



Report

Date: 3 August 2021

Security Level: IN CONFIDENCE

To: Hon Carmel Sepuloni, Minister for Social Development and Employment

Children's Commissioner: Revised Accountability Documents

Purpose of the report


1. This report provides you with advice on the final versions of the Children's Commissioner's: 2021-2024 Statement of Intent (SoI), 2021/2022 Statement of Performance Expectations (SPE), and 2021/2022 Memorandum of Understanding (MoU). It recommends that you sign the MoU, but that you delay presentation of the SoI and SPE until later this year.

Recommended actions

2. It is recommended that you:
 - a) **note** that the Children's Commissioner has provided you with final versions of its 2021-2024 SoI, 2021/2022 SPE and proposed 2021/2022 MoU
 - b) **note** that Children's Commissioner's 2021-2024 SoI provides a sound strategic framework within which the entity can operate, for the time being at least (noting that an updated version will probably need to be produced in 2022/2023)
 - c) **agree** that no further action is taken regarding the 2021-2024 SoI, other than asking that it published on the Children's Commissioner's website and presented to Parliament later this year **Agree / Disagree**
 - d) **note** that the 2021/2022 SPE has been refined and updated to more accurately reflect the funding that will be available to the Children's Commissioner in 2021/2022, and is a good starting point that can be updated and refined as key aspects of the transition plan are approved
 - e) **agree** that the Children's Commissioner should publish the 2021/2022 SPE on its website, but that it and the 2021-2024 SoI are not presented to Parliament until later in the year **Agree / Disagree**
 - f) **note** that the Children's Commissioner has also provided you with a proposed version of the 2021/2022 MoU setting out how it is proposed the entity will work with you over the coming year

g) **sign** the attached MoU and letter to the Children's Commissioner advising him of your decisions regarding these documents.

Agree / Disagree



Mark Frew
General Manager
Organisational Planning, Performance and Governance

3/8/21

Date



Hon Carmel Sepuloni
Minister for Social Development and Employment

8/8/21

Date

RELEASED UNDER THE OFFICIAL INFORMATION ACT

Background

3. On 20 May 2021 we provided you with advice on draft versions of the Social Development Crown Entities' accountability documents [REP/21/5/519 refers]. In that report we noted that:
 - the Children's Commissioner's 2021-2024 SoI was statutorily compliant and provided a sound framework within which the Office of the Children's Commissioner (OCC) can operate (at least until the new Independent Children's Monitor process is in place and a new Commissioner is appointed)
 - the Children's Commissioner's 2021/2022 SPE was also statutorily compliant, but further work would be required to fully reflect decisions made as part of Budget 2021 (especially the need to develop a transition plan before extra funding could be allocated)
 - it is highly likely the "final version" of the SPE will need to be amended after 1 July 2021, and that its presentation to Parliament will need to be deferred until later in the year
4. You wrote to the Children's Commissioner on 24 May 2021 confirming this assessment and asking that all parties take a pragmatic approach toward the finalisation of these documents.
5. The Children's Commissioner has written to you agreeing to this approach and providing you with revised versions of the entity's 2021-2024 SoI and 2021/2022 SPE. Also attached was a proposed 2021/2022 MoU between you and the entity.

Comment

Revised 2021-2024 SoI

6. This document is largely the same as the document sent to you in May 2021. It is statutorily compliant and references: changes associated with the transition to the new proposed Independent Children's Monitor (ICM); associated changes to the Children's Commissioner's legislation; and the expected appointment of a new Commissioner later this year.
7. We believe that the attached document provides a sound strategic framework within which the OCC can operate, for the time being at least.
8. Looking ahead, it is likely that either you, or the new Children's Commissioner (and any new board members assuming proposed governance changes are made), will wish to produce an updated document once all the changes outlined above have been worked through¹. We expect this to happen sometime in 2022/2023. This means that the attached document is only expected to apply for the next two to three years, as opposed to the usual four-year minimum.
9. In the circumstances we recommend that no further action is taken regarding the attached document, other than asking the Children's Commissioner to publish it on its website as required by legislation, if it has not already done so.
10. While the attached document could be presented to Parliament now, we recommend that you use the discretion available under the Crown Entities Act 2004 and defer doing so until the 2021/2022 SPE is also presented (see below). In our opinion it is preferable to present an entity's SoI and SPE at the same time.

Revised 2021/2022 SPE

11. This document is also very similar to the document sent to you in May 2021. It has however, been refined and updated to more accurately reflect the funding that will be available to the OCC in 2021/2022. In particular, the extra \$1.2 million provided to the Ministry of Social Development as part of Budget 2021 is no longer included in the OCC's own appropriation, but instead is treated as Other Revenue.

¹ Section 148 of the Crown Entities Act 2004 specifically provides for this to happen where changes arise as a result of legislative changes and/or changes in an entity's operating environment. In addition, Section 139A also allows the responsible Minister to request a new SoI at any time they consider it necessary or desirable.

12. While this treatment of the additional funding may be premature (it is up to you and the Minister of Finance to jointly decide whether this funding can be transferred to the OCC or not), it is not an unreasonable starting point for planning purposes, pending the development of a more detailed transition plan which will determine how this funding is treated.
13. This transition plan, once approved, will almost certainly have an impact on the way the OCC operates (especially in the second half of the year when a new Commissioner has been appointed and there is more certainty about the changes associated with ICM). The transition plan is also likely to have an impact on the OCC's organisational structure and the precise mix of output deliverables produced during 2021/2022.
14. In the interim the attached document provides a good starting point, that can be updated and refined as key aspects of the transition plan are approved. For this reason, we recommend that the attached document is not presented to Parliament until as late as possible. This depends upon when the OCC's 2020/2021 Annual Report is presented (it is unlikely that this will be before December 2021).
15. Again, the Crown Entities Act requires that the attached document is published on the OCC's website as soon as possible, at least until it is replaced by another more up-to-date version.

2021/2022 Memorandum of Understanding (MoU)

16. While there is no requirement for Crown entities to produce a MoU, they are a useful way to set out how the responsible Minister and the entity will work with each other over the coming year.
17. In particular, MoUs are a way to document:
 - details of how the entity will keep the responsible Minister informed of progress to deliver its outputs, along with any other performance-related issues
 - details of how the entity will receive its Crown funding
 - any additional matters on which Ministers and entities may agree each year relating to the delivery of outputs specified in the entity's SPE.
18. The attached MoU is very similar to that produced in previous years. It has been updated, however, to formally acknowledge that *up to \$1.2 million may be paid* to the OCC subject to the development of an agreed transition plan as set out above. The MoU also contains an acknowledgement from the Children's Commissioner that the OCC will continue to support the transition to the new ICM. We recommend that you sign the attached MoU.

Next steps

19. A letter to the Children's Commissioner advising him of your decisions regarding these documents is attached, should you agree.
20. Given recent incidents where the Children's Commissioner gave your Office relatively short notice of his intention to release some sensitive documents under the Official Information Act 1982, we have included in this letter a brief statement reminding him of the undertaking contained in the MoU to provide "sufficient prior notice" when releasing these types of documents.

File ref: 0000 REP/21/7/803

Author: Out of scope Principal Advisor, Crown Entities

Responsible manager: (Mark Frew, General Manager, Organisational Planning, Performance and Governance

Hon Carmel Sepuloni

MP for Kelston

Minister for Social Development and Employment

Minister for ACC

Minister for Arts, Culture and Heritage

Minister for Disability Issues



Judge Andrew Becroft
Children's Commissioner
PO Box 5610
Lambton Quay
WELLINGTON 6149

Tēnā koe Judge Becroft

Children's Commissioner: Revised Accountability Documents

Thank you for providing me with revised versions of your 2021-2024 Statement of Intent and your 2021/2022 Statement of Performance Expectations.

In keeping with the pragmatic approach outlined in my letter to you dated 20 May 2021, I have no further comment to make regarding your 2021-2024 Statement of Intent. If you have not already done so, could you please ensure that it is published on your website. The document should also be prepared for presentation to Parliament.

Regarding your 2021/2022 Statement of Performance Expectations, I note that this has been amended to better reflect the decisions made as part of Budget 2021.

As you know, it is likely, however, that further changes will be required as key aspects of the transition plan for your Office are approved. In recognition of this I have decided to defer presentation of this document to Parliament until later in the year, most likely sometime in early December. It makes sense from a practical point of view that your 2021-2024 Statement of Intent is also presented at that time. In the interim, if you have not already done so, could you please ensure that it is published on your website.

I have also signed your 2021/2022 Memorandum of Understanding (copy attached for your records). This will allow you to receive your existing funding and as well as continuing to provide a basis for how we propose to work together over the coming year. I note that on page 4 of the MoU you state that your Office will continue to operate a "no surprises" approach, and this includes an undertaking to provide "sufficient prior notice" when releasing material, especially to the media.

Ngā mihi nui

Hon Carmel Sepuloni
Minister for Social Development and Employment