date and strategic framework for the departmental agency, **subject to** further advice from officials on the funding and establishment of the departmental agency;
- 8 **invited** the Minister for the Public Service to instruct the Parliamentary Counsel Office to draft Orders in Council to add the new departmental agency agreed in paragraph 6 above to Part 2 of Schedule 2 of the Public Service Act 2020 and Part 1A of Schedule 1 of the Ombudsmen Act 1975 and to provide for transitional matters connected with the transfer of functions, **subject to** decisions in paragraph 7 above;
- 9 **agreed** that the Bill provide that the government may not stop or prevent the Statutory Officer from undertaking a particular monitoring activity, where the Statutory Officer considers the particular activity is necessary to enable them to discharge their functions or duties or exercise their powers under the Bill;
- 10 **agreed** that the Bill will provide that the above provision would not constrain the Minister responsible for monitoring from directing the Statutory Officer to commence or undertake additional monitoring activities that are within scope of their functions, duties, or powers;
- 11 **noted** the expectation that a Ministerial direction would be undertaken in discussion with the Statutory Officer;
- 12 **noted** that in December 2019, Cabinet agreed that the Prime Minister, Minister responsible for Monitoring, or Minister responsible for Oranga Tamariki may request reports from the Monitor on specific matters of interest or concern within the Oranga Tamariki system, but did not consider whether a request must be actioned [CAB-19-MIN-0687];
- 13 **agreed** that the Statutory Officer must give effect to a request for a review made by the Prime Minister, Minister responsible for Monitoring or Minister responsible for Oranga Tamariki;
- 14 **agreed** that, in making a request for a review, the government may not require the Statutory Officer to stop doing any existing monitoring activities or prevent any planned monitoring activities, in order to prioritise the request;
- 15 **agreed** that the Bill require the Statutory Officer to establish a Māori Advisory Group and should collaborate with them to:
- 15.1 develop monitoring priorities, work programmes and monitoring approaches;
- 15.2 support meaningful and effective engagement with Māori;
- 16 **agreed** that the Bill require that the Statutory Officer must have regard to the views of the Māori Advisory Group;

**Transition and technical legislative decisions for assigning statutory roles**

17 **agreed** to commence work to establish a new departmental agency to be hosted by ERO, including any necessary provisions in the Bill;

18 **noted** that the transfer of the interim monitoring function from MSD to its permanent location will occur by the end of 2022, once the legislation has passed;

19 s 9(2)(f)(iv)

**Next steps**

20 **noted** that the Bill seeks a category 4 priority on the 2021 Legislation Programme (to be referred to a Select Committee in 2021) and that the Minister intends to introduce the Bill to the House in mid-2021;

21 s 9(2)(f)(iv)



Michael Webster  
Secretary of the Cabinet

*Secretary's Note: This minute replaces SWC-21-MIN-0057. Cabinet agreed to the rescinding recommendation in paragraph 4.*