



# Cabinet

## Minute of Decision

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### Strengthening Independent Oversight of the Oranga Tamariki System and Children's Issues

**Portfolio**                      **Social Development**

On 25 March 2019, following reference from the Cabinet Social Wellbeing Committee (SWC), Cabinet:

#### Background

- 1        **noted** that recent and ongoing reforms of the Oranga Tamariki system and new government priorities (including the reduction of child poverty and the child wellbeing strategy), have prompted the need to consider strengthening independent oversight arrangements for the Oranga Tamariki system and children's issues;
  
- 2        **noted** that:
  - 2.1      in August 2017, the previous government agreed that a review of independent monitoring, complaints review, investigation and advocacy functions for the new vulnerable children's system be led by the Ministry of Social Development (MSD), using an independent reviewer, with support from the State Services Commission (SSC) [SOC-17-MIN-0115];
  
  - 2.2      in March 2018, SWC agreed to a targeted consultation process to test the preliminary work done to identify the overlaps and gaps in current independent oversight arrangements for the Oranga Tamariki system and children's issues, and potential options to improve the independent oversight model, and invited the Minister for Social Development to seek final policy decisions from SWC following the consultation [SWC-18-MIN-0025];
  
- 3        **noted** that:
  - 3.1      MSD, with support from the SSC, has reviewed how these arrangements might be strengthened to ensure that the government has the level of independent oversight of the operation of the Oranga Tamariki Act 1989 (the Act) and children's issues that is now required (the Review);
  
  - 3.2      the Review drew on the findings of stakeholder consultation carried out in mid-2018, together with a range of additional sources;

## Strengthening the oversight system

- 4 **agreed** that the system of independent oversight for the Act and children's issues should be strengthened in three core areas, specifically:
  - 4.1 system-level advocacy for all New Zealand children and young people;
  - 4.2 oversight and investigation of complaints of matters related to application of the Act and/or children in the care or custody of the State;
  - 4.3 independent monitoring and assurance of the operations and obligations delivered under the Act and associated regulations;
- 5 **agreed** that new primary legislation – provisionally titled the *Independent Oversight (Oranga Tamariki and Children's Issues) Bill* (the Bill) – bring together in one place the respective roles, responsibilities and powers of oversight bodies assigned the three primary oversight functions, with regulations to be made under the Bill as appropriate;
- 6 **agreed** that the three oversight functions apply to children and young people under 25 years, as appropriate;

## The system-level advocacy function

- 7 **agreed** that the role of the system-level advocate for children and young people be continued as currently defined in the Children's Commissioner Act 2003;
- 8 **agreed** that the new Bill provide an enhanced focus on the areas of advocacy as set out in paragraphs 46-48 of the paper under CAB-19-SUB-0113;

## The independent monitoring and assurance function

- 9 **noted** that the depth and breadth of independent monitoring that will be required for Oranga Tamariki's new operating model will be a major new undertaking, particularly with the independent monitoring requirements set out in the new Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018 (NCS Regulations);
- 10 **agreed in principle**, s 9(2)(f)(iv), to the role of the independent monitor as set out at paragraphs 50-52 of the paper under [CAB-19-SUB-0113];
- 11 **agreed** that MSD be appointed the independent monitor from 1 July 2019 to establish the monitoring function, with the intent that it is 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;
- 12 **noted** that MSD's role will be to design and establish the framework for the independent monitoring of compliance with the NCS Regulations, information that is disclosed on abuse or neglect in state care and how Oranga Tamariki is responding (NCS Regulations 69 and 85), and establish the broader monitoring frameworks and conduct full monitoring for a period from December 2020 (or earlier if possible) to refine the operation of the function before it is transferred;

- 13 **agreed** that MSD will work with Te Puni Kōkiri and Te Arawhiti, in line with the Māori Crown relations Engagement Framework and Guidelines, to:
- 13.1 ensure appropriate Māori and iwi engagement during the establishment of the monitoring function, and to support improvement of MSD's te ao Māori capability;
  - 13.2 support official's advice on the transfer of the function;
- 14 **noted** that MSD and relevant agencies, including Oranga Tamariki, the Ombudsman, the OCC and the SSC will work together to effectively progress the establishment and transfer of the monitoring function;
- 15 **agreed** that officials report regularly to the Minister for Social Development and other key Ministers, including the Minister of Māori Development and the Minister for Whānau Ora, on the progress of the establishment of the monitoring function, including a substantive update in mid-2020;
- 16 **agreed** that in principle the intention is that the monitoring function will be transferred to the OCC;
- 17 **agreed** that officials will report to the Minister for Social Development and other key Ministers, including the Minister of Māori Development, the Minister for Whānau Ora, and the Minister for State Services, in March 2021 on the plan, timeframes, and readiness for the transfer of the monitoring function;
- 18 **noted** that transferring the monitoring function to the OCC along with existing advocacy and Optional Protocol on the Convention Against Torture (OPCAT) monitoring functions would fundamentally change the organisational structure and culture of the OCC;
- 19 **agreed** that the Bill provide for appropriate governance for a monitor, and for an entity undertaking oversight functions that may be in conflict;
- 20 **noted** that the decision in paragraph 19 above will ensure strengthened governance for the OCC, should the monitoring function transfer to it post-establishment;
- 21 **noted** that, from time-to-time, it would be appropriate for the responsible Minister to provide direction in respect of matters that relate to monitoring and assurance functions;
- 22 **agreed** that the Bill provide for the responsible Minister to provide direction in respect of monitoring matters, but not in respect of systemic advocacy;
- 23 **agreed** that, to allow sufficient time to progress wider legislative change and to enable MSD to develop, design and build the monitoring function alongside the phased roll-out of Oranga Tamariki's new operating model, the new independent monitoring function should be phased in, with:
- 23.1 MSD developing the NCS assessment framework in consultation with Oranga Tamariki, the Children's Commissioner, Te Puni Kōkiri, Te Arawhiti and others from 1 July 2019;
  - 23.2 MSD monitoring information that is disclosed on abuse or neglect in state care and how Oranga Tamariki is responding (NCS Regulations 69 and 85) from 1 July 2019;
  - 23.3 full monitoring of all NCS Regulations to commence on or before 31 December 2020;

**The independent complaints oversight and investigations function**

- 24 **noted** that within the care and protection and youth justice system children, young people and their whānau are often reluctant to raise concerns, complaints can also take a long time to resolve, and it can be challenging to find support to resolve issues that span several departments for children with complex needs;
- 25 **noted** that the Children's Commissioner is currently assigned the independent complaints function, but the operation of this function has been severely constrained by a lack of resourcing, which has meant that there is currently no significant oversight of complaints made by children, young people or those who care for them;
- 26 **agreed** to the role of the independent complaints oversight and investigations function as set out in paragraph 85 of the paper under CAB-19-SUB-0113;
- 27 **agreed** to recommend to the Officers of Parliament Committee (OPC) that the Ombudsman be appointed to carry out the complaints oversight and investigation function on or by 31 December 2020;
- 28 **noted** that the Ombudsman's existing functions, powers under the Ombudsmen Act 1975 and the operational infrastructure and capability of the Office of the Ombudsman makes the Ombudsman well placed to take up the strengthened complaints and investigation oversight function;
- 29 **noted** that the Ombudsman will inform the Speaker of the decision referred to in paragraph 27 above and the OPC will consider Cabinet's recommendation;
- 30 **noted** that the work underway on complaints relating to the education system as part of the review of Tomorrow's Schools, may enable future opportunities to further align and refine education complaints pathways for children and young people in the custody of the State;

**Legislative amendments required to bring the proposals into effect**

- 31 **noted** that the legislative proposals in the paper under CAB-19-SUB-0113 will be included in the Independent Oversight (Oranga Tamariki System and Children's Issues) Bill (the Bill), which holds a category 2 priority on the 2019 Legislative Programme (must be passed in 2019);
- 32 **agreed** that the category priority of the Bill be amended to a category 4 (to be referred to a select committee in 2019);
- 33 **agreed** that the Bill should reflect an intention to provide a strengthened system of independent oversight of the Act, and advocacy for all children;
- 34 **agreed** that the Bill reflect that bodies responsible for oversight should be guided by a set of core principles, as set out in paragraph 41 of the paper under CAB-19-SUB-0113;
- 35 **agreed** that the Bill explicitly recognise the Crown's relationship with Māori, and the need for the Crown to be more responsive to the high rate of Māori children in the Oranga Tamariki system, through the provision of specific duties on parties who are designated oversight roles in the Bill, as specified in paragraph 43 of the paper under [CAB-19-SUB-0113];

- 36 **agreed** that the Bill:
- 36.1 repeal the Children's Commissioner Act 2003 and continue the provision of dedicated arrangements for the oversight of the Act and children's issues including existing advocacy functions and powers, which include giving effect in New Zealand to the United Nations Convention on the Rights of the Child;
  - 36.2 provide new governance arrangements to support the entity undertaking monitoring arrangements, as intended;
  - 36.3 subject to OPC approval, provide for the Ombudsman to undertake complaints and investigations functions and provide additional powers required to exercise those functions, over and above those provided in the Ombudsmen Act 1975;
  - 36.4 to continue the appointment, and make future appointments, of an independent monitor and necessary functions and powers to support monitoring and assurance;
- 37 **agreed** that any existing provisions relevant to the purpose, intent, administrative arrangements, functions and powers described for each function that are contained in the Oranga Tamariki Act 1989, the Children's Commissioner Act 2003, the Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018 (the NCS Regulations), the Oranga Tamariki (Residential Care) Regulations 1996, and the Vulnerable Children's Act 2014 be transferred to the new Bill, with necessary modifications;
- 38 **agreed** that the Bill should refer to necessary functions and powers in the Ombudsmen Act 1975, to enable the Ombudsman to undertake independent complaints oversight and investigations;
- 39 **noted** that MSD will consult with Oranga Tamariki, the Ministry of Justice, Te Puni Kōkiri, Te Arawhiti, the Office of the Ombudsman, and the OCC on the development of the legislative proposals in line with Cabinet's decisions on the paper under CAB-19-SUB-0113, which will include releasing the draft paper for the Cabinet Legislation Committee and the draft legislation to them;
- 40 **noted** that the OCC will also be consulted on the proposed oversight model, legislation and development of the monitoring function;
- 41 **agreed** that common duties and requirements for all oversight bodies, detailed in Table 1 (on pages 21-22) of the paper under CAB-19-SUB-0113, be included in the Bill subject to changes considered when designing the Bill in regards to whether or not they are combined for all functions or specified for separate functions;
- 42 **agreed** that the independent monitor have the duties and requirements detailed in Table 2 (on pages 22-24) of the paper under CAB-19-SUB-0113 and that these be included in the Bill or, where appropriate, in regulations made under the Bill;
- 43 **agreed** that the complaints oversight body also have the duties and requirements detailed in Table 3 (on pages 24-25) of the paper under CAB-19-SUB-0113, that are not allowed for in any of the above Acts or regulations, and that these be included in the Bill;
- 44 **noted** that amendments to the NCS Regulations are required in order to align the Regulations with the implementation of the monitoring and assurance function outlined above;

- 45 **agreed** that the NCS Regulations be amended as set out in Table 4 (on pages 27-28) of the paper under CAB-19-SUB-0113 prior to 1 July 2019, in order to:
- 45.1 change the commencement provisions to enable MSD sufficient time to develop the monitoring function, which will allow the assessment framework for the NCS to be developed over 2019/20 and the monitoring function to commence on or before 31 December 2020;
  - 45.2 clarify the scope of the independent monitoring function under the NCS;
- 46 **noted** that the policy on access to information held in the Oranga Tamariki system and use of that information needs to be considered more fully alongside policy and following a Privacy Impact Assessment to ensure what is intended and required operationally is set out appropriately in the legislative framework;
- 47 **noted** that the policy on powers of entry needs to be considered more fully alongside policy following a Privacy Impact Assessment to ensure what is intended and required operationally is set out appropriately in the legislative framework;
- 48 **directed** officials to report to the Minister for Children and Minister for Social Development on the issues of access to information and powers of entry;
- 49 **authorised** the Minister for Social Development, in consultation with other Ministers as appropriate, to make decisions on access to information and powers of entry to enable the progress of legislative drafting in order to finalise the Bill;
- 50 **invited** the Minister for Social Development to issue drafting instructions to the Parliamentary Counsel Office (PCO) to draft:
- 50.1 the Bill and associated regulations to be made under the Bill;
  - 50.2 changes to the NCS Regulations required prior to 1 July 2019;
- 51 **agreed** that consequential amendments will be required to the Act and associated regulations, the Ombudsmen Act 1975, and other legislation such as the Privacy Act 1993 may also require consequential amendments;
- 52 **authorised** the Minister for Social Development, in consultation with other Ministers as appropriate, to make any decisions on minor and technical matters required to finalise the Bill;



s 9(2)(f)(iv)



### **Future review of the new independent oversight arrangements**

- 66 **noted** that, given the scale of change proposed, the potential for Oranga Tamariki's internal monitoring and complaints systems to mature and develop, and the potential findings of the Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions, it would be valuable to provide for a review of the new independent oversight arrangements;
- 67 **agreed** that there be a statutory requirement to review of the effectiveness of the new independent oversight arrangements in 2023;

**Publicity**

68 **noted** that a high-level public announcement will be made following decisions on the functions have been made by Cabinet and the OPC.

Michael Webster  
Secretary of the Cabinet

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**Hard-copy distribution:**

Prime Minister  
Deputy Prime Minister  
Minister for Social Development  
Minister for Children