

Hon Carmel Sepuloni

MP for Kelston

Minister for AOC

Minister for Arts, Culture and Heritage

Minister for Social Development and Employment



24 AUG 2022

Dear

On 17 June 2022, you emailed my office requesting, under the Official Information Act 1982, the following information:

- *Any and all advice received by the minister regarding the Oversight of Oranga Tamariki System and Children and Young People's Commission Bill.*

On 28 June 2022, you were advised by my office that your request was too broad in scope as it covered a significant timeframe, and a lot of information may fall within scope. On the same day, you rescoped your request to:

- *All formal advice received by Minister Sepuloni regarding the Oversight of Oranga Tamariki System and Children and Young People's Commission Bill in the last six months.*

Please find attached the following documents released to you under the Act:

- REP/22/2/110 - *Strengthening Oversight of the Oranga Tamariki System Programme - monthly progress report - January 2022* – dated 24 February 2022
- REP/22/3/182 - *Strengthening Oversight of the Oranga Tamariki System Programme - monthly progress report - February 2022* – dated 24 March 2022
- REP/22/3/232 - *Cover report: Departmental Report - Oversight of Oranga Tamariki System and Children and Young People's Commission Bill Sepuloni* – dated 23 March 2022
- REP/22/4/294 - *Legislative independence provisions: Independent Children's Monitor* – dated 6 April 2022
- REP/22/4/337 - *Strengthening Oversight of the Oranga Tamariki System Programme - monthly progress report - March 2022* – dated 28 April 2022
- REP/22/4/338 - *Oversight Bill: Further context on the role of the Board and consultation with children and young people* – dated 27 April 2022
- REP/22/5/407 - *Aide-Memoire: Meeting with VOYCE Whakarongo Mai* – dated 11 May 2022
- REP/22/5/408 - *Aide-Memoire: Meeting with Caring Families* – dated 11 May 2022
- REP/22/5/409 - *Aide-Memoire: Meeting with Save the Children* – dated 11 May 2022
- REP/22/5/410 - *Aide-Memoire: Meeting with Amnesty International* – dated 11 May 2022

- REP/22/5/411 - *Aide-Memoire: Meeting with the Children's Rights Alliance* – dated 11 May 2022
- REP/22/5/412 - *Aide-Memoire: Meeting with the Chief Ombudsman* – dated 11 May 2022
- REP/22/5/413 - *Aide-Memoire: Meeting with Social Service Providers Aotearoa* – dated 11 May 2022
- REP/22/5/415 - *Aide-Memoire: Meeting with the Disability Rights Commissioner* – dated 11 May 2022
- REP/22/5/457 - *Strengthening Oversight of the Oranga Tamariki System Programme - monthly progress report - April 2022* – dated 26 May 2022
- REP/22/6/554 - *Strengthening Oversight of the Oranga Tamariki System Programme - monthly progress report - May 2022* – dated 23 June 2022.

In regard to REP/22/5/409 - *Aide-Memoire: Meeting with Save the Children* – dated 11 May 2022, this meeting was rescheduled and went ahead on 3 June 2022.

In regard to REP/22/5/412 - *Aide-Memoire: Meeting with the Chief Ombudsman* – dated 11 May 2022, this meeting was rescheduled and went ahead on 2 June 2022.

You will note that the information regarding some individuals is withheld under section 9(2)(a) of the Act in order to protect the privacy of natural persons. The need to protect the privacy of these individuals outweighs any public interest in this information.

Some information is also withheld under section 9(2)(f)(iv) of the Act to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials. The release of this information is likely to prejudice the ability of government to consider advice and the wider public interest of effective government would not be served.

Some of the information in these documents is also marked as 'Out of Scope' as this is not related to the Oversight of Oranga Tamariki System and Young People's Commission Bill.

Please note that for the monthly progress reports, this data was accurate at the point of drafting; however, progress has been made in all workstreams discussed within these reports, and therefore some information may now be outdated. Additionally, all working arrangements between the Independent Children's Monitor and the Education Review Office are in-principal and may be subject to change.

One document in scope of your request, REP/22/2/038 - *Initial briefing to select committee - Oversight of Oranga Tamariki System and Children and Young People's Commission Bill* – dated 2 February 2022, is already available in the public domain on the Parliament website at the following link: www.parliament.nz/resource/en-NZ/53SCSS_ADV_116701_SS3087/a0512f87d897e89dda5486c30904a78b0c25778c.

One document in scope of your request, REP/22/3/249 – *Aide memoire: Meeting with Minister Tinetti* – dated 25 March 2022, is withheld in full under section 9(2)(g)(i) of the Act to protect the effective conduct of public affairs through the free and frank expression of opinions. I believe the greater public interest is in the ability of individuals to express opinions in the course of their duty.

If you are not satisfied with this response, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.nz or 0800 802 602.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'C Sepuloni', with a large loop at the start and a long horizontal stroke extending to the right.

Hon Carmel Sepuloni
Minister for Social Development and Employment



Report

Date: 6 April 2022

**Security
Level:**

IN CONFIDENCE

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

Legislative provisions for independence of Independent Monitor of Oranga Tamariki system

Purpose of the report

- 1 This report provides advice on specific independence provisions for the Oversight of Oranga Tamariki System and Children and Young People's Commission Bill.

Recommended actions

It is recommended that you:

- 1 **Indicate** your preferred option for legislative provisions for independence of the Independent Children's Monitor:

- a. Option 1 – clarify the existing legislative independence provisions

YES / ☒ NO

OR

- b. Option 2 – include an explicit independence provision related to specific functions of the Monitor (recommended)

☒ YES / NO

OR

- c. Option 3 – include a broad independence provision for the Monitor


YES / ☒ NO

AND

- d. Option 4 – clarify that the Monitor must be independent of Oranga Tamariki

☒ YES / NO

- 2 **Note** MSD recommends both options 2 and 4 be progressed. YES / NO
- 3 **Note** the Public Service Commission considers additional legislative provisions are not necessary to safeguard the Monitor's independence but considers that option 1 most closely reflects the existing policy intent for the Monitor. YES / NO
- 4 **Indicate** if you would like to discuss the contents of this briefing with officials. YES / NO



Melissa Cathro
Policy Manager
Child and Youth Policy

6/04/2022

Date



Hon Carmel Sepuloni
Minister for Social Development and
Employment

6 / 4 / 22

Date

Background

- 2 You have requested specific advice on how the legislative provisions for independence of the Independent Monitor of Oranga Tamariki System (the Monitor) could be strengthened in the Oversight of Oranga Tamariki System and Children and Young People's Commission Bill (the Bill).
- 3 The Bill currently includes what can be considered an 'independence provision', although, the word 'independence' is not specifically used. As currently drafted, the Bill explicitly states that Ministers must not direct the Monitor to stop carrying out an activity, or prevent the Monitor from carrying out an activity, that the Monitor considers is necessary.
- 4 MSD had initially explored a more explicit independence provision when drafting the Bill, similar to the independence provided to the Chief Archivist under the Public Records Act 2005¹, as there was a clear recognition that the Monitor needs to be perceived to be independent in order to support public trust and transparency. However, the Public Service Commission was not supportive of including an explicit legislative independence provision of this nature as they were concerned it was unnecessary from a machinery of government perspective, and may create unintended consequences, such as limiting Ministers' authority over a departmental agency. In balancing these views, the current clause, as outlined in paragraph 3, was included in the Bill.
- 5 Submissions at the select committee stage were largely opposed to the Bill. A lack of independence of the Monitor was cited as one of the key reasons for not supporting the Bill. Some submitters recommended the inclusion of a specific legislative independence provision in the Bill. However, the majority recommended the Monitor be established as a Crown entity to ensure independence from Ministers.
- 6 Cabinet decided the Monitor would be a departmental agency hosted by the Education Review Office (ERO). Advice on the home of the Monitor noted the potential perception issues regarding the perception of Ministerial influence [REP/20/11/1158 and REP/21/2/105 refers].

The Bill already includes provisions for independence of the Monitor

- 7 The Bill includes a number of provisions which strengthen its independence. The use of a statutory officer model, alongside the Monitor's statutory reporting requirements², power to require information, powers of entry and limit on Ministers' ability to direct the Monitor, collectively provide the Monitor

¹ Section 12 of the Public Records Act 2005

² The Monitor is required to publish reports annually on compliance with national care standards regulations, outcomes for Māori children and young people and their whānau, and a 3-yearly State of the Oranga Tamariki system report.

with an appropriate level of independence from Ministers and the Oranga Tamariki system to carry out its functions – while also enabling the Monitor to work alongside Ministers or agencies where needed as part of its monitoring role.

- 8 As discussed in paragraphs 3 and 4, the Bill limits Ministers' powers in relation to the Monitor. Clause 15 of the Bill states that a Minister must not direct the Monitor to stop carrying out an activity, or prevent the Monitor from carrying out an activity that the Monitor considers is necessary to perform or exercise their functions, duties and powers. However, while this clause may prevent monitoring from being stopped, Ministers would still have the ability to request reviews into any topic and have some influence how monitoring is conducted.
- 9 Cabinet has agreed that the monitoring function will be within a departmental agency. Therefore, it is appropriate for Ministers to have some level of influence as they are ultimately responsible for the direction and priorities of the department. The independence provisions currently included in the Bill have sought to strike a balance between retention of this ability for Ministers and addressing the public's concerns about independence.
- 10 From a machinery of government perspective, it is unnecessary to create provisions explicitly stating the Monitor's independence. However, there has been a clear view from stakeholders that they do not view the Monitor as having sufficient independence to undertake its functions effectively. There is a perception that because the Monitor will be within a departmental agency and within government, that it will be subject to the direction of Ministers, despite these limits. The perception of independence by the public, and in particular Māori, was covered in previous advice [REP/20/11/1158 and REP/21/2/105 refers].

Four options have been identified for legislative provisions for independence

Subheading

- 11 The options for legislative provisions for independence are:
 - 11.1 Option 1 – clarify the existing legislative independence provisions
 - 11.2 Option 2 – include an explicit independence provision related to specific functions (recommended)
 - 11.3 Option 3 – include a broad independence provision for the Monitor
 - 11.4 Option 4 – clarify in legislation that the Monitor must be independent of Oranga Tamariki
- 12 Key criteria in assessing these options are the ability to build and maintain the trust and confidence of the public, in particular Māori, and the ability to operate as a trusted advisor to decision makers.

- 13 We have also considered a clause that would specify where in the Bill independence is provided for the Monitor. However, the Parliamentary Counsel Office has identified the risk of unintended consequences in this approach, primarily, that it may be open to interpretation, resulting in further independence provided for than was intended. However, as there are no material changes, this approach may not respond to concerns from stakeholders and the public.

The ability to build and maintain the trust and confidence of the public

- 14 The ability to build and maintain the trust and confidence of the public, in particular Māori, is important to ensuring the Monitor's findings are robust and well-informed. If Māori do not trust or have confidence in the Monitor, it will be difficult for the Monitor to freely engage and present an accurate picture of how the system is impacting on Māori.

The ability to operate as a trusted advisor to decision makers

- 15 To operate as a trusted advisor to decision makers, the Monitor will provide evidence, make findings and public reports setting out what is and is not working in the Oranga Tamariki system. In order to hold the trust of decision makers and to maintain the objectivity of the Monitor's findings, the Monitor must not advocate for specific changes in the system.

Options for independence

Option 1 – clarify the existing independence provisions in the Bill

- 16 Option 1 clarifies the existing intent of the legislation and would not materially alter the balance between an appropriate level of independence from Ministers and the Oranga Tamariki system to effectively carry out its functions while also enabling the Monitor to work alongside Ministers or agencies where needed as part of its monitoring role.
- 17 The Bill includes existing independence provisions. Specifically, the Bill limits Ministers' powers in relation to the Monitor. The Bill specifies that Ministers must not direct the Monitor to stop carrying out an activity, or prevent the Monitor from carrying out an activity, that the Monitor considers is necessary to enable them to perform or exercise their functions, duties, or powers.
- 18 The Bill could be amended to explicitly sign-post this clause as an independence clause. This may go some way to clarify the provision for the public but is unlikely to fully satisfy submitters concerns as independence arrangements would not be materially changed.
- 19 The Public Service Commission has indicated they are most comfortable with this option.

Option 2 – explicit independence provisions related to specific functions (recommended)

- 20 There are longstanding examples of chief executives having independence over specific functions. This includes the Government Statistician, Public

Service Commissioner and Commissioner of Inland Revenue and other statutory officer roles (such as Chief Archivist). However, existing provisions have generally been where the statutory officer has a monitoring role of chief executives or Ministers, and therefore, further independence is necessary for undertaking such functions.

- 21 While the Monitor would have sufficient independence to conduct its functions under the status quo, a specific independence provision, which explicitly provides for independence, is likely to strengthen the public's perception of the Monitor's independence. This is specifically important in the Oranga Tamariki context where there is intense public scrutiny of the system, unlike few other government departments.
- 22 Providing the Monitor with a duty to act independently when monitoring the performance of the Oranga Tamariki system (clause 14) and in the development of tools and approaches to support monitoring and reporting (clause 16) balances the need for the Monitor to have the ability to build and maintain the trust and confidence of the public with the ability to operate as a trusted advisor to decision makers.
- 23 Further clarification may also be needed to clarify for the avoidance of doubt that the Minister or chief executive of Oranga Tamariki is still able to request reviews be undertaken under clause 24(1). This approach is consistent with the other statutory officer roles outlined in paragraph 20.
- 24 The Public Service Commission has expressed concern that this option could limit the Monitor's ability to work with agencies and Ministers as it carries out its monitoring function. However, this can be addressed by providing for the Monitor to consult with Ministers and agencies as he or she deems appropriate.
- 25 This is MSD's recommended option.

Options 3 – overarching independence provision

- 26 This type of provision is not common in legislation in relation to Public Service Chief Executives and is not common for statutory officers within the Public Service. Most independence provisions in legislation for departments link to specific functions, duties or powers that must be undertaken independently, as set out in option 2.
- 27 An overarching independence provision would best respond to the concerns of stakeholders and the public who have called for independence of the Monitor during the select committee process. While this option is likely to best respond to concerns from submitters, a broad duty of independence would fundamentally change the relationship between the Minister and the Monitor.
- 28 Ministers will remain responsible for the performance of the Monitor; therefore, broad statements of independence may not serve to support this relationship. This option could lead to possible scenarios where the Monitor is

not responsive to the needs of Ministers and may work against one of the key objectives of the Monitor being a trusted advisor to decision makers.

- 29 The legislation will not remove the ability for a future Government to defund, underfund or ultimately disestablish the function in the future, but no legislation can provide a cast iron guarantee in this respect. It is important to ensure this relationship is balanced, and there are the appropriate levers available for Ministers to influence the performance of an entity that they ultimately remain responsible for, to prevent these actions from being taken.
- 30 Option 3 may also lead to unintended consequences, where the Monitor has some important features of an independent Crown entity, but within a department and without the appropriate machinery of government framework to support it. Crown entities are generally governed by boards to ensure there is consistency and stability in leadership.
- 31 MSD considers Cabinet approval is needed in order to progress option 3. The Public Service Commission shares MSD's concern about progressing option 3.

Option 4 – Monitor must be independent of Oranga Tamariki

- 32 Option 4 is to include a specific provision in the Bill that would ensure the Monitor could never be housed within Oranga Tamariki, or the agency responsible for the Oranga Tamariki Act 1989.
- 33 This was not previously included as it is unlikely to ever arise. However, stakeholders may benefit from an assurance of this. Independence from the organisation(s) being monitored was a recommendation from the Royal Commission of Inquiry's report on redress, *He Purapura Ora, he Māra Tipu*.
- 34 A similar provision is included in the Oranga Tamariki Act for the monitoring function of the National Care Standards Regulations, requiring the monitoring function to be independent of Oranga Tamariki. This provision is repealed by the Bill as the Monitor will absorb this function. Therefore, it may be appropriate to provide assurances to stakeholders that independence from Oranga Tamariki will remain.
- 35 Option 4 could progress alongside options 1-3. However, it is not recommended to progress option 4 alone, as it is unlikely to respond to key concerns that relate to the independence of the Monitor from Ministers. MSD recommends progressing option 4 alongside option 2.
- 36 The Public Service Commission do not have significant concerns about option 4.

Next steps

- 37 Officials will provide select committee with advice on legislative provisions for independence ahead of their meeting on 13 April 2022. If the Committee agrees to the proposal, the Committee will instruct PCO to draft these changes into the RT version of the Bill.

38 In order for officials to meet timeframes of the Committee, you need to indicate your preference by 8 April 2022.

File ref: REP/22/4/294

Author: 9(2)(a), Senior Policy Analyst, Child and Youth Policy

Responsible manager: Melissa Cathro, Policy Manager, Child and Youth Policy

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Report



MINISTRY OF SOCIAL
DEVELOPMENT
TE MANATŪ WHAKAHIATO ORA

Date: 27 April 2022

**Security
Level:**

IN CONFIDENCE

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

Oversight Bill: Further context on the role of the Board, and consultation with children and young people

Purpose of the report

- 1 This report responds to a request from your Office for further information on:
 - 1.1 the role of the proposed board for the Children and Young People's Commission and what the board will do in practice
 - 1.2 the consultation undertaken to date with children and young people, and whether further engagement would be beneficial.

Recommended actions

It is recommended that you:

- 1 **note** the contents of this report
- 2 **indicate** if you would like to discuss this report with officials

Yes / No

27/04/2021

Date?

Melissa Cathro

Policy Manager, Child and Youth Policy

Date

Hon Carmel Sepuloni
Minister for Social Development and
Employment

Date

Background

- 2 The Oversight of Oranga Tamariki System and Children and Young People's Commission Bill (the Bill) strengthens the oversight of the Oranga Tamariki System in three key areas:
 - 2.1 independent monitoring and assurance of the operations and obligations under the Oranga Tamariki Act 1989
 - 2.2 oversight and investigation of complaints in matters related to the application of the Oranga Tamariki Act 1989
 - 2.3 system-level advocacy for all children and young people in Aotearoa New Zealand.
- 3 The Bill is currently being considered by the Social Services and Community Committee and is due to be reported back to the House of Representatives by 13 June 2022.

The Bill will strengthen advocacy for children and young people in New Zealand

- 4 The Bill establishes a new Children and Young People's Commission (the Commission). The role of the Commission is to promote the interests and wellbeing of children and young people in New Zealand, and to advocate for their rights. The Commission will focus on functions related to system advocacy, monitoring the progressive implementation of the United Nations Convention on the Rights of the Child (UNCROC), and gathering and sharing the voices of children and young people.
- 5 These functions are broadly consistent with the current functions of the Children's Commissioner. While the Commission will no longer have a statutory role in the investigation of complaints, the Bill strengthens the Commission's powers related to advocacy. Further, the function of inquiring generally into, and reporting on, any matter that relates to the welfare of children, including any law, practice or procedure, will be strengthened by the Bill. The Commission will have the ability to require information from any person to enable it to effectively perform this function.
- 6 The Commission's functions will also extend to cover young people up to age 18 years, or under 25 years if they are, or have been in care or custody. Currently the Commissioner's remit for advocacy is only up to age 18.
- 7 The Bill establishes a board as governance for the Commission. Having a board separate from day-to-day management of the organisation is standard practice for many Independent Crown Entities. For example, the Commerce Commission, Independent Police Conduct Authority, Electoral Commission, Human Rights Commission and the Transport Accidental Investigation Commission all have a multi-member board. Among the Independent Crown Entities, the Children's Commissioner, Health and Disability Commissioner and

Privacy Commissioner are the only remaining corporations sole (where the same person is both the governance and executive).

- 8 The model proposed for the Children and Young People's Commission can be viewed as akin to other board models of the Independent Crown Entities noted in paragraph 7.
- 9 Using the Human Rights Commission as an example; its board consists of the Chief Human Rights Commissioner, and three other Commissioners who are focused on Disability Rights, Equal Employment Opportunities and Race Relations. The Commissioners are collectively responsible for the governance of the Human Rights Commission, including defining its strategic direction and policies, undertaking international responsibilities, and being accountable for overall performance.
- 10 In the Departmental Report to the Social Services and Community Committee, the Ministry of Social Development (MSD) has recommended that the Bill provide for the Chair of the board to be the Chief Children's Commissioner. The remaining 2-4 members will comprise the remainder of the board.
- 11 As the Bill allows for the board to determine how best to arrange itself, it is difficult to speculate precisely how this might look once established. However, the board may decide that in addition to the Chief Children's Commissioner the other board members will be appointed as Commissioners with a specific focus, (as with the Human Rights Commission) or they may decide to remain Commissioners with the ability to flex to focus on issue across a broad remit, as they arise. It is likely that as the Chair of the board, the Chief Children's Commissioner would have a more public facing and visible role, representing the Commission generally.
- 12 The establishment of a board does not dilute the powers of a sole-Commissioner, rather the board will hold those powers as a collective. The Chair is responsible for the leadership of the board, and facilitating effective decision making.
- 13 A benefit of a board model is that it provides an opportunity to include more diverse experience in the setting and achieving of the Commission's strategic priorities. For example, a board structure will enable the Commission to strengthen and deepen its advocacy role by having multiple Commissioners focused in different areas and with different backgrounds and life experience to bring to their roles. The model will also support consistency and stability of the Commission over the longer-term, as members will finish their terms at different times.
- 14 The collective duties of the board will be governed by the provisions set out in the Bill, and the Crown Entities Act 2004. In a practical sense, the board will agree and set the strategic priorities and work programme for the Commission, for example what inquiries to undertake and what specific issues to advocate for. Under the Bill, another duty of the board will be to build and

maintain relationships with iwi, Māori organisations, organisations representing children's and young people's issues, youth-led organisations, community organisations, departments, and other agencies. The board will collectively be accountable for the overall performance of the Children and Young People's Commission.

- 15 Through our engagement with children and young people in 2018, we heard that they wanted extra advocacy services that were diverse ethnically and in terms of life experience. Clauses 91 to 94 of the Bill set requirements around the make-up of the board and its nomination process, including requiring that at least half of its members must have Māori knowledge and experience in and knowledge of tikanga Māori. These provisions allow for a wide range of skills and experience to be represented in the board's membership. The provisions will help to support greater Māori representation and expertise on the board. The board model will also allow for representation of other communities, including Pasifika and disability.
- 16 The table attached as Appendix One compares the Commissioner sole model with the proposed Children and Young People's Commission board model to show at a glance how the proposed Commission builds on and strengthens the system advocacy role.

Engagement with children and young people has informed the development of the Bill

- 17 In 2018, MSD engaged specialist expertise to consult with groups of children and young people. Insights from this engagement fed into Strengthening Independent Oversight of the Oranga Tamariki System (the Beatie Report). In addition, throughout the development of the Bill, existing insights from children and young people were pulled from other recent consultation, including:
 - Oranga Tamariki: Care experienced children's workshops – May/June 2018
 - Specialist Foster Care for Remand Youth Engagement – 2017
 - Assess Plan Implement and Review (APIR) Rangatahi Forum – 2015
 - Voices of Children Interviews Expert Advisory Panel – 2015
 - Child, Youth and Family Modernisation Youth Voices Workshop – 2014
- 18 Much of the existing consultation that these further insights were drawn from came from care experienced children and young people.
- 19 Specialist consultation commissioned by MSD primarily involved focus groups with young people who were considered to be at a higher risk of entering care. Twenty-nine individuals were consulted from Auckland, Wellington and Whangarei. Most of the young people were 15 or 16 years of age. Over half of the young people were girls. A diverse range of ethnicity was represented (although some young people did not disclose their ethnicity). The young

people were a mixture of non-rainbow and rainbow youth. The focus groups included some who were care experienced.

- 20 Insights from children and young people underpin the Bill, and there are specific provisions being included in the Bill that demonstrate this. For example, in response to:

20.1 hearing that children and young people did not know where to go when they had a complaint, the Bill was drafted to include requirements for the complaints and investigations processes to be accessible and visible to children and young people, their families, whānau, hapū and iwi

20.2 insights that children and young people wanted advocacy services that were diverse ethnically and in terms of life experience, the proposed board model of the Commission directly responds to this by providing for more members than the Commissioner sole model, and requiring at least half the board to have knowledge and understanding of tikanga Māori

20.3 the insight that complaints processes need to be timely and action oriented for children and young people to have confidence and trust in them and to use them, the Bill enables the Ombudsman to undertake preliminary inquiries, to ensure that matters are able to be resolved at the earliest opportunity possible, as means of supporting timely processes for children and young people

20.4 the insight that children and young people need to have a sense of family and belonging; as well as the insight that oversight arrangements need to ensure that there are a broad range of supports for children and young people who want to learn more about their culture; the Bill includes provisions that require oversight mechanisms to operate in ways that recognise the importance of children's and young people's families, whānau, hapū, iwi, and communities, and their culture

20.5 insights that oversight arrangements should acknowledge the importance of giving children and young people a voice, the Bill requires oversight bodies to ensure the voices of children and young people are heard, and to develop codes of ethics to ensure engagement is done safely and ethically

20.6 the high rates of Māori children and young people within the Oranga Tamariki system, the Bill requires the Monitor to appoint a Māori Advisory Group to support meaningful engagement with Māori, to provide opportunities to iwi and Māori organisations to provide input on how to improve the oversight of the Oranga Tamariki system, and to report annually on the performance of the Oranga Tamariki system in respect of outcomes being achieved for Māori children and young people and their whānau. The board of the Children and Young People's Commission supports Māori representation in particular, but also that of other communities, including Pasifika and disability.

- 21 The key themes and insights that have been identified from consultation undertaken with children and young people to date are outlined in Appendix Two.
- 22 A number of children and young people have also submitted through the select committee process to share their views on the Bill, and in particular, where improvements can be made.

The Monitor and Ombudsman have also engaged with children and young people as part of their work

- 23 In informing its initial assessment framework and approach to monitoring, the Monitor utilised existing information gathered from children and young people including, but not limited to the Expert Advisory Panel report into Child, Youth and Family, findings from surveys undertaken by the Office of the Children's Commissioner, and the work completed by the Department of Prime Minister and Cabinet's Child Wellbeing Unit to inform the Child and Youth Wellbeing Strategy. It also engaged with Voyce – Whakarongo Mai and the Voices team in Oranga Tamariki.
- 24 In addition, the Monitor engages with children and young people in its monitoring. As part of this, the Monitor seeks feedback from young people on how they found the engagement process and what it could do differently. The Monitor has also asked Voyce – Whakarongo Mai to provide feedback from children on the approach. The feedback received is used to inform the Monitor's approach.
- 25 The Monitor is currently working on a plan for engaging with a group of children and young people later this year when it develops its expanded monitoring approach. The Monitor is also closely following the redress hearings and reports from the Royal Commission into Abuse in Care and is using this context to inform its expanded monitoring framework.
- 26 The Ombudsman has also undertaken consultation with children and young people. In late 2020 the Chief Ombudsman commissioned Point & Associates and Ohomairangi Trust to undertake research with care experienced young people, their whānau, support persons and caregivers ('trusted adults'), and advocacy groups to understand the process a young person might follow when making a complaint about their experience in care. The Children's Voices research report has provided valuable insights and material that continues to inform his practice.

Further engagement with children and young people at this stage of the process will significantly delay the Bill

- 27 We have considered whether further engagement with children and young people would be beneficial for the Bill, and when and how this could occur. To inform the Bill, engagement would need to take place after the Social Service and Community Committee reports to the House (this is expected by 13 June 2022) and before the second reading, or between the second and third reading.

- 28 As we have done in the past, any future engagement would require specialist expertise to be contracted. We also recommend that any consultation be targeted and that it is driven by a clear purpose.
- 29 There are a number of considerations with undertaking further engagement with children and young people at this stage in the legislative process. These are set out below.
- 30 Based on what we have heard through the consultation conducted in 2018, and what we have heard from the children and young people who have submitted on the Bill in the select committee process, we believe further engagement is unlikely to identify new matters that officials, Ministers and Cabinet have not already considered when making policy decisions, developing the Bill, and responding to submissions.
- 31 By way of examples, key feedback from young people who submitted on the Bill was that they didn't know where to go for complaints – as noted in para 20.1 of this report, this was raised in the initial consultation, and has been considered in the development of the Bill. Young people also told us they wanted a named Children's Commissioner, which MSD is recommending in its departmental report to the Select Committee.
- 32 If additional engagement is undertaken at this stage and does not lead to further changes being made to the Bill, it may create an unintended negative consequence of appearing tokenistic.
- 33 It is also likely that further engagement with children and young people would significantly delay the Bill. MSD is not currently resourced to undertake this work and would require funding either by reallocating funding from another source or by seeking new funding through the budget process. If new budget money is required, consultation would not be able to be initiated until mid 2023. With the current planned timeframe for the legislation to be passed by the end of 2022, this would mean a significant delay to the Bill passing.
- 34 In addition, the time required to undertake further engagement would lead to additional delays to the Bill of potentially up to a further six months. Delays to the passing of the Bill would mean Oranga Tamariki will continue to operate without effective oversight.
- 35 The policy work has been in progress since 2018 and in that time, officials have thoroughly scrutinised a wide range of options and arrangements, informed by consultation, which has culminated in Ministerial and Cabinet decisions reflected in the Bill. If the Bill is delayed, only a narrow part of the system will continue to be monitored by the Independent Children's Monitor.
- 36 On the basis of the issues raised in paras 30-35 above, we do not recommend delaying the Bill to engage further as, on balance, we think further engagement is unlikely to yield new insights, and it is imperative to have comprehensive oversight arrangements in place as soon as possible.

- 37 We propose that further engagement with children and young people could be conducted as part of the five-year review proposed in the Bill. Doing so at this point would enable engagement to be planned and budgeted for, and would also allow time for children and young people to experience the oversight system and to provide feedback on how it is or is not working for them. These insights would then help to further inform how the oversight system operates.

Next Steps

- 38 Officials are available to discuss the contents of the report further with you, if that would be helpful.

File ref: A14074813 (REP/22/4/338)

Author: Emma Churchill, Senior Policy Analyst, Child and Youth Policy

Responsible manager: Melissa Cathro, Policy Manager, Child and Youth Policy

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Appendix One: Comparison of Commissioner sole model with proposed Children and Young People's Commission board model

Children's Commissioner – role and functions

Proposed Children and Young People's Commission board – role and functions

Sole Commissioner makes decisions on priorities and areas of focus and leads this with support from the Office

Board jointly agrees priorities and areas of focus using its shared knowledge, values, diverse life experiences and understanding of issues

Board will be Chaired by a Chief Children's Commissioner, who will facilitate effective decision making

Board may choose to delegate members to lead in specific areas of expertise (eg. Māori children, disabled children, rainbow young people) giving the work a broader and deeper focus than a sole Commissioner would be able to offer

Sole Commissioner is appointed for a set term, and each new Commissioner decides their own priorities and focus areas for the role which are not necessarily the same as the previous Commissioner. Need to build new relationships on entering the role

Board members are appointed at different times, and finish their appointments at different times, giving greater continuity and consistency to the areas of focus for the Board, and supporting continuity of relationships with key stakeholders

Children's Commissioner is the sole spokesperson with mana, known to the public

While a Chief Children's Commissioner may be more of a spokesperson for the Commission, all members will have mana and may speak publicly on issues relevant to the Commission

There is no current requirement for the Children's Commissioner to have Māori knowledge and experience in and knowledge of tikanga Māori.

At least half of the board must have Māori knowledge and experience in and knowledge of tikanga Māori – this will support greater Māori representation and expertise on the Board

An Assistant Māori Commissioner for Children was first appointed in 2020. This is not a statutory position.

Sole Commissioner applies for the role and the successful applicant is appointed by the Governor General

Board members need to have the endorsement from a "relevant agency" (to be defined in legislation) to support their application. A relevant agency might include a national organisation which represents Māori, or an organisation focused on advocacy for children and young people, and their rights.

The successful applicants will be appointed by the Governor General.

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Appendix Two: Key themes and insights from consultation with children and young people to date

1. Children and young people want to be loved, supported, and kept safe

- Insight: Future oversight arrangements need to acknowledge the importance of love, encouragement and support and the impact that these three things have on the lives of children and young people. To be happy and thrive, children and young people need to have a sense of family (belonging) and to know that they have caring adults who genuinely want what's best for them.

2. Trust is crucial for children and young people to feel safe and to share what's worrying them

- Insight: Many children and young people find it hard to share their views about difficult or personal things regardless of life circumstances, especially if they don't know the person they're talking to. Without trusting relationships, care experienced children and young people might not tell anyone if something bad had happened to them.
- Insight: Future oversight arrangements that acknowledge the importance of trusting relationships with supportive adults are more likely to see children and young people want to share their views and engage.

3. Most children and young people feel more comfortable talking to someone who they have something in common with

- Insight: Many children and young people find it hard to share their views or disclose difficult or personal things, especially if they don't know the person they are talking to. Future arrangements that acknowledge the importance of taking the time to establish and maintain connections and on-going relationships with children and young people are fundamental to having authentic, open, and frank conversations with them.

4. Children and young people want to be listened to and to have a say in decisions that affect them

- Insight: Future oversight arrangements that acknowledge the importance of giving children and young people a voice (particularly regarding matters that affect them) promotes self-esteem and self-worth. By giving children and young people a voice through choice, opinion, feelings and emotion, children and young people will learn that they are important and valued.

5. Most children and young people value the opportunity to share their views

- Insight: Children and young people care a lot about what happens to them. Future arrangements that see them being treated fairly (which means listening to their views) could bring about new ideas and perspectives which other people may not have identified otherwise.
- Insight: Children and young people in care may need help to share their views.
- Insight: The value of monitoring and oversight is more than just as a means to an end. For the children and young people involved, sharing their views can be meaningful in-and-of-itself.

6. Adult-centric processes are not effective in enabling children and young peoples' views to be heard

- Insight: Future arrangements which see more processes tailored to the needs of children and young people are likely to be more successful – simply replicating adult centred processes may not be useful or effective ways for children and young people to share their views. It is important to provide a range of mechanisms (eg. surveys or social media chat groups etc.) and environments within which they feel comfortable to engage.

7. Complaints can seem pointless to children and young people if they take too long or don't lead to any action

- Insight: Future arrangements which ensure complaints processes are timely and action-orientated are needed if children and young people are to have confidence and trust in the process (to use it).

8. Children and young people need parents and caregivers that can help to strengthen their cultural identities and connections (if that is what the children and young people want)

- Insight: Children and young people are becoming more aware that culture can have a positive impact on their lives. Future oversight arrangements need to ensure that there are a broad range of supports for children and young people who want to learn more about their culture, and who wish to stay connected to those who can help them. This may become particularly important later, for those young people who are transitioning from care, in terms of them being able to continue to access strength, help, support and nurturing outside of the 'state care environment'. The view that it is family that connects children and young people most can support informed policy and practice guidelines.

9. Adults can help children and young people by encouraging and supporting them to be themselves

- Insight: Future arrangements that ensure children and young people are given every opportunity to participate in community life (eg. through sport, art, dance or culture etc.), and to express themselves freely is key to enabling them to reach their full potential.

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MINISTRY OF SOCIAL
DEVELOPMENT
TE MANATŪ WHAKAHIATO ORA

Meeting

Date: 11 May 2022 **Security Level:** IN CONFIDENCE

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

File Reference: REP/22/5/407

Meeting with VOYCE - Whakarongo Mai

Meeting details 2pm-2.30pm, 13 May 2022, Zoom

Expected attendees Tracie Shipton – Chief Executive Officer

Purpose of meeting To discuss the Oversight of Oranga Tamariki System and Children and Young People's Commission Bill (the Bill).

Background VOYCE was established in 2017, and is an independent charity organisation that helps to advocate for the approximately 6000 children with care experience (including children in foster or whānau care) in New Zealand. VOYCE was co-designed by children with care experience for children with care experience.

The Chief Executive of the Board of VOYCE – Whakarongo Mai is Tracie Shipton. Tracie has a social work background and is a foster mother herself. She has been part of VOYCE – Whakarongo Mai since its inception.

VOYCE co-signed a letter to Ministers, with other organisations representing children and young people, with concerns about the Bill and requesting it be paused.

Key issues

In their submission to the Committee, as well as in a letter to you, VOYCE has identified a number of concerns relating to the Bill, which are addressed below, including:

- pausing the Bill
- consultation
- Te Tiriti o Waitangi
- Royal Commission of Inquiry
- independence of the Monitor
- fragmentation of the system.

Further information on the board model and meeting with the Prime Minister are attached as **Appendix 1**. These were not raised in the letter, but have arisen in the course of the select committee process.

As the changes being made to the Bill are confidential to the Committee, these cannot be discussed with VOYCE. The Select Committee will be reporting the Bill back to the House on 13 June 2022. After this, the changes will be publicly available. These changes include strengthening the independence of the Monitor, providing for a Chief Children's Commissioner and creating a statutory function of reporting to the Prime Minister.

Pausing the Bill

VOYCE has called for the Bill to be paused to undertake further consultation with children and other groups and for the incorporation of the findings made by the Royal Commission of Inquiry into Abuse in Care (expected in June 2023) and for these policies to be worked through in partnership with Māori.

If the Bill is delayed, Oranga Tamariki will continue to operate without effective oversight, leading to further issues. It is imperative that Oranga Tamariki has comprehensive oversight arrangements in place as soon as possible, to ensure the best outcomes for children and young people.

Talking points:

- It is imperative to have comprehensive oversight arrangements in place as soon as possible, to ensure there is proper oversight of Oranga Tamariki.
- If the Bill is paused, only a narrow part of the system will continue to be monitored by the Independent Children's Monitor.

Consultation

VOYCE has expressed their view that consultation on the Bill has been insufficient, and further consultation is needed before the Bill progresses any further.

Consultation with children and young people has informed the development of the Bill, and a number of specific provisions in the Bill demonstrate this.

As an example, in response to hearing that children and young people did not know where to go when they had a complaint, the Bill was drafted to include requirements for the complaints and investigations processes to be accessible and visible.

The Ministry of Social Development undertook targeted engagement with Māori in 2019, hosting 22 hui, as part of the policy development for the Bill.

Officials have also worked closely with Te Kāhui throughout the development of the policy, and to craft specific provisions in the Bill.

Talking points:

- Consultation has informed the development of the Bill already, including a number of specific provisions.
- There has also been a number of submissions on the Bill at select committee, which has provided an open opportunity to share views.

Te Tiriti o Waitangi

VOYCE are concerned that the Bill does not uphold Te Tiriti o Waitangi obligations.

The Bill creates strong obligations on the oversight bodies to respect and uphold Te Tiriti o Waitangi. The specific clause in the Bill directly emerged from key Māori stakeholders, who called for specific obligations to be placed on the oversight bodies, rather than broad statements.

Talking points:

- The Bill places specific obligations for upholding Te Tiriti on the oversight bodies.
- Broad statements can be open to interpretation and run the risk of diluting the obligations on agencies.

Royal Commission of Inquiry

VOYCE has expressed concern that the Bill is progressing before the Royal Commission of Inquiry makes its final recommendations.

The Bill is consistent with the recommendations of the Royal Commission of Inquiry's report on redress. Notably, recommendation 90 calls for monitoring bodies to be independent of other oversight mechanisms and the organisation(s) being monitored.

The Beatie Report supported progression of reform prior to the Royal Commission of Inquiry's final recommendations.

The Bill includes the requirement for a review to be undertaken within five years of commencement. This will not only allow the success of the oversight mechanisms to be reviewed but will also allow any recommendations made by the Royal Commission of Inquiry to be addressed if required.

Talking points:

- Establishing stronger oversight is needed to ensure circumstances such as those surrounding historic claims are less likely for children and young people in the Oranga Tamariki system today.
- Recommendations from the Royal Commission of Inquiry can be incorporated when the oversight system is reviewed, within five years of enactment. However, tamariki and rangatahi cannot continue to wait for these changes to be made.

Independence of the Monitor

VOYCE is concerned that as the Monitor will be a departmental agency housed within the Education Review Office (ERO), the Monitor will not be sufficiently independent for monitoring to be trusted.

The Bill includes a number of provisions which protect the independence of the Monitor. The use of a statutory officer model, alongside the Monitor's statutory reporting requirements, power to require information, powers of entry and a limit on Ministers' ability to direct the Monitor, collectively provide the Monitor with the necessary independence.

ERO will have no operational role in the Monitor's work. The decision was made for ERO to host the Monitor because of its existing focus on children and young people and

similarities in their monitoring. However, the relationship between the Monitor and ERO is mostly administrative.

The Monitor will be operationally autonomous from all other departments, including ERO, in relation to how it goes about its monitoring role as well as acting as a trusted advisor to government and the public.

Talking points:

- The Bill includes a number of provisions which strengthen the Monitor's independence.
- ERO will have no operational role in the Monitor's work, just as the Ministry of Justice has no operational role in Te Arawhiti's operational work.

Fragmentation of the system

VOYCE are concerned that the Bill proposes an overly bureaucratic system that will be difficult to navigate for children, young people, and their whānau.

As part of consultation, officials heard that the system is unclear and difficult to navigate. The Bill makes it clear in legislation who has responsibility for the different parts of the system.

The purpose of monitoring sits in conflict with the role of an advocate. The purpose of monitoring is to monitor the system within the settings that have been put in place by Government and provide objective and impartial information to Parliament, the public and Ministers. Whereas the role of the advocate is to question whether the settings are right in the first place. The advocate does this by influencing decision makers to change system settings to those the advocate considers will generate more positive outcomes.

Under the proposed arrangements, the oversight functions are separate and focused. The system is, if anything, simplified. The Independent Children's Monitor is focused on monitoring, the Ombudsman on investigating complaints, and the Children and Young People's Commission on advocacy. This model focuses expertise within the specific bodies, as well as reducing overlaps and duplication of functions.

Operational work will be required to ensure that this is communicated effectively to the public.

Talking point:

-
- Further work will be required to communicate the system to children and young people, their whānau, and the public.

General talking points:

- I am concerned that delaying the Bill will not be in the best interests of children in New Zealand, as it is imperative to have comprehensive oversight arrangements in place as soon as possible.
 - Consultation has taken place with children and young people, Māori, and other priority groups, and has informed the development of the Bill.
 - I am open to making changes to the Bill to ensure that it is fit for purpose.
 - The Bill is complex and we will be ensuring that it is effectively communicated to children, young people, their whānau and the wider public.
 - I will be looking at what changes to the Bill the select committee has recommended, and from there I will consider if any further changes are needed.
-

Author: Sara Elgoran, Senior Policy Analyst, Child and Youth Policy

Responsible manager: Melissa Cathro, Policy Manager, Child and Youth Policy

APPENDIX 1: Further information

Board model

A board model will enable the Children and Young Person's Commission to collectively possess the diverse skills and experience required to advocate on a wide range of issues important to children and young people in New Zealand. A board model also enables the maximisation of Māori representation within the governance arrangements of the Commission.

The Bill will not prevent the board from allocating an appropriate spokesperson for the board, with an appropriate title, to ensure that the visibility and mana of the Commission is maintained. This flexibility will allow the board to make decisions that best suit its strategic goals and ensure the legislation is enduring. The Commission will remain an Independent Crown Entity.

Talking points:

- The board will still be able to appoint a spokesperson.
- The board will be able to cover and advocate on a wider range of issues.
- Appointing a board means there is partnership with Māori in the Commission, and allows for other diverse experiences to be represented.
- While the Bill is silent on these matters, it does not prevent them from happening. We want the board to be able to make the decisions it needs to, once it has been established.
- The board model will help to ensure there is continuity within the Commission.

Meeting with the Prime Minister

This specific section of the Children's Commissioner Act 2003 was not transferred into the Bill as it places no strict obligations on either party.

There is no requirement on the Prime Minister to meet with the Children's Commissioner, nor does it restrict such meetings from taking place. In the same way that the Children's Commissioner is currently able to routinely meet with Ministers without any specific legislative mandate, the Commission will still be able to meet with the Prime Minister and advocate on issues, as well as report on general issues to the Prime Minister.

Talking point:

- While the Bill does not specify this as a function, these meetings will still be able to take place just as the Children's Commissioner currently meets with other Ministers on important issues without it being in legislation.

Aide-mémoire



**MINISTRY OF SOCIAL
DEVELOPMENT**
TE MANATŪ WHAKAHIATO ORA

Meeting

Date: 11 May 2022 **Security Level:** IN CONFIDENCE

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

File Reference: REP/22/5/409

Meeting with Save the Children New Zealand

Meeting details XX, 13 May 2022, Zoom

Expected attendees Heidi Coetzee – Chief Executive
Jacqui Southey – Director of Child Rights Advocacy and Research

Purpose of meeting To discuss the Oversight of Oranga Tamariki System and Children and Young People's Commission Bill (the Bill)

Background Save the Children New Zealand

Save the Children New Zealand works with supporters and partners to advocate and campaign for change to improve child wellbeing, realise children's rights and ensure children's voices are heard. Save the Children also has a role supporting humanitarian responses to emergencies, worldwide.

Heidi Coetzee, Chief Executive, joined Save the Children in 2015 as Finance Director before being appointed Chief Executive in May 2017. Heidi is a strong advocate for children's rights.

Jacqui Southey is the Director of Child Rights Advocacy and Research at Save the Children. She has extensive experience working in children's rights and is particularly interested in children's participation and empowering

children's agency, child rights education, speaking up with and for children on issues important to children now and in the future, and education.

Heidi and Jacqui both sit on the Steering Group for the Children's Right's Alliance, as the Treasurer and as Secretary respectively.

Oversight of Oranga Tamariki System Bill

Save the Children submitted against the Bill and co-signed a letter to Ministers, with other organisations representing children and young people, with concerns about the Bill and requesting it be paused.

Save the Children presented a petition to Parliament to "Save the Children's Commissioner", with the power to report directly to the Prime Minister. The petition received 10,774 signatures.

Out of Scope



The Children's Convention is within Minister Davis' portfolio.

Key issues

In their submission to the Committee, as well as in a letter to you, Save the Children has identified a number of concerns relating to the Bill, which are addressed below, including:

- pausing the Bill
- consultation
- Te Tiriti o Waitangi
- Royal Commission of Inquiry
- independence of the Monitor
- fragmentation of the system.

Further information on the board model and meeting with the Prime Minister are attached as **Appendix 1**. These were not raised in the letter but have arisen in the course of the select committee process.

As the changes being made to the Bill are confidential to the Committee, these cannot be discussed with Save the Children. The Select Committee will be reporting the Bill

back to the House on 13 June 2022. After this, the changes will be publicly available. These changes include strengthening the independence of the Monitor, providing for a Chief Children's Commissioner and creating a statutory function of reporting to the Prime Minister.

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Author: Sara Elgoran, Senior Policy Analyst, Child and Youth Policy

Responsible manager: Melissa Cathro, Policy Manager, Child and Youth Policy

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APPENDIX 1: Further information

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Meeting with the Prime Minister

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Talking point:

- While the Bill does not specify this as a function, these meetings will still be able to take place just as the Children's Commissioner currently meets with other Ministers on important issues without it being in legislation.

Out of Scope

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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**MINISTRY OF SOCIAL
DEVELOPMENT**
TE MANATŪ WHAKAHIATO ORA

Meeting

Date: 11 May 2022 **Security Level:** IN CONFIDENCE

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

File Reference: REP/22/5/412

Meeting with the Chief Ombudsman

Meeting/visit details XX, 13 May 2022, Zoom

Expected attendees Judge Peter Boshier, Chief Ombudsman

Purpose of meeting/visit To discuss the Oversight of Oranga Tamariki System and Children and Young People's Commission Bill (the Bill).

Background The Chief Ombudsman is Judge Peter Boshier. He was appointed in December 2015. Prior to this, Judge Boshier was the Principal Family Court Judge (2004-2012) and a Law Commissioner. As Chief Ombudsman, Judge Boshier's focus has been on a faster and more effective resolution of Official Information Act and other complaints, working with government agencies to improve their practices and strengthening his team's investigation and monitoring of prisons and public mental health facilities.

The Chief Ombudsman submitted in support of the Bill. The Bill strengthens the role of the Ombudsman in dealing with complaints and investigations about the Oranga Tamariki System.

The Ombudsman is an Officer of Parliament which means they hold a unique constitutional position. Government cannot direct an Ombudsman on his or her operations.

Appendix 1 includes background information on steps the Ombudsman has taken to create more child-centric practices.

Key issues

Concerns have arisen at select committee around the Ombudsman's timeliness in resolving complaints and whether the Ombudsman is best placed to deliver a child and whānau-friendly service.

In the reporting year from 1 July 2020 to 30 June 2021, Ombudsmen Act complaints relating to children and young people have taken on average 94 days to complete.

The Ombudsman has established capability and experience in complaints and investigations oversight, and are best placed to deliver this function.

The Bill already places a duty on the Ombudsman to ensure complaints pathways are visible and accessible. The Bill also includes provisions for the timely resolution of complaints, including ensuring the necessary information is available for an Ombudsman to undertake preliminary inquiries.

Officials do not recommend prescribing in legislation the complaints process or timeframes for the Ombudsman to undertake its activities. This would be inconsistent with the established precedent of the Ombudsman's autonomy over his or her policies and processes. In practice, it could cause investigations to be cut short or otherwise incomplete, sacrificing quality for speed.

You may wish to pass on concerns to the Chief Ombudsman that the Ombudsman's processes are not timely for children and young people.

Talking points:

- What actions do you plan on taking to ensure complaints pathways are accessible and visible to children, young people and their whānau?
- How do you plan on making complaints and investigations more timely for children and young people?

Author: Sara Elgoran, Senior Policy Analyst, Child and Youth Policy

Responsible manager: Melissa Cathro, Policy Manager, Child and Youth Policy

Appendix 1: Child-centric practices of the Ombudsman

- In late 2020 the Chief Ombudsman commissioned Point & Associates and Ohomairangi Trust to undertake research with care-experienced young people, their whānau, support persons and caregivers ('trusted adults'), and advocacy groups to understand the process a young person might follow when making a complaint about their experience in care. The Children's Voices research report has provided valuable insights and material that continues to inform his practice.

Communications

- A simple stand-alone website especially for children in care complaints is currently being developed, which takes on board the recommendations from the Children's Voices research report around branding (e.g. colour palette suggestions), simple language and accessibility, imagery, and storytelling as a tool for conveying information. The intention is that this website will be bilingual (i.e. English and te reo Māori), and have key information readily available in other key languages. Specifically, it will include:
 - a simple pathway for people wanting help with children in care issues.
 - a simple contact form where young people and their trusted adults can request a 'call back' service;
 - using photos/avatars/illustrations and biographies of the people who may be helping the young people with the complaints, or some way for young people to request this information;
 - on the contact page, it will incorporate a text service, or have a number that young people and/or their trusted adults can contact via text; it may also have basic chat functionality enabled; and,
 - It will have information available about the rights of young people and other sources of help.
- The Chief Ombudsman has also committed to:
 - creating simple and accessible print material (i.e. pamphlets and posters) in a variety of languages for those who do not have access to the internet.
 - Using story-telling techniques on social media to raise awareness of the rights of young people and share information about the children in care complaints process.
 - Running a youth and whānau-centred media campaign promoting the Ombudsman's role in the children in care complaints process once the website has launched.

- Engaging youth and whānau-centric contractors to support communications and the community outreach programme of work.

Personnel

Chief Ombudsman is very experienced in working on issues relevant to children through his role as Chief Judge of the Family Court.

He has set up a separate Children in Care Complaints Team managed by Janice Hemi, who is highly experienced and knowledgeable in all aspects of tamariki and children in the state care system. She has held a number of leadership and practitioner roles with Child, Youth and Family, and Oranga Tamariki. She has been foster parent for multiple tamariki and rangatahi, and is herself care experienced. She is supported by a shortly to be expanded team of six, dedicated to tamariki and rangatahi in care, all of whom have been specifically recruited for the role and bring a range of relevant skills experience and from diverse cultural backgrounds. A key focus of the team is to operate in a child-centric, trauma-informed and culturally appropriate way.

The Children in Care Team is supported by dedicated staff in the systemic issues and Communications team.

Child-centric practices of the Children in Care team

The Children in Care team operates in the following child-centric ways:

- complaints received from tamariki are prioritised.
- the work is guided by the tamariki and rangatahi timeframes.
- the voice of tamariki and rangatahi are valued.
- the team is open and transparent in its communication with tamariki. The team take the time to check that they have heard the voices of tamariki and rangatahi correctly and that they understand any information shared and provided.
- the team recognise that tamariki and rangatahi are a part of a whānau/family group. It seeks to ensure that tamariki have the required support available from trusted adults and support people throughout the complaints process.
- the teams' engagement practice is guided by what works best for tamariki and rangatahi and is tailored to suit their individual needs, whether that be in-person hui, zoom, texts, telephone calls, or written communication channels.
- the team integrate Tikanga into the complaints handling practice to ensure the needs of mokopuna Māori are met.
- the team deals with safety and welfare concerns immediately.
- the best interest of tamariki and rangatahi are paramount.

Professional development

The Chief Ombudsman is also committed to ongoing Professional Development for the Children in Care team to ensure their knowledge and practice continues to be up to date and comprehensive. Training/refreshers are planned in the following areas:

- Oranga Tamariki policy and practice
- Child Protection Training (Disclosures)
- Trauma-informed complaints handling practice
- Interviewing tamariki and rangatahi
- Sharing and gathering of tamariki and rangatahi information
- Te Tiriti or Waitangi
- Engaging with Māori
- Engaging with Pacific Peoples

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**MINISTRY OF SOCIAL
DEVELOPMENT**
TE MANATŪ WHAKAHIATO ORA

**Te Mana
Whakamaru
Tamariki
Motuhake**

Independent
Children's
Monitor

Report

Date: 26 May 2022

**Security
Level:**

IN CONFIDENCE

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

Strengthening Oversight of the Oranga Tamariki System Programme – Monthly Progress Update – April 2022

Purpose of the report

- 1 This report provides you with a progress update for the Strengthening Oversight of the Oranga Tamariki System Programme for the period ending 30 April 2022.
- 2 Key points of interest are included in this cover report with a summary provided in the attached A3.

Recommended actions

- 3 It is recommended that you:
 - 3.1 **note** the contents of this Strengthening Oversight of the Oranga Tamariki System Programme Monthly Progress Update which covers April 2022.

YES / NO

Arran Jones
Executive Director, Independent Children's
Monitor

Date

Hon Carmel Sepuloni
Minister for Social Development and
Employment

Date

Summary and key points of interest

Programme summary

- 4 Programme status is on track.
- 5 We completed our monitoring visits to Te Tai Tokerau, Central Auckland and North/West Auckland. Analysis of the data collected during these visits has been analysed, and our findings shared with the communities. On 9 May, we commenced our visit to the Bay of Plenty region, visiting Tāupo and Taumaranui, Rotorua and Tokoroa and Tauranga and Whakatane.

Policy/Legislation workstream

- 6 On 11 and 18 May, the Oversight of the Oranga Tamariki system and Children's and Young People's Commission Bill (the Bill) was considered by Select Committee. The Committee is due to report back to the House on 13 June 2022.
- 7 Work has continued to develop the Regulations for the Bill and these are being consulted on.

Independent Children's Monitor monitoring and establishment workstreams

Monitoring Operations

- 8 Analysis of the information gathered during our visits to Te Tai Tokerau, Central Auckland and North-West Auckland has been completed. We provided feedback on what we heard across each community to the tamariki, rangatahi, whānau, caregivers, Oranga Tamariki and other agencies we met with during May. We will also be providing feedback to the Auckland Regional Public Service Commissioner, and their Regional Leadership Group.

- 9 On 9 May, we commenced our monitoring visit to the Bay of Plenty visiting Tāupo and Taumaranui, Rotorua and Tokoroa and Tauranga and Whakatane. The Executive Director met with the Eastern Bay of Plenty iwi Provider Alliance, Ngāti Raukawa and Ngāti Ranginui to discuss our work and to support the wider visit. Engagements in the region are being completed kanohi ki te kanohi and staff visiting communities are required to take Rapid Antigen Tests before traveling.
- 10 Initial planning for our next scheduled visit to South Auckland in August will commence in the coming weeks.
- 11 We continue to develop our monitoring approach for the Oranga Tamariki system, as proposed in the Bill. Since our last update, we have continued to analyse our obligations under the Bill and progress the steps we need to take to expand our current monitoring framework.
- 12 This analysis informed internal insights about the Monitor's expanded framework and the key questions that the Monitor will need to answer to inform our monitoring approach. We have also sought and received feedback from Te Kāhui Group on these key questions and started consulting with iwi and Māori organisations that hold Strategic Partnerships with Oranga Tamariki. This includes Waikato-Tainui, the Eastern Bay of Plenty iwi Provider Alliance, Te Kahu Oranga Whānau and Ngāti Toa.
- 13 These meetings also provided an opportunity to have an initial discussion on how we might monitor their Strategic Partnerships as well as the potential for sharing information once the Bill is passed. Both are provided for in the Bill.
- 14 During June we will engage our wider stakeholder group on the expanded framework, including the VOYCE Whakarongo Mai Youth Council, the Office of the Children's Commission and shared care providers, before consulting with government agencies such as Oranga Tamariki, the Police, Ministry of Education and the Ministry of Health.

Key engagements and communications

- 15 On 4 May, we met with Te Kāhui Group. This meeting focused on seeking feedback to our key questions for our expanded monitoring function.
- 16 As noted in paragraphs [9] and [12], the Executive Director travelled to the Bay of Plenty, Waikato and Tāmaki to meet with Ngāti Raukawa, Ngāti Ranginui, the Eastern Bay of Plenty iwi Provider Alliance, Waikato-Tainui and Te Kahu Oranga Whānau to discuss feedback on our proposed expanded monitoring framework and key questions. Te Kahu Oranga Whānau have offered to help us connect with tamariki, caregivers and whānau in South Auckland for our next community visit, as well as making use of their premises.
- 17 The Executive Director and Chief Monitor met with Judge Shaw and the Commissioners from the Abuse in Care Royal Commission of Inquiry. The purpose of the meeting was to discuss our current practice, and answer questions that the Commissioners had. We also discussed our broader monitoring role proposed in the Bill and we invited the Commissioners to consult on the monitoring framework and key questions.
- 18 The Executive Director and Chief Monitor also met with the Chief Executives of VOYCE Whakarongo Mai and Caring Families Aotearoa (CFA) to update them on the work of the Monitor, and ongoing opportunities to partner with them to help the Monitor to connect with tamariki and caregivers.
- 19 We have partnered with CFA over the last two years, with CFA helping us to connect with caregivers during our community visits. Together, we have trialled different ways of completing monitoring engagements through both individual and group hui. CFA staff have been present in all the participant hui, and their role has varied, from helping to facilitate, observing participant responses (and thereby informing their advocacy role) to helping staff from the Monitor build rapport with hui participants.
- 20 The connector approach that we follow with CFA, has been applied with other agencies, such as VOYCE Whakarongo Mai, Stand Tū Maia and Key Assets (in

addition to the monitored agencies, Oranga Tamariki, Open Home Foundation, Barnardos and Dingwall Trust¹).

21 In individual communities, we also look for providers that can help us connect well with tamariki, whānau and caregivers in their rohe. For example, in the recent Bay of Plenty visit, the following connectors worked alongside us to support us in our work.

- Eastern Bay of Plenty iwi Provider Alliance
- Whakaatu Whanunaga Trust
- Tumano Hou Trust
- Manaaki Ira Trust
- Raukawa.

Establishing the Monitor as a new departmental agency

22 Work under the six workstreams of the Programme Implementation Plan continues. During April, we successfully consulted with Monitor staff about the future structure for the Monitor. The purpose of this change to the structure is so we are best organised to deliver the expanded scope of the monitoring function and to be established as a departmental agency, as currently proposed under the Bill. The new structure has been agreed. For existing staff, changes are minimal, and where there is change, it is limited to a change in title or reporting line only.

23 We are due to provide you with an update on progress with establishing the departmental agency, once Select Committee has reported back on the Bill.

¹ Note that as of 2022, Dingwall Trust is no longer a monitored agency, as the one young person that was in their care is now over 18 years of age.

- Attached as Appendix One is the Monthly Progress Update A3 for the period ending April 2022.

File ref: REP/22/5/457

Author: (Arran Jones, Executive Director, Independent Children's Monitor)

Responsible manager: (Stephen Crombie, Deputy Chief Executive, People and Capability)

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Engagement, Communications and Change

Māori Engagement:	<ul style="list-style-type: none">On May 4, we met with Te Kāhui Group . This meeting focused on seeking feedback to our key questions.The Executive Director travelled to the Bay of Plenty, Waikato and Tāmaki to meet with Ngāti Raukawa, Ngāti Ranginui, the Eastern Bay of Plenty iwi Provider Alliance, Waikato-Tainui and Te Kahu Oranga Whānau to discuss feedback on our proposed expanded monitoring framework and key questions. Te Kahu Oranga Whānau have offered to help us connect with tamariki, caregivers and whānau in South Auckland for our next community visit, as well as making use of their premises.
Engagement:	<ul style="list-style-type: none">The Executive Director and Chief Monitor also met with the Chief Executives of VOYCE Whakarongo Mai and Caring Families Aotearoa to update them on the work of the Monitor, and opportunities to partner with them to help the Monitor to connect with tamariki and caregivers.The Executive Director and Chief Monitor met with Judge Shaw and the Commissioners from the Abuse in Care Royal Commission of Inquiry. The purpose of the meeting was to discuss our current practice, and answer questions that the Commissioners had. We also discussed our broader monitoring role proposed in the Bill and we invited the Commissioners to consult on the monitoring framework and key questions.

Workstream summary:

Policy/Legislation	Independent Children’s Monitor Monitoring/Operations
<div>G</div> <ul style="list-style-type: none">On 11 and 18 May, the Oversight of the Oranga Tamariki system and Children’s and Young People’s Commission Bill (the Bill) was considered by Select Committee. On 13 June, the Committee is due to report back to the House.Work has continued to develop the Regulations for the Bill and these are being consulted on.	<div>G</div> <ul style="list-style-type: none">Analysis of the information gathered during our visits to Te Tai Tokerau, Central Auckland and North-West Auckland has been completed. We provided feedback on what we heard across each community to the tamariki, rangatahi, whānau, caregivers, Oranga Tamariki and other agencies we met with during May. Feedback will also be provided to the Auckland Regional Public Service Commissioner, and their Regional Leadership Team.On 9 May, we commenced our monitoring visit to the Bay of Plenty visiting Tāupo & Taumaranui, Rotorua & Tokoroa, Tauranga and Whakatane.Initial planning for our next scheduled visit to South Auckland in August will commence in the coming weeks.We continue to develop our monitoring approach for the Oranga Tamariki system, as proposed in the Bill. Since our last update, we have continued to analyse our obligations under the Bill and progress the steps we need to take to expand our current monitoring framework.This analysis informed internal insights about the Monitor’s expanded framework and the key questions that the Monitor will need to answer to inform our monitoring approach.We have also sought and received feedback from Te Kāhui Group on these key questions.We have also begun to consult with iwi and Māori organisations that hold Strategic Partnerships with Oranga Tamariki. This includes Waikato-Tainui, the Eastern Bay of Plenty iwi Provider Alliance, Te Kahu Oranga Whānau and Ngāti Toa. These meetings also provided an opportunity to have an initial discussion on how we might monitor their Strategic Partnerships as well as the potential for sharing information once the Bill is passed. Both are provided for in the Bill.During June we will engage our wider stakeholder group on the expanded framework (including VOYCE Whakarongo Mai Youth Council, the Office of the Children’s Commission and shared care providers, before consulting with government agencies such as Oranga Tamariki, the Police, Ministry of Education and the Ministry of Health.
Establishing the Independent Children’s Monitor as a new departmental agency	
<div>G</div> <ul style="list-style-type: none">Work under the six workstreams of the Programme Implementation Plan continues. During April, we successfully consulted with Monitor staff about the future structure for the Monitor. The purpose of this change to the structure is so we are best organised to deliver the expanded scope of the monitoring function and to be established as a departmental agency, as currently proposed under the Bill. The new structure has been agreed. For existing staff, changes are minimal, and where there is change, it is limited to a change in title or reporting line only.	

Programme summary:

	Previous	Current	Next	
Overall status	G	G	G	Programme status continues to track GREEN overall.

Programme Management: Following the decision on the permanent home of the Monitor, we are planning for our establishment as a departmental agency.



Report

Date: 24 February 2022

Security Level: IN CONFIDENCE

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

Strengthening Oversight of the Oranga Tamariki System Programme – Monthly Progress Update – January 2022

Purpose of the report

- 1 This report provides you with a progress update for the Strengthening Oversight of the Oranga Tamariki System Programme for the period ending 31 January 2022.
- 2 Key points of interest are included in this cover report with a summary provided in the attached A3.

Recommended actions

- 3 It is recommended that you:

3.1 **note** the contents of this Strengthening Oversight of the Oranga Tamariki System Programme Monthly Progress Update which covers January 2022.

☒ YES / NO


Arran Jones

Executive Director, Independent Children's Monitor


25 Feb '22

Date



Hon Carmel Sepuloni

Minister for Social Development and Employment

9/3/22

Date

Summary and key points of interest

Programme summary

- 4 Programme status is on track.
- 5 We continued planning for our first set of monitoring visits scheduled to begin at the end of February. The communities we are speaking to are: Te Tai Tokerau, Central Auckland and North/West Auckland. Due to the current COVID-19 pandemic and the impact of Omicron variant, we are completing our engagements virtually.
- 6 We have continued planning for the establishment of the Monitor as a departmental agency to be hosted by the Education Review Office (ERO). We have provisionally agreed to the working arrangements between the agencies, subject to joint Minister's approval, and the Public Service Commissioner. In March, the Monitor and ERO will provide you, the Minister of Finance, Minister for the Public Service and Associate Minister of Education with an update on progress and seek your agreement to the high-level working arrangements set out in the Public Service Act, s9(2)(f)(iv) OIA
- 7 On 1 February, our annual report titled, '*Experiences of Care in Aotearoa: Agency Compliance with the National Care Standards and Related Matters Regulations*' was publicly released, along with the monitored agencies' responses.

Policy/Legislation workstream

- 8 The written submissions period for the Oversight of Oranga Tamariki System and Children and Young People's Commission Bill (the Bill) has closed as of 26 January 2022 and oral submissions for the Bill are to be heard by the Social Services Select Committee until the end of March 2022. On 6 April, the Committee will consider the Departmental Report.
- 9 Work is getting underway to develop the regulations for the Bill.

Independent Children's Monitor monitoring and establishment workstreams

Monitoring Operations

- 10 On 1 February, our annual report titled, '*Experiences of Care in Aotearoa: Agency Compliance with the National Care Standards and Related Matters Regulations*' was publicly released, along with the monitored agencies' responses. We also published two additional versions; the first being a summary report of our key findings and the second being a tamariki focused version which explained our key findings in a more accessible way to a younger reading age.
- 11 We have continued planning our scheduled monitoring visits to Te Tai Tokerau and Central Auckland/North North-West Auckland. We are being careful to protect communities and our staff, in response to the current Omicron variant outbreak and will be completing monitoring engagements virtually for all groups. We have been working with our connectors (NGO providers and agencies) to ensure that we can hold quality virtual meetings with tamariki, whānau and caregivers.

Establishing the Monitor as a new departmental agency

- 12 In January, the Memorandum of Understanding (MoU) between MSD and the ERO was agreed. Amongst other matters, the MoU sets out the range of services that are to be shared between the Monitor and the ERO, subject to the approval of the Public Service Commissioner. These arrangements include the high-level working arrangements referred to in section 24 of the Public Service Act, namely that the Monitor operates outside of the ERO's strategic and policy framework and that the ERO manage the Monitor's assets and liabilities. These high-level arrangements require agreement of joint Ministers.

- 13 With in-principle agreement on the working arrangements, work has commenced on the Programme Implementation Plan. Workstreams under the Plan are:
- Legislation and Legal
 - The Monitor and the ERO working arrangements
 - People
 - Finance and Property
 - Technology and data
 - Communications.

14 s9(2)(f)(iv) OIA

Key engagements and communications

- 15 We met with the Te Kāhui group during January, and discussions focussed on the release of our report and our upcoming monitoring visits. Due to this meeting being held late January, a meeting is not scheduled for February and monthly meetings for 2022 will continue from March onwards.
- 16 The Executive Director and Chief Monitor met with the Children's Commissioner, to discuss the work of the Monitor, the transition of monitoring functions once the Bill is passed into law and also to brief her on our report on the National Care Standards. The Ombudsman's Office was also briefed on the report prior to publication.
- 17 On 1 February, a newsletter was emailed to stakeholders advising of the publishing of our annual report on our website.
- Attached as Appendix One is the Monthly Progress Update A3 for the period ending January 2022.

File ref: REP/22/2/110

Author: (Arran Jones, Executive Director, Independent Children's Monitor)

Responsible manager: (Stephen Crombie, Deputy Chief Executive, People and Capability)

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Strengthening Oversight of the Oranga Tamariki System Programme | Monthly Progress Report for the Minister for Social Development | January 2022



Programme summary:

	Previous	Current	Next	
Overall status	G	G	G	<ul style="list-style-type: none">Programme status continues to track GREEN overall.
Programme Management:				<ul style="list-style-type: none">Following the decision on the permanent home of the Monitor, we are planning for a successful transition from MSD to ERO.

Engagement, Communications and Change

Engagement:	<ul style="list-style-type: none">The Executive Director and Chief Monitor met with the Children's Commissioner, to discuss the work of the Monitor, the transition of monitoring functions once the Bill is passed into law and also to brief her on our report on the National Care Standards.The Ombudsman's Office was also briefed on the report prior to publication.
Māori Engagement:	<ul style="list-style-type: none">We met with the Te Kāhui group during January, and discussions focussed on the release of our report and our upcoming monitoring visits. Due to this meeting being held late January, a meeting is not scheduled for February. Monthly meetings will continue from March 2022 onwards.
Communications:	<ul style="list-style-type: none">Communications were emailed to stakeholders on 1 February 2022 advising of the publishing of our annual report, alongside the agencies' responses, on our website.Our annual report titled "Experiences of Care in Aotearoa 1 July 2020 – 30 June 2021" was publicly released on our website on 1 February. Two alternative versions were also simultaneously released:<ul style="list-style-type: none">A 'Key Findings' report: which provides a summary of our key findingsA 'Tamariki version': this report contains a summary of our key findings written in a way that is more understandable for a younger reader.Both alternative versions were released in both Te Reo and English.

Workstream summary:

Policy/Legislation	G	<ul style="list-style-type: none">The written submissions period for the Oversight of Oranga Tamariki System and Children and Young People's Commission Bill (the Bill) has closed as of 26 January 2022 and oral submissions for the Bill are to be heard by the Social Services Select Committee until the end of March 2022. On 6 April, the Committee will consider the Departmental Report.Work is getting underway to develop the regulations for the Bill.
Establishing the Independent Children's Monitor as a new departmental agency	G	<ul style="list-style-type: none">In January, the Memorandum of Understanding (MoU) between MSD and the ERO was agreed. Amongst other matters, the MoU sets out the range of services that are to be shared between the Monitor and the ERO, subject to the approval of the Public Service Commissioner. These arrangements include the high-level working arrangements referred to in section 24 of the Public Service Act, namely that the Monitor operates outside of the ERO's strategic and policy framework and that the ERO manage the Monitor's assets and liabilities. These high-level arrangements require agreement of joint Ministers.To progress the establishment of the new Monitor, workstreams are commencing around key deliverables of this work. Workstreams are:<ul style="list-style-type: none">Legislation and legalThe Monitor and ERO working arrangementsPeopleFinance and propertyTechnology and dataCommunications.s9(2)(f)(iv) OIA
Independent Children's Monitor Monitoring/Operations	G	<ul style="list-style-type: none">On 1 February, our 2021 annual report titled, 'the National Care Standards and Related Matters Regulations', with the agency's responses, was publicly released.We have continued planning our scheduled monitoring visits to Te Tai Tokerau and Central Auckland/North North-West Auckland. We are being careful to protect communities and our staff, in response to the current Omricon variant outbreak and will be completing monitoring engagements virtually for all groups. We have been working with our connectors (NGO providers and agencies) to ensure that we can hold quality virtual meetings with tamariki, whānau and caregivers.

What's coming up:

Meetings with you:	<ul style="list-style-type: none">Meetings as required to discuss LEG paper at date (TBC).
Reports to you:	<ul style="list-style-type: none">Draft LEG papers (TBC).