



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

5 December 2022

Tēnā koe

On 30 May 2022, you emailed the Ministry of Social Development (the Ministry) requesting, under the Official Information Act 1982 (the Act), the following information:

- *Under the Official Information Act 1982 I request all information held by the Ministry in relation to policy analysis and advice in regard to policy issues relating to and leading up to the introduction of the Oversight of the Oranga Tamariki System and Children and Young People's Commission Bill that has not already been publicly released.*
- *As part of your response could you identify for me (and provide links to) all material relevant to the request that has been publicly released.*

On 14 June 2022, you agreed to limit the timeframe of your request to 1 January 2018 onwards.

On 29 June 2022, the Ministry emailed you to advise that more time was required to respond to your request as your request is for a large quantity of information, and it would take longer than the 20 working day time limit to collate the material requested and assess whether any interest might be prejudiced by its release.

Please find attached the following documents as **batch three** in response to your request:

- REP/19/2/128 – Report – *Considering legislation change and phasing for independent oversight of Oranga Tamariki and children's issues*, dated 25 February 2019

- REP/19/3/185 – Report – *Draft Cabinet paper: Strengthening Independent Oversight of the Oranga Tamariki system and children's issues*, dated 8 March 2019
- REP/19/3/207 – Aide-mémoire – *Social Wellbeing Consideration of – Strengthening Independent Oversight of Oranga Tamariki and children's issues*, dated 15 March 2019, and attached feedback table
- REP/19/3/238 – Aide-mémoire – *Cabinet Consideration of – Strengthening Independent Oversight of Oranga Tamariki and children's issues*, 22 March 2019
- REP/19/4/272 – Aide-mémoire – *Process for having the Ombudsman recognised as the complaints oversight and investigations body*, dated 1 April 2019
- REP/19/4/345 – Report – *Progress in establishing strengthened independent oversight of the Oranga Tamariki Act and associated regulations*, 9 May 2019

The names of individuals who are not Tier 4 or decision makers are 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 withheld 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.

Some information is withheld under section 9(2)(h) of the Act in order to maintain legal professional privilege. The greater public interest is in ensuring that government agencies can continue to obtain confidential legal advice.

The Cabinet paper *Strengthening Independent Oversight of the Oranga Tamariki System and Children's issues*, dated March 2019, was also identified to be in scope of your request. This Cabinet paper has been refused under section 18(d) of the Act as I understand the Minister of Social Development and Employment's office has already provided this to you on 30 August 2022.

The principles and purposes of the Official Information Act 1982 under which you made your request are:

- to create greater openness and transparency about the plans, work and activities of the Government,
- to increase the ability of the public to participate in the making and administration of our laws and policies and
- to lead to greater accountability in the conduct of public affairs.

This Ministry fully supports those principles and purposes. The Ministry therefore intends to make the information contained in this letter and any attached documents available to the wider public. The Ministry will do this by publishing this letter and attachments on the Ministry's website. Your personal details will be deleted, and the Ministry will not publish any information that would identify you as the person who requested the information.

If you wish to discuss this response with us, please feel free to contact OIA_Requests@msd.govt.nz.

If you are not satisfied with this response regarding the Oversight of Oranga Tamariki System and Children and Young People's Bill, 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.

Ngā mihi nui

A handwritten signature in blue ink, appearing to read 'Christian Opetaia', followed by the initials 'PO'.

Christian Opetaia
Policy Manager
Child and Youth Policy



Report

Date: 25 February 2019

Security Level: BUDGET - SENSITIVE

To: Hon Carmel Sepuloni, Minister for Social Development

Considering legislation change and phasing for independent oversight of Oranga Tamariki and children's issues.

Purpose of the report

- 1 This paper sets out how to progress assigning the Office of the Children's Commission (OCC) the monitoring function over the National Care Standards (NCS) in the Oranga Tamariki system by 1 July 2021 and options and recommendations for phasing these key tasks.
- 2 It also provides high level advice on transferring the Review and/or responsibility for the Office of the Children's Commissioner to the Ministry of Justice.

Recommended actions

Appointing a monitor and beginning monitoring

It is recommended that you:

- 1 **note** that the Minister for Children has indicated that the Children's Commissioner should be appointed as the independent monitor from 1 July 2019 for the NCS Standards in line with requirements in the Oranga Tamariki Act
- 2 **note** that the Minister for Children wants to delay implementation of monitoring of NCS to 1 July 2021 to enable Oranga Tamariki more time to implement the NCS
- 3 s9(2)(h)
- 4 **agree** (in discussion with Minister for Children) that changes are required to NCS Regulations before 1 July 2019 so that substantive monitoring does not commence until 1 July 2021, to provide sufficient time to enable establishment of the monitoring framework and function

Agree/Disagree

- 5 **note** the above work required to develop the monitoring function would have financial and operational implications for the Office of the Children's Commissioner, the Ministry for Social Development and Oranga Tamariki and we will continue to refine the current 2019 budget bid to support this work

6 s9(2)(g)(i)

- 8 **note** that it is our advice that given the significant inter-agency implications, if the Children's Commissioner is assigned the independent monitoring function, establishment work should be managed as part of a single inter-agency work programme alongside the Commissioner and that this would need to be negotiated and reflected in SPE or MOU
- 9 **agree** that MSD provide the on-going specialist advice and support, subject to discussions and the agreement of the Commissioner and if agreed, funding would be sought in the current 2019 budget bid

Agree/Disagree

The need for legislative change

- 10 **note** that as part of the Review we have identified the best options for legislative reform to ensure effective and robust oversight including the relevant powers and duties that are required
- 11 **note** that it is our advice that we should progress wider legislative change now to ensure appropriate legislation is in place for the commencement of monitoring in 2021
- 12 **note** that the most effective approach is for oversight functions to be underpinned by a new Act; setting out roles, functions and powers and enables the responsible Minister to appoint bodies to undertake each function
- 13 **note** that we are progressing a Cabinet paper for consideration for 20 March 2019 that seeks agreement to assign the Ombudsman with the role of complaints and investigation oversight for the system
- 14 **agree** that we include in the above Cabinet paper agreement to legislative reform as outlined in the draft Cabinet paper provided to your office on 1 February 2019

Agree/Disagree

Moving responsibility for the Children's Commissioner to the Ministry of Justice

- 15 **note** that there is little constitutional impediment to moving responsibilities for monitoring the Children's Commissioner to the Ministry of Justice and this paper outlines the key steps that would be required
- 16 **note** that any move presents risks, including:
- 16.1 a loss of momentum associated with establishment of the independent monitor
 - 16.2 fiscal impacts for MSD associated with existing shared services arrangements and the Ministry of Justice's available resources
 - 16.3 the effectiveness of the upcoming process to appoint a Children's Commissioner by September 2019
- 17 **advise** officials whether you wish responsibilities for the Children's Commissioner to be transferred to the Minister and Ministry of Justice

18 **agree** to share this paper with the Minister for Children

Agree/Disagree

Justine Cornwall

Justine Cornwall
General Manager, Seniors & International Policy

25 February 2019.

Date

Hon Carmel Sepuloni
Minister for Social Development

Date

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Background

- 3 The Review of Independent Oversight of Oranga Tamariki and Children's Issues (the Review) has examined options to strengthen core oversight functions and to meet new regulatory requirements for independent monitoring of Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018 (NCS Regulations).
- 4 Following ministerial discussions it has been decided that Cabinet should be asked to agree that the Ombudsman should have an enhanced role in complaints and investigations oversight of matters related to application of the Oranga Tamariki Act 1989 and/or children in the custody of the State¹. A Cabinet paper is being prepared for consideration by SWC on 20 March 2019.
- 5 In consultation with the Minister for Children it has been decided that the Office of the Children's Commissioner (OCC) should be appointed to the independent monitoring and assurance function for the NCS Regulations. Under the Oranga Tamariki Act a monitor needed to be appointed in time for 1 July 2019.
- 6 MSD's 15 February 2019 report *The Children's Commissioner: Considerations for oversight* provided initial advice on what would be required to enable the OCC to undertake monitoring. In addition to increasing the scale of monitoring, the new regulatory context monitoring requires a specialist, impartial and objective approach. We noted that given the OCC's appropriately strong focus on advocacy, changes within the OCC would be required in capability and organisational structure if independent monitoring were to remain with the OCC on an ongoing basis.
- 7 This report highlights the best options for phasing the monitoring function and outlines the need for changes to Regulation and provides a rationale for progressing legislation change now. The paper also considers the mechanisms and opportunities to work with the Children's Commissioner in the short term, both to manage OCC-as-monitor key deliverable of an assessment framework for NCS and to ensure that operations for monitoring can be stood up by July 2021.
- 8 The paper also responds to your request for advice on transferring the Review and, or the management of the Office of the Children's Commissioner to the Minister for Justice.

Commencing substantive monitoring on July 2021

Delaying substantive monitoring of NCS Regulations until July 2021 is supported

- 9 We understand that the Minister for Children considers the commencement of monitoring should be delayed until 1 July 2021 to better align with Oranga Tamariki's roll out of the Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018 (NCS Regulations).
- 10 There are advantages if the NCS monitoring was delayed until 2021, including:
 - providing the OCC with more time to recruit or procure the expertise they will need to develop the assessment framework for monitoring NCS, and any associated management and governance infrastructure
 - enables time for collaboration and, or co-design with Maori for the assessment framework
 - provides a more achievable timeframe for legislative and regulatory change, and
 - enables some additional time to consider future monitoring arrangements, although we advise that this decision must be made by December 2019 or sooner to give the monitor time to stand up operations.

¹ If supported by Cabinet this would be recommend to the Officers of Parliament Committee.

Changes to NCS Regulations is required to delay substantive monitoring

- 11 The Oranga Tamariki Act, 1989 requires the Minister for Children to appoint a monitor as soon as possible following 1 July 2019. ^{s9(2)(h)}

s9(2)(h)

- 12 It is our advice that the NCS Regulations must be amended to enable a phased approach, where a monitor is appointed in July 2019 but substantive monitoring does not commence until July 2021.
- 13 MSD's earlier advice to the Minister for Children sets out the amendments that are required to delay substantive monitoring until July 2020. If you and the Minister for Children support delaying substantive monitoring of NCS until July 2021 and agree to change the Regulations, then MSD could include those changes in the Cabinet paper currently being prepared seeking agreement for the Ombudsman to take the complaints and oversight function. This approach would ensure that the change would be in place before NCS Regulations commence on 1 July 2019.

Key decisions and tasks for delivering new oversight arrangements by July, 2021

- 14 Assigning the monitoring role of the NCS to the Office of the Children's Commissioner could be phased as follows:
- commence the development of the monitoring framework as set in Part 6 of the NCS Regulations
 - development of a future operating model to deliver an enhanced monitoring function
- 15 As outlined in the diagram below, subject to decisions on where the ongoing monitoring function is placed, work to build the necessary infrastructure would be needed to commence by the end of 2019 so that everything is built and in place for 2021.

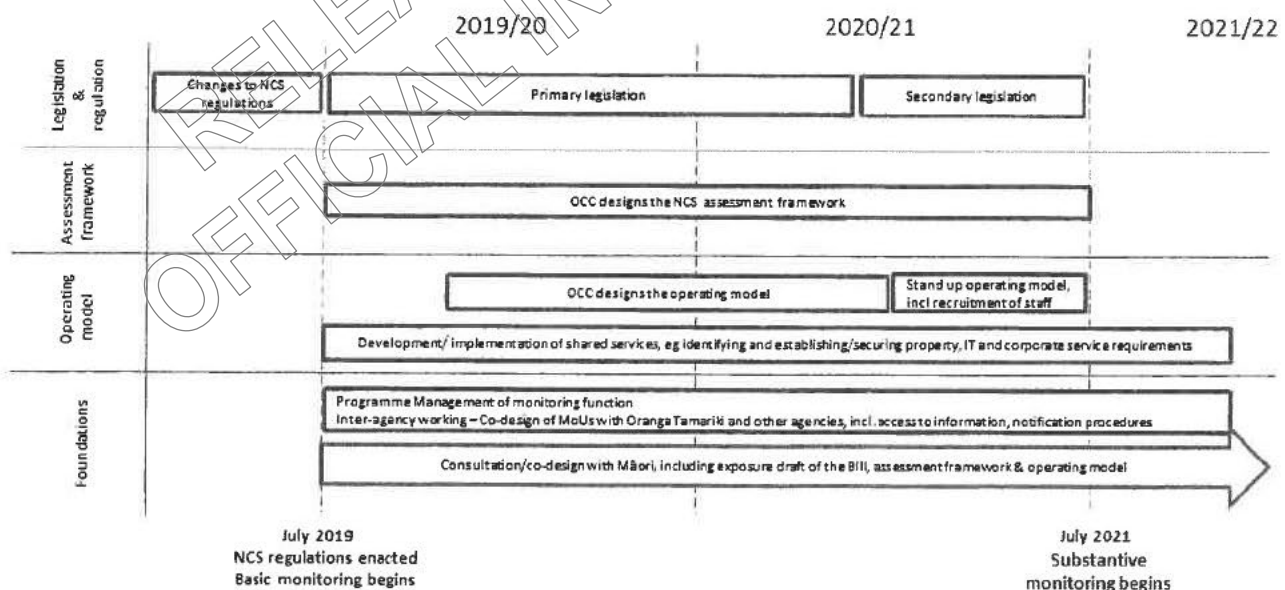



Figure 1: Monitoring function work programme deliverables – project interdependencies

- 16 MSD's preliminary planning on standing up monitoring operations has confirmed that there is a substantial programme of work to design and deliver the monitoring function. This is more complex and likely to take longer if monitoring is delivered by the OCC, as they do not have MSD's scale or its expertise in establishing new

functions. MSD's planning also relied on an overlap of work on the assessment framework and operations, and this may not be able to be relied on going forward (ie if there is a chance that the OCC would develop the assessment framework, but a new monitor appointed to establish operations).

- 17 If desired, MSD could provide the capability needed to work alongside the OCC to ensure the monitoring work is effectively stood up. We understand what is likely to be needed and as the monitoring agency responsible for the OCC we need to ensure that it can deliver this work successfully.
- 18 It is our advice that given the significant inter-agency implications, if the Children's Commissioner is assigned the independent monitoring function, establishment work should be managed as part of a single inter-agency work programme alongside the Commissioner.
- 19 This is also a need for one programme of work for the oversight system so that all functions are developed in consideration of each other, Oranga Tamariki, and operating systems. This is a particular risk for MSD because we provide shared services to both Oranga Tamariki and OCC. We would want to ensure that the OCC designs something that is cognizant of the impacts on the infrastructure that MSD currently provide to them.
- 20 As an Independent Crown Entity, the Children's Commissioner is independent and cannot be directed by a Minister, except under its own Act. s9(2)(g)(i)

s9(2)(g)(i) One potential way of ensuring the best product is developed is to for example, specify that the work is peer reviewed by an independent peer reviewer and reflected in either the SPE or an MOU.
- 21 It will be important to engage with the Children's Commissioner as soon as practicable in order to have these discussions about how the establishment work for the NCS standards is best progressed. We note that work on the OCC's Statement of Performance Expectations needs to commence in late April/May.

The need for wider legislative change

- 22 As outlined above the OCC, as an independent Crown entity, could not be confidently appointed to carry out the substantive monitoring and assurance function as envisaged by the review, without legislative change.
- 23 As set out in the draft Cabinet paper you received on 1 February we consider independent oversight arrangements are best provided for in a dedicated independent oversight Act. While it is possible to amend the Children's Commissioner and Ombudsman's Acts, this is not advised as it risks embedding the OCC as the on-going monitor for the NCS.
- 24 Establishing a single new Act is the most future proof option for legislative change. A new Act would set out the respective roles of the oversight bodies, and the functions and powers to support effective oversight, but could be agnostic on which body was appointed². It would set out provisions enabling the responsible Minister to appoint bodies to the respective oversight functions, allowing the assignment of these roles to change in the future as needed. Such a new Act would also specify the appropriate

² You may want to name the OCC as advocate and the Ombudsman as the complaints and investigation oversight body if you were confident that this would not change in the foreseeable future.

levels of independence and/or the degree of Ministerial direction necessary to meet the purpose of each respective function. This would include specifying that:

- the system-level advocate should not be subject to Ministerial direction in carrying out this function; and
- the monitoring and assurance body can be directed by a Minister direction when carrying out this function, in some limited circumstances eg where required under legislation (for example to provide reports on request of the Minister as set out in NCS Regulation 82 (b); and they must monitor against Acts and regulations as written.

- 25 This would mean, for example, that if the Children's Commissioner were to be assigned both the advocacy and monitoring roles, the Children's Commissioner would be able to carry out the monitoring function in accordance with the NCS legislation, without compromising its independence in carrying out the advocacy role.³
- 26 As outlined in the figure above we still need to progress legislative change now, to ensure that all of the oversight functions have the powers and duties they need to provide robust and effective oversight and necessary legislative changes are in place for 2021.
- 27 Subject to your agreement, we recommend including the wider legislative change we have provided you previously, in the Cabinet paper we are currently preparing for SWC on 20 March 2019 seeking agreement that the Ombudsman be assigned the complaints and investigation oversight for Oranga Tamariki.

Potential transfer of responsibility for the Office of the Children's Commissioner to the Ministry of Justice

- 28 We understand consideration is being given to:
- transferring the responsibility for leading the Review, and establishing new independent oversight arrangements, from the Minister for Social Development and Minister of State Services to the Minister of Justice – this would involve a corresponding transfer of departmental responsibilities in this area from MSD/SSC to the Ministry of Justice (MoJ)
 - the transfer of the ongoing general administration of the Children's Commissioner Act and support for the OCC from MSD to MoJ.
- 29 Taking the lead for the Review would require the MoJ to assign dedicated resources for this task and get up-to-speed with the full range of issues. This would include MoJ taking lead responsibility for progressing the required legislation for the new arrangements to completion, and progressing Budget funding to enable establishment activities to commence.
- 30 Transferring oversight responsibility for the Children's Commissioner Act, while constitutionally straightforward, would take some time, and have resourcing implications for both MSD and MoJ. Key elements of such a transfer would include:
- the designation of the transfer of responsibilities by the Prime Minister
 - Cabinet agreement to a baseline update to transfer the Commissioner's appropriation from Vote: Social Development to Vote: Justice
 - winding down MSD's shared services arrangements to support the OCC's operations (eg IT and other back office services), and the establishment of similar services in MoJ

³ This approach would take account of the fact that the Children's Commissioner is an independent Crown entity not subject to the direction of a Minister except under its own Act.

- the transfer of responsibilities for the pending appointment process for next the Children's Commissioner (this will need to be concluded by September 2019)
- progressing legislative and regulatory and funding changes to ensure the monitor has all the necessary functions, duties, powers and capabilities to undertake effective monitoring, should the OCC be assigned the new monitoring function
- consideration of transfer of monitoring UNCRoC

31 If Ministers wish this transfer to take place, we propose that it be phased in over time to enable each of the above elements to be managed appropriately. We will work with MoJ to provide joint advice to you on a staged transfer plan.

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Report

Date: 8 March 2019

Security Level: IN CONFIDENCE

To: Hon Carmel Sepuloni, Minister for Social Development

Draft cabinet paper: Strengthening Independent Oversight of the Oranga Tamariki system and children's issues

Purpose of the report

- 1 This report provides you with a revised draft Cabinet paper *Strengthening Independent Oversight of the Oranga Tamariki system and children's issues* for your feedback.

Recommended actions

It is recommended that you:

- 1 **note** that attached to this report is a revised version of the Cabinet paper *Strengthening Independent Oversight of the Oranga Tamariki system and Children's Issues*, incorporating the comments received on the paper from Ministerial consultation and further departmental feedback
- 2 **note** that Oranga Tamariki provided feedback on an earlier draft of the Cabinet paper on 7 March and that the attached revised version includes as much feedback as possible within the timeframe
- 3 **note** that we have also included recent feedback received from the State Services Commission
- 4 **note** that we will circulate this revised paper to key agencies today for feedback, including Oranga Tamariki, the Ministry of Justice, Te Arawhiti and Te Puni Kōkiri
- 5 **note** that we will provide you with a revised Cabinet paper once we have received your feedback and any other feedback from the departments identified above
- 6 **note** that in order for the Cabinet paper to be considered at the Social Wellbeing Committee on 20 March, it will need to be lodged by 10am on 14 March 2019.
- 7 **agree** that the attached draft Cabinet paper be forwarded to the Minister for State Services and Minister for Children


Justine Cornwall
General Manager, Seniors and International Policy


Hon Carmel Sepuloni
Minister for Social Development

Agree/Disagree

8 March 2019
Date

10/03/2019
Date

We have revised the draft Cabinet paper following ministerial consultation to incorporate feedback

- 2 On 1 February 2019, we provided you with a draft cabinet paper for ministerial consultation.
- 3 In response to the feedback from Ministers, we have made some amendments to the Cabinet paper:
 - It has been proposed that the independent monitor be phased-in over a transition period. The Ministry of Social Development (MSD) will be appointed the independent monitor in order to establish the function over 2019/20, before transferring the function to the OCC. Monitoring of NCS Regulations will commence on or before December 2020. The Cabinet paper has been revised to include the operational, legislative and financial implications of this proposal.
 - The Minister for Crown/Māori relations suggested that there should be more collaboration with Māori on the proposal. In response to this, we propose further collaboration and consultation with Māori post-Cabinet decisions.
 - In response to feedback from the Green Party, we have added more reference to children and young people with disabilities in the body of the paper (paras 139-141 of the cabinet paper refers).

We received further feedback from agencies during the ministerial consultation period

- 4 On 29 January 2019, we provided you with a report which summarised the feedback we received from departmental consultation. We have continued to receive further comments from departmental agencies over the course of the ministerial consultation process. The further departmental feedback we received included the following key comments:
 - Te Puni Kōkiri had concerns at the lack of formalised Māori involvement and representation in the monitoring function and that the advice was not taking a whānau-centred approach. We have amended the paper so that it outlines how Māori views and voices will be embedded in the system (Part 2 of the cabinet paper refers). We are also proposing further engagement with Māori post-Cabinet decisions, as outlined in this paper.
 - The Privacy Commission queried the proposed access to information for the monitoring and complaints bodies in the paper, including direct access to Oranga Tamariki's systems. We are engaging Oranga Tamariki on how they can operationalize timely access to high volume information requests, and how this is best expressed in legislation. We will give further consideration to issues around access to information through the legislative paper (paras 97 – 103 refer).
 - The Office for Maori Crown Relations, Te Arawhiti suggested that the paper should include reference to treaty settlement obligations to ensure that these obligations are considered appropriately and commitments honoured. We propose that Te Arawhiti provides further advice on precedents in other legislation, particularly in like settings, and on what additional benefits reference to Treaty settlements this provides to Māori and the Crown, and also any unintended disbenefits or risks.
- 5 Oranga Tamariki has provided further feedback on an earlier draft of the Cabinet paper from 7 March 2019. We have incorporated as much feedback as possible into this version of the Cabinet paper in the timeframes provided, and will continue to work through the feedback with Oranga Tamariki.

Due to the impact that the proposed changes will have on Māori, we propose further consultation/collaboration following Cabinet decisions

- 6 The Review found that better representation of Māori views is needed across all elements of the care and protection system and independent oversight functions. Given the national significance of these proposals and the high proportion of Māori in the Oranga Tamariki system, and in line with recently released guidelines on engagement from the Office for Māori Crown Relations, Te Arawhiti, we propose that collaboration on these issues is necessary.
- 7 We propose to run an engagement process with Māori organisations and iwi/hapū alongside the development of the legislation, assessment framework and operating model. We will engage Te Arawhiti for support and guidance on how a robust consultation/collaboration process might work.

Māori organisations were engaged and consulted as part of the Review of the oversight system

- 8 The second phase of the Review included consultation with stakeholders, seeking their views on the core functions required for strong oversight, critical features to success including skill and knowledge requirements, and whether and what functions best sit together and how the respective functions could be organised.
- 9 Consultation was undertaken with a range of stakeholder groups¹, including Māori organisations, and involved 35 face to face meetings or teleconferences with groups and individuals, a hui with Māori providers and 33 written submissions.
- 10 A number of Māori stakeholders were approached for consultation. A targeted group of 26 Māori organisations² were invited to take part in the hui, of which eight care and protection service providers attended. We sought a meeting with the Iwi Chairs Forum but were unable to fit onto their agenda at the time required. We also sought a meeting with the Oranga Tamariki Māori Design Panel and the Whānau Ora Commissioning Agencies; however were unable to meet due to their competing priorities.
- 11 Te Puni Kōkiri supported the consultation phase and facilitated the hui.

¹ Stakeholders included; Crown entities and Officers of Parliament; Principal Judges in the Youth Court and Family Court; other key individuals with particular expertise in the area; Pacific peoples representatives, including the Oranga Tamariki Pacific Panel; groups and associations representing children, caregivers and others involved with the Oranga Tamariki system, such as VOYCE – Whakarongo Mai, Fostering Kids, YouthLaw Aotearoa; and non-government organisations (NGOs) involved in delivering services to children and young people in the Oranga Tamariki system, such as Dingwall Trust and Barnados and NGOs that advocate for children's rights, such as Save the Children and UNweCEF.

² Māori organisations were invited to participate in the consultation process and the hui, including; Te Hau Awhiowhio o Otangarei Trust; Ngati Hine Health Trust; Te Runanga o Whaingaroa (Iwi Social Services); Te Hiku; Ngapuhi Iwi Social Services; Te Iwi o Ngati Kahu Trust; Papakura Marae; Te Whare o Meri; Ngā Mataapuna Oranga; Te Arawa Whānau Ora Collective; Te Uru Taumatua; waikato-Tainui Mokopuna Ora; Te Runanga o Kirikiriroa; Ngati Ranginui Iwi Society Incorporated; Te Korowai Roopu Tautoko Incorporated; Te Oranganui Trust; kōkiri Marae Keriana Olsen Trust; Orongomai Marae; Te Runanga o Toa Rangitira Incorporated; Te Runanga o Turanganui a Kiwa; Te Taiwhenua O Heretaunga Trust; Te Ikaroa Rangatahi Social Services; Roopu a Iwi Trust; He Waka Tapu; Whakatu Marae; Māori Womens Welfare League.

Next steps

- 12 Subject to your agreement, the paper will need to be forwarded to the Minister for State Services and Minister for Children for comment.
- 13 We will circulate this revised paper to key agencies today for feedback, including Oranga Tamariki, the Ministry of Justice, Te Arawhiti and Te Puni Kōkiri. We will provide other departments with an updated version of the paper at the time of lodging.
- 14 We will provide you with a revised Cabinet paper once we have received your feedback and any other feedback from the departments identified above.
- 15 We will provide the Minister for Children with an updated paper on the NCS Regulations changes on 11 March 2019 (which are required ahead of 1 July 2019). These changes are currently detailed in the draft Cabinet paper.

Appendix

- 16 The draft Cabinet paper, *Strengthening Independent Oversight of the Oranga Tamariki system and children's issues*, is attached.

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Aide-mémoire



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

Cabinet paper

Date: 15 March 2019

Security Level: Cabinet Sensitive

For: Hon Carmel Sepuloni, Minister for Social Development

File Reference: REP/19/3/207

Social Wellbeing Consideration of - *Strengthening Independent Oversight of Oranga Tamariki and children's issues*

Cabinet Committee

Social Wellbeing

Date of meeting

20 March 2019

Minister

Hon Carmel Sepuloni, Minister for Social Development

Proposal

This paper seeks agreement for:

- new institutional arrangements to strengthen independent oversight of the Oranga Tamariki system and children's issues, including:
 - appointing the Ministry of Social Development (MSD) to establish a more robust independent monitoring and assurance function for the Oranga Tamariki system, with the intention to transfer it to the OCC
 - strengthening the resourcing of the Office of the Children's Commissioner (OCC) to carry out its system-level advocacy for all New Zealand children and young people (once monitoring functions have been transitioned)
 - recommend to the Officers of Parliament Committee (OPC) that the Ombudsman provide an enhanced complaints oversight and investigations function relating to the Oranga Tamariki system
- key legislative changes to underpin these arrangements.

Key issues

How will the proposed new independent oversight model be rolled out?

It is proposed that the Ministry of Social Development (MSD) will be appointed the independent monitor in order to meet the early requirements for a National Care Standards (NCS) regulations monitor, and to establish operations and approaches for broader monitoring also.

NCS requirements for July 2019 to 2020 are to:

- monitor information that is disclosed on abuse or neglect in state care and how Oranga Tamariki is responding (regulations 69 and 85 of the NCS Regulations)
- establish the assessment framework for NCS Regulations, and
- be ready commence NCS monitoring in full in by December 2020. This is the initial focus of the monitor.

The approach to broader monitoring also needs to be established in the short term and pre-transition. This includes the approach to deep dive reviews, critical incident learning and monitoring frameworks for other parts of Oranga Tamariki's operations.

The monitoring function will transfer to the OCC once relevant legislation has passed and when the monitoring function has been established. In March 2021, MSD will report to the Minister of Social Development on the transition plan.

Systemic advocacy will continue in 2019 based on current resourcing. Subject to the monitoring function being transitioned, existing funding supporting the OCC's non-OPCAT monitoring activities will be re-allocated to support enhanced advocacy.

Complaints oversight will begin in 2019, with the Ombudsman building an enhanced model to deliver function. On or before December 2020, the Ombudsman will be ready to deliver an enhanced function. Note that they have existing powers to enable them to receive complaints.

Why is MSD proposed to be the independent monitor from 1 July 2019?

When determining where the monitoring function should be housed we considered a wide range of entities.

We also considered the risk that stakeholders may perceive MSD to be conflicted.

On balance MSD is best placed to establish such a significant and complex function within the timeframes required.

MSD has the capability and capacity required and is well placed to lead the establishment of the monitoring role as it:

- has recent experience in the development of new functions, including the establishment of Oranga Tamariki and the Ministry of Housing and Urban Development.
- is currently the shared service provider for both Oranga Tamariki and the OCC
- has quality assurance and regulatory expertise in related fields – eg MSD currently hosts the Social Services Accreditation (SSA) team, a shared service whose functions include accrediting non-government organisations providing care and protection services for Oranga Tamariki.

Any perceptions of a conflict of interest should be mitigated by the proposal that MSD intends to transfer the function to the OCC once it is established and monitoring activities have been refined.

Why was the OCC not recommended to:

Establishing the monitoring function

The OCC was carefully considered when determining where the monitoring function should be housed.

<ul style="list-style-type: none"> • establish the monitoring function? • have the complaints and oversight function? 	<p>The OCC is a small office (20 FTEs) s9(2)(g)(i) s9(2)(g)(i) s9(2)(g)(i) . Once fully established the function will increase the OCC's size by between 60 and 70 FTEs and fundamentally alter the structure and culture of the Office.</p> <p>The OCC would need strengthened governance in line with existing best practice for larger independent crown entities, providing for the establishment of a Board and a more traditional management structure, including the introduction of a Chief Executive.</p> <p>As an independent Crown entity the OCC does not have to have regard to current government policy. Appropriate provision would need to be made in legislation to require the OCC-as monitor to monitor against the Oranga Tamariki Act and associated regulations as written.</p> <p>In building the function and in particular developing the assessment framework that will guide initial monitoring, MSD will work closely with the OCC.</p> <p><i>Complaints and investigation oversight function</i></p> <p>s9(2)(g)(i)</p> <p>While the Ombudsman's Office is specifically established for this purpose. During consultation the Children's Commissioner did not provide specific advice on building their complaints function, while the Ombudsman's submission noted that this function would fit well within their existing scope.</p>
<p>How will we engage with Māori?</p>	<p>A formal engagement plan has not yet been developed. However, given the high proportion of Māori in the Oranga Tamariki system, and in line with recently released guidelines on engagement from the Office for Māori Crown Relations, Te Arawhiti, we propose formal collaboration with Iwi/Māori in the design of monitoring and complaints functions is required.</p> <p>We will work through how this will occur with Te Puni Kōkiri and Te Arawhiti.</p>
<p>How will we ensure oversight bodies have the right access to information and information sharing?</p>	<p>Effective oversight will be underpinned by robust information to support analysis and reporting.</p> <p>If stakeholder trust and confidence in oversight is to be retained ensuring oversight bodies can operate with a high degree of independence from Oranga Tamariki and other agencies they are overseeing will be critical.</p> <p>As written the Oranga Tamariki Act does not explicitly recognise oversight bodies for the purposes of information sharing. In addition, as written the Act would see oversight bodies reliant on the discretion of the Chief Executive of Oranga Tamariki to furnish them with information that will underpin oversight body's assessment of Oranga Tamariki's compliance. Both of these issues will need to be addressed to ensure effective and independent oversight.</p> <p>The degree of access that oversight bodies will require to information has not yet been determined. It is proposed that MSD will continue to work with Oranga Tamariki, the Children's</p>

	Commissioner, the Ombudsman's and other relevant agencies and provide you with advice in due course that will inform the drafting of the Bill to be considered by Cabinet Legislation Committee by November/December 2019.
How does this proposal fit in the context of wider sector reforms?	<p>When determining where the monitoring function should be housed we considered a wide range of entities. However, some entities were discounted due to ambiguity over their future as a consequence of wider social sector reviews.</p> <p>It is the intention at this time that the OCC will become the long-term monitor.</p>
How will this be communicated to the Office of the Children's Commissioner and the public?	<p>A comprehensive communications plan will be developed to support the announcement of the new proposed framework in April 2019, provided in draft form prior to final decisions being made at Cabinet on 25 March 2019.</p> <p>This work will include an overarching approach that will ensure all involved parties are aligned and that a collateral pack will be provided including FAQ's, responsive Q&A's, key messages, and fact sheets.</p> <p>The Ministry will work with the Ministers office to ensure all relevant Ministers have the resources required to support them, and to establish a shared approach to communications.</p> <p>The associated Cabinet Paper, select key advice papers, and the Beatie Report are expected to be published at the same time as part of a proactive release approach.</p>
What are the Financial implications?	<p>We consider a child centric approach will be required which will necessitate engagement with children, young people and those who care for them.</p> <p>We considered a number of options for the extent of engagement as this is what ultimately drives monitoring size and cost. For independent monitoring to be meaningful we considered the monitor should be resourced to engage annually with services to approximately 33% of children and young people in care, those who care for them, and services (REP 18/11/1605 refers).</p> <p>The following funding arrangements have been proposed in Budget 2019:</p> <ul style="list-style-type: none"> • a bid has been submitted for Budget 2019 to provide new funding of \$49.2 million over four years to establish and carry out the monitoring function • once the function is transitioned to the OCC, funding for non-OPCAT monitoring will no longer be required. It is proposed that this funding be re-allocated to strengthen the Commissioner's advocacy function at that time. <p>The new funding the Ombudsman will require to carry out the enhanced complaints oversight and investigation function will need to be determined by the OPC.</p>
Why are we proposing to	We considered maintaining and amending the current Children's Commissioner Act and Ombudsmen Act, rather than creating a

**repeal the
Children's
Commissioner
Act?**

new Act. However, on balance we consider the repeal of the Children's Commissioner Act and the re-establishment of the Commissioner and associated advocacy functions in the new Act would be more robust and future proof, and more transparent for parties interested in understanding how New Zealand views and provides for independent oversight.

The proposed Act and related regulations will support clarity and transparency with regard to the purpose, functions and powers of each oversight body, as well as allow for collaboration and common objectives within an independent oversight system. Some stakeholders, including the Children's Commissioner, may express concern at the repeal of the Children's Commission Act. However, it is important that the Commissioner be seen as a critical part of a cohesive system of oversight for the Oranga Tamariki system and children's issues. In addition, a new Act would send a strong signal that oversight of children's issues is important and while it includes advocacy there are other key elements to create an overall system.

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Talking points

Why was MSD proposed to be the monitor from 1 July 2019?

- I want to be confident that the new function that is established is robust and delivers what we intend.
- While the OCC has monitoring experience, it will need to significantly expand its capacity and capabilities to carry out the new monitoring function.
- I propose that we leverage MSD's very recent experience in establishing new operations at scale and regulatory expertise, by appointing them as the independent monitor for an establishment phase.
- MSD will establish the assessment framework for NCS Regulations, and then for broader monitoring.
- MSD must consult and co-design with Māori to develop the frameworks for monitoring, (and work with Te Puni Kōkiri, the Office for Māori Crown Relations – Te Arawhiti as appropriate).
- I expect MSD to draw on the OCC's knowledge and engage them as a key stakeholder. I also expect MSD to engage with Oranga Tamariki, including as they develop their internal monitoring and quality assurance practices.
- I propose that MSD conducts monitoring for a period, to ensure the new function is robust, and that officials I report back to key Ministers in mid-2020 on progress with the establishment of the monitoring function and in March 2021 on the plan and timeframes to transition the function to the OCC.

Why was the OCC not recommended to establish the monitoring function?

- The Office of the Children's Commissioner was considered when determining where the monitoring function should be housed.
- However, the Office of the Children's Commissioner is a small office and does not have the technical capability or capacity to stand up a function of this scale and complexity. It would also require changes to their governance structure, and legislative change to enable them to carry out the function.
- Beyond the establishment phase, I think that the Office of the Children's Commissioner is the most appropriate body to carry out the independent monitoring function, given its specialised focus on children and young people.
- The Ministry of Social Development will work closely with the Office of the Children's Commissioner in building the function and developing the assessment framework that will guide initial monitoring.

Why is the Office of the Ombudsman, rather than the Office of the Children's Commissioner, proposed to house the complaints function?

- While the Office of the Children's Commissioner's currently is empowered to receive complaints in the legislation, s9(2)(g)(i)

- s9(2)(g)(i) the Ombudsman's Office has the capability and experience in complaints and investigations oversight, and is well placed to deliver this function quickly and more cost-effectively.
- During consultation, the Children's Commissioner did not provide specific advice on building their complaints function, while the Ombudsman's submission noted that this function would fit well within their existing scope.

How will this be communicated to the Office of the Children's Commissioner?

- In April 2019, I will make a public announcement of the new proposed framework.
- I will brief the Children's Commissioner of Cabinet decisions prior to the announcement.
- I will work with my Ministerial colleagues to ensure all relevant Ministers have the resources required to ensure we have a shared approach to communications
- This Cabinet Paper, select key advice papers, and the post-consultation report (the "Beatie Report") are expected to be published at the same time as part of a proactive release approach.

How will Māori be involved in the establishment and delivery of the independent oversight model?

- Māori will be involved throughout the development of the monitoring and complaints functions
- I expect the independent monitor to seek advice from the Office for Māori Crown Relations – Te Arawhiti in relation to engagement with Māori during the establishment phase and beyond.
- The monitoring function will be developed in partnership and/or co-designed with Māori in accordance with the Māori Crown relations Engagement Framework and Guidelines and partnership principles.
- The Office of the Ombudsman has advised me that they are committed to ensuring that the principles of the Treaty of Waitangi are at the heart of its work and culture. Accordingly, it will work closely with Māori to develop the complaints and investigations oversight function, as well as embedding a tikanga Māori approach into the day to day delivery of the function.

How will you ensure oversight bodies have the right access to information and information sharing?

- MSD is working with Oranga Tamariki, the Office of the Children's Commissioner and the Office of the Ombudsman to determine the degree of access to information and information sharing that will be required.
- I will address these issues in a separate paper to be considered at Cabinet Legislative Committee.

Why are you proposing to repeal the Children's Commissioner Act 2003?

- I am proposing to repeal the Children's Commissioner Act 2003 and transfer all relevant existing provisions into a new dedicated Act covering all oversight functions.
- The new Act would also include any relevant provisions for each function that are contained in the Oranga Tamariki Act, the National Care Standards Regulations, the Residential Care Regulations 1996, and the Vulnerable Children's Act 2014.
- I think that re-establishing the Commissioner and associated advocacy functions in the new Act will reflect the integral role they have as part of a cohesive system of oversight for Oranga Tamariki and children's issues.

Could you just make amendments to the Children's Commissioner Act instead?

- I considered maintaining and amending the current Children's Commissioner Act and Ombudsmen Act, rather than creating a new Act.
- However, I think that repealing the Children's Commissioner Act and the re-establishment of the Commissioner and associated advocacy functions in the new Act is a more robust and future proofed approach
- The new Act will provide a necessary focus on the different functions, and ensures a function separation between systemic advocacy and regulatory monitoring
- This will ensure that independent oversight works cohesively as part of a wider system that aims to protect children and young people from harm and ensuring oversight of harm in care.
- I also think that this approach is more transparent for parties who are interested in understanding how New Zealand views and provides for independent oversight.

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Response to agency feedback (based on 8 March 2019 draft Cabinet paper)

MINISTERS	
The drafting of legislation in relation to the proposed new duties and provisions of the new oversight system should make explicit references to Māori, hapū, iwi being formally involved in carrying out these functions.	<p>The paper currently commits that in establishing the monitoring framework MSD will:</p> <ul style="list-style-type: none"> work with Māori to co-design the frameworks for monitoring, in accordance with the Māori Crown relations Engagement Framework and Guidelines and partnership principles (point 9 – Executive summary). seek advice from the Office for Māori Crown Relations – Te Arawhiti in relation to engagement with Māori during the establishment phase and beyond, with the expectation that the monitoring function will then be developed in partnership or co-designed with Māori in accordance with the Māori Crown relations Engagement Framework and Guidelines and partnership principles (point 59) <p>A new Act will allow that tasks within a function can be delegated to suitable bodies or person, and so does not preclude the involvement of Māori bodies in delivery. Strategic partnerships might also be considered for a LEG paper (note that the Oranga Tamariki Act makes it a duty for the CE to consider strategic partnerships with iwi and Māori organisations).</p>
Note the need for Māori to be formally involved in the delivery of the interim monitoring function with MSD, and to work with Te Puni Kōkiri and Te Arawhiti to ensure the needs and interests of whānau Māori are realised.	<p>s9(2)(g)(i)</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
ORANGA TAMARIKI	
Why an initial focus on assessment and referral	<p>Para 50 notes that the initial focus will be on meeting requirements for NCS monitoring and establishing operations and approaches for broader monitoring also.</p> <ul style="list-style-type: none"> NCS requirements for July 2019 to 2020 are to monitor information that is disclosed on abuse or neglect in state care and how Oranga Tamariki is responding (regs 69 and 85 of the NCS Regulations) and to establish the assessment framework for NCS Regulations, and be ready to commence NCS monitoring in full by December 2020. The paper clarifies that this is the initial

	<p>focus of the monitor.</p> <ul style="list-style-type: none"> The paper also clarifies that over time, the function could extend to cover intake, referral and assessment processes and monitoring the delivery of services within, and outcomes achieved by, the Oranga Tamariki system, across their core operating model.
Appendix B should provide more analysis about other bodies considered for appointment	<p>While the paper should, and does, acknowledge a range of other entities that have been considered for the monitoring function we have focused the cabinet paper on laying out the case for the Minister's preferred approach. This is particularly necessary given the scale of the paper. A fuller analysis of other options in the body is likely to complicate and confuse an already complex paper further. We also consider the assessment of alternatives in the Appendix to be adequate. We also recognise the significant consideration key ministers have given to who should be the monitor over recent months.</p>
Why does it take 18 months to establish the function	<p>We have included further information and a work programme diagram to illustrate the scale and complexity of the task and, therefore, the time required. A key driver of the time required will be the need for co-design with Iwi/Maori, in line with Te Arawhiti's recent guidance.</p> <p>We do not consider there are any other viable options for establishing the function 'sooner', and we consider the current timeline to be ambitious particularly in light of the necessary time required to co-design work that will be required with Iwi Maori and other stakeholders in the design of the monitoring framework.</p>
More acknowledgements of the risks of appointing MSD as the initial monitor	<p>We consider the paper adequately acknowledges the risks. The extensive consideration on alternative monitors has demonstrated there are no other viable alternatives at this time. We have also clarified in the paper that MSD's role will be to both establish the function and undertake initial monitoring to ensure a fully operationalised function can be transitioned.</p>
The paper should clarify that MSD will work closely with the OCC	<p>Para 55 now clarifies that MSD will consult with the OCC in the development of the monitoring function.</p>
The scale of monitor is bigger than OT's internal monitoring function	<p>We consider the scale of the monitoring function is appropriate and note Minister's agreed to a child centric approach and, to support this, engagement with up to 33% of children and young people in care, those who care for them and services p.a. We also note that it is appropriate for the purposes of maintaining independence that the monitor has its own field staff to enable engagement with agencies, stakeholders and children and to review samples of practice as required. These staff account for more than 50% of the monitors scale and when removed the function is likely to be more comparable to OT's internal function.</p>

The paper needs discussion of the scale of the complaints function	The Ombudsman has made it clear during our engagement that it is not appropriate for agencies or the Executive to direct the Ombudsman. While an initial headline funding figure was provided no clarity was given in regards to whether this was an annual or four year funding need or what the funding would be spent on. In addition, through the development of the policy work the proposed scope of activities for the Ombudsman was reduced, which we anticipate would have reduced their estimate of costs. We note that the Treasury have oversight of their funding proposals and that they will provide advice on their proposed bid to the OPC.
Protecting children and young people from harm should not be an objective of the complaints body	Wording has been clarified to note that the Ombudsman will work as part of a wider system focused on protecting children and young people from harm.
The independent complaints body should not be notified of about acts that 'do or could lead to abuse	We have adjusted the wording to address this concern and clarify that this proposal relates to the existing regulation 85, regarding the provision of information to the independent monitor. We consider that the Ombudsman should also be provided the same information as the monitoring body.
There are likely to be workforce implications	We have adjusted the Cabinet paper to reflect that workforce implications should be managed due to the likely focus on compliance and monitoring skill sets and the proposal for the monitor to scale up over time.

TE ARAWHITI	
Emphasise that the monitor needs to build its te ao Maori capability and the ability to engage with Maori	We have added this emphasis in the Executive Summary, included a principle that will require all oversight bodies to take a te ao Maori approach to and incorporate Maori perspectives in the design and implement of their monitoring, para 4 and 38
Ensure there is a co-design process with Maori to develop the frameworks for monitoring.	We have emphasised through the Cabinet paper that Te Puni Kokiri, Te Arawhiti and Maori will be engaged through the development of oversight functions in accordance with the Maori Crown Relations Engagement Framework and Guidelines. Rec13
Explain the person-centric approach	This has been clarified

Explain in the paper why external Maori groups weren't considered either as primary monitor or as a partner when considered relevant government agencies for the monitoring function.	We have not amended the Cabinet paper to reflect this comment. Appendix B to the Cabinet paper outlines the assessment of organisations that was undertaken and then agreed by Ministers in November 2018. We are not aware of any national Maori body that would be appropriate to this function.
Include an additional paragraph in the monitoring section that MSD review any commitments that have been entered into through Treaty Settlements to ensure that the monitoring function accounts for and meets these obligations.	The Tuhoe and Te Hiku settlements, for example, include specific commitments in relation to the care and protection system. We discussed this suggestion with Te Arawhiti. In light of uncertain issues around the nature of commitments and the need to consult with other agencies that have obligations under Treaty Settlements we agreed with Te Arawhiti to include amended text in the Cabinet paper. Para 60
Amend Table 1 on the common duties, requirements and administrative provisions for oversight functions so that that objective one provisions specify engagement and working in partnership with Maori	We discussed this suggestion with Te Arawhiti and agreed that rather than change the Table we would amend paragraph 99 to include a commitment that we would work with TPK and Te Arawhiti on how best to give effect to the engagement guidelines.
Include in the Consultation section what engagement with Maori was undertaken on the proposals to date and how Maori views have been reflect in the proposals.	We have included this information (drawing on our previous cover report to you with the revised draft Cabinet paper on 8 March) in para 151
Include a recommendation setting out how Maori will be involved in the development of the monitoring function.	We have made this change in rec 13
TE PUNI KOKIRI	
Include the requirement for co-design with Maori of the oversight functions	We have made this change, refer to Te Arawhiti changes.

Refer to Mana Mokapuna	We have made this change
Include text on how the proposals will consider UNDRIP	We have made this change
In the legislative section ensure that the Objective and provision that oversight bodies recognise and provide a practical commitment to the principles of the Treaty of Waitangi for specified functions is also reflected in the duties for monitoring and complaints	We have made this change
Reflect in the Executive Summary the need to recognise the Crown and Maori relationships (as per the associated recommendation)	We have made this change

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MINISTRY OF JUSTICE	
Make it clearer what functions and powers would be taken away from the Children's Commissioner and which functions and powers remain at various stages	We have responded to Justice that in the short-term there will be no change and in the longer-term the intention is to significantly expand their monitoring function.
Is the recommendation to repeal the Children's Commissioner Act appropriate at this stage?	We have responded to Justice explaining why this recommendation is necessary now.
How will the transition of the monitoring function to the OCC happen and will it be before or after the 2023 review?	We have responded to Justice that we haven't yet considered transitional matters but will provide advice to the Minister of Social Development in March 2021 with a transition plan.

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Aide-mémoire

Cabinet paper



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

Date: 22 March 2019

Security Level: Cabinet Sensitive

For: Hon Carmel Sepuloni, Minister for Social Development

File Reference: REP/19/3/238

Cabinet Consideration of - Strengthening Independent Oversight of Oranga Tamariki and children's issues

Cabinet	Cabinet
Date of meeting	20 March 2019
Minister	Hon Carmel Sepuloni, Minister for Social Development

Proposal

This aide memoire provides supplementary information following SWC discussion of the Cabinet paper on 20 March 2019.

Key issues

Options for who will undertake monitoring once transferred

It is the intention that MSD will establish the monitoring function. MSD will also monitor for a period of time to ensure the function is fully operational before it is transferred to an appropriate entity.

The intent, in principle, is for the monitoring function to transfer to the Office of the Children's Commissioner (OCC). Before the function is ready to transfer there is the possibility that wider social sector monitoring arrangements may experience structural change. The Minister of State Services has, therefore, expressed a preference that a firm decision is not taken until greater clarity emerges.

On this basis the paper sets out two options for Cabinet to consider:

agree in principle that the intention is for the monitoring function to be transferred to the OCC; OR

agree to seek further advice on where monitoring is transferred to in December 2020, anticipating that this when a new legislative framework will be in place and the monitoring function will be established

How will we engage with Māori?

The Minister for Crown Māori Relations has expressed a desire for a stronger focus on Māori engagement during the establishment of the monitoring function. The Minister has also expressed a desire for Māori involvement in the operation of monitoring whilst the function resides within MSD and once transferred to an appropriate entity.

Consideration is being given to the development of governance and working arrangements to establish monitoring. MSD will be working with Te Puni Kokiri and Te Arawhiti to develop an engagement strategy to support Māori involvement. In accordance with Te Arawhiti's engagement guidelines.

Following discussion between Minister's offices the paper has been amended to reflect a clear intent that MSD and the monitor will require Te ao Māori capability and the ability to effectively engage with Māori.

Talking points**How will Māori be involved in the establishment and delivery of the independent oversight model?**

- Māori will be involved throughout the development of the monitoring function
- I expect the independent monitor to seek advice from the Office for Māori Crown Relations – Te Arawhiti in relation to engagement with Māori during the establishment phase and beyond.
- The monitoring function will be developed with strong engagement with Māori in accordance with the Te Arawhiti Engagement Framework and Guidelines and partnership principles.
- The Office of the Ombudsman has advised me that they are committed to ensuring that the principles of the Treaty of Waitangi are at the heart of its work and culture. Accordingly, it will work closely with Māori to develop the complaints and investigations oversight function, as well as embedding a tikanga Māori approach into the day to day delivery of the function.

Who should the monitoring function be transferred to?

- I understand it will take MSD some time to stand up and test the monitoring function and that this provides a window to consider where the function could be transferred to.
- However, I do not consider the sector will respond well to a long period of uncertainty.
- I recognise that if the OCC is chosen significant change will be required within the Office to ensure both the advocacy and monitoring functions can coexist effectively. However, I believe we have time, while MSD is building the function, to make the necessary changes.

Aide-mémoire



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

Meeting

Date: 1 April 2019 **Security Level:** IN CONFIDENCE

For: David Harrison, Primate Secretary, Minister for Social Development

File Reference: REP/19/4/272

Process for having the Ombudsman recognised as the complaints oversight and investigations body

Purpose This aide memoire clarifies what is required to have the Ombudsman act as the complaints oversight and investigation body for independent oversight of the Oranga Tamariki system.

Background During the development of proposals the Ombudsman's Office noted that the Offices of Parliament Committee (OPC) should consider the appointment of the Ombudsman as the Complaints oversight and investigations body.

On 25 March 2019 Cabinet agreed to recommend to the Officers of Parliament Committee (OPC) that the Ombudsman be appointed to carry out this function on or by 31 December 2020

Comment There has been lack of clarity over the process to get OPC to consider Cabinet's recommendation. On Friday 29 March officials spoke with the Clerk of the OPC.

The Clerk has clarified that the OPC can consider the Ombudsman's appointment if the Ombudsman or the Minister would like. However, OPC agreement is not necessary to progress the Ombudsman as the complaints oversight and investigation body for the purposes of fulfilling the policy objectives.

The Bill currently under development will formally assign the Ombudsman as the body for overseeing complaints and undertaking investigation associated with children and young people in care. In the Clerk's view, Parliament will consider the Ombudsman's role at the time the Bill is progressed through the House. Given the Clerk's view we do not consider there is value in the Minister asking the OPC to consider Cabinet's recommendation.

OPC consideration will be required for any further funding the Ombudsman requires to give effect to the policy objectives.

Next steps

The Ombudsman has clarified that the cabinet paper, with material pertaining to the proposed role and function, can be released.

The Ombudsman is currently reviewing the material we are proposing be proactively released as part of announcements.

The Ombudsman will engage with the OPC on budget required to undertake the new role and will engage with Treasury as well. He plans to do this in April. We understand that this is the usual process and that he will lead on this.

As noted above, we do not consider there is value in seeking OPC agreement to Cabinet's recommendation. However, if the Minister does wish to seek OPC agreement, the Clerk has advised that a session could be held in the week beginning 8 April 2019.

Author: s9(2)(a) , Contractor, Policy

Responsible manager: Justine Cornwall, General Manager, Policy

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Report

Date: 9 May 2019

Security Level: IN CONFIDENCE

To: Hon Carmel Sepuloni, Minister for Social Development

Progress in establishing strengthened independent oversight of the Oranga Tamariki Act and associated regulations

Purpose of the report

- 1 This report provides you with an update on
 - progress in establishing strengthened independent oversight arrangements
 - the development of the Oranga Tamariki (Independent Oversight and Children's Issues) Bill, which will support the oversight system
 - progress in strengthening complaints oversight and investigations associated with services provided under the Oranga Tamariki Act and associated regulations.

Executive Summary

- 2 Establishing initial monitoring from 1 July 2019 is tracking to plan (although timeframes remain tight) and work has commenced on the establishment of monitoring for all NCS regulations.
- 3 Good progress is being made on the amendments to the Regulations and development of the Bill. To meet timelines for the Bill, we need to resolve any remaining or new policy issues by the end of June.
- 4 We are working with key stakeholders on information sharing and access arrangements and will provide a report to joint Ministers on our progress in early June.
- 5 We are recruiting an Executive Director to operate the unit on commencement of operations from 1 July.
- 6 The engagement with stakeholders is progressing well including; The Office of the Children's Commissioner, Oranga Tamariki, the Ombudsman's Office, State Services Commission, Te Puni Kōkiri and Te Arawhiti.
- 7 The Children's Commissioner has provided his perspective on the future role and function of the Independent Monitor and the Commission, and these are being considered through the policy development process.
- 8 We are working through a number of different measures to ensure a level of independence of the monitoring function within MSD.

Recommended actions

It is recommended that you:

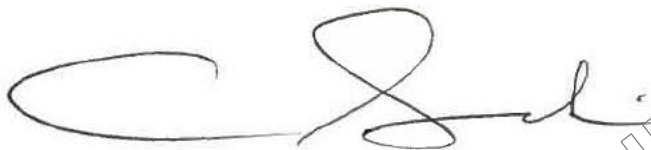
- 1 **note** the contents of this report
- 2 **discuss** your requirements for on-going reporting at the Official's Meeting on 13 May.



Stephen Crombie
DCE Corporate Solutions
Ministry of Social Development

9/5/19

Date



Hon Carmel Sepuloni
Minister for Social Development

11/5/19

Date

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Background

- 9 On 25 March 2019 Cabinet agreed to strengthen independent oversight (systemic advocacy, independent monitoring and complaints oversight and investigations) of the Oranga Tamariki Act and associated regulations (CAB-19-MIN-0113 refers). This included the appointment of the Ministry of Social Development (MSD) as the independent monitor from 1 July, with the in-principle intention to transfer the function (once established) to the Office of the Children's Commission. MSD is to:
- monitor information that is disclosed on abuse or neglect in State care and how Oranga Tamariki is responding (NCS Regulation 69 and 85) from 1 July 2019
 - develop the NCS assessment framework, in consultation with Oranga Tamariki, the Children's Commissioner, Te Puni Kōkiri, Te Arawhiti and others from 1 July 2019
 - undertake full monitoring of all NCS Regulations on or before 31 December 2020.
- 10 Cabinet agreed to a number of milestones for the new oversight system, including the establishment of the new independent children's monitoring function. A summary of the key milestones to give effect to this are set out below:
- 27 May 2019 - Cabinet consideration of National Care Standards amendments required before 30 June 2019
 - 1 July 2019 - National Care Standards and amended regulations come into effect
 - 1 July 2019 - Initial monitoring of information disclosed on abuse or neglect in State care and how Oranga Tamariki / approved organisations are responding
 - Early October 2019 (TBC) - Cabinet Legislation Committee consideration of Independent Oversight (Oranga Tamariki Systems and Children's Issues) Bill
 - October 2019 (TBC) - Independent Oversight (Oranga Tamariki Systems and Children's Issues) Bill introduced
 - Mid 2020 (TBC) - Independent Oversight (Oranga Tamariki Systems and Children's Issues) Bill enacted with phased commencement
 - December 2020 - Monitoring commences on compliance with all NCS regulations
 - March 2021 - Report to you and other key Ministers on the plan, timeframes and readiness for transfer of the monitoring function.

Work programme update

Establishing Initial Monitoring from 1 July 2019

- 11 From 1 July 2019, the focus of the Independent Monitor will be on receiving information relating to allegations of abuse and neglect in care (Regulation 69). An operating model is under development to form the foundation for this initial monitoring.
- 12 Recruitment is underway for an Executive Director to lead, on commencement of operations, in an interim capacity from 1 July.
- 13 The implementation programme is currently on track but the time period is very tight. We will update you early June to confirm readiness for 1 July.

Establishment of monitoring of all NCS regulations on or before December 2020

- 14 Work is underway to establish the workstreams and build implementation team capacity and capability; connecting with key stakeholders to understand aspects of the system the new monitor will need to operate within (as well as understanding the existing monitoring that is in place); and beginning the detailed planning process.

Progress on New Independent Oversight Bill and Amendments to NCS Regulations

- 15 Good progress is being made on the amendments to the Regulations and development of the Bill. The timelines are tight for the Bill and will require us to resolve any remaining or new policy issues by the end of June to enable final drafting instructions to be provided to PCO. We will update you if it becomes clear through stakeholder engagement that further policy decisions are recommended for Cabinet consideration, particularly if they could not be addressed through the Legislation Cabinet paper.
- 16 Your office received the amended Regulations on 30 April 2019 for ministerial consultation.
- 17 We have also been engaging with agencies (Oranga Tamariki, Te Puni Kōkiri, Te Arawhiti, the Ombudsman and the Children's Commissioner) to gain a better understanding of their particular areas of interest. As a consequence, a number of key areas have emerged relating to:
 - the principles that will guide oversight bodies' activities
 - how the Crown will fulfil its Treaty obligations
 - access to information held by Oranga Tamariki, approved providers and other agencies operating under the Oranga Tamariki Act and how this information will be accessed, shared and used. Cabinet agreed that MSD would report to the Minister for Social Development and the Minister for Children on the issues surrounding information sharing and access [CAB-19-Min-0113]. We are currently working in consultation with key stakeholders on this matter and will provide a report to joint Ministers on our progress in early June
 - the future governance arrangements for the Office of the Children's Commissioner. We have been working closely with the State Services Commission who are developing a range of governance options that will be canvassed with the Children's Commissioner and Māori engagement forums.
- 18 The areas set out above are substantive and complex and likely to generate significant interest from a wide range of parties. Once we have a greater understanding of the areas of interest and the nature/complexity of the work required to progress we will update you on any implications on timeframes for the introduction of the Bill.

Progress in strengthening complaints oversight and investigations

- 19 Cabinet has agreed that the Ombudsman should establish strengthened complaints oversight and investigations capability in regards to services provided under the Oranga Tamariki Act and associated regulations.
- 20 The Ombudsman is currently:
 - preparing to submit a budget bid to the Officers of Parliament Select Committee in the 2019/2020 financial year to resource its enhanced functions. This involves determining the positions and organisational changes required for this purpose
 - setting up transitional arrangements pending the additional resourcing and implementation of the new legislation
 - determining how best to engage with Māori and youth, as well as how to implement its Treaty of Waitangi obligations more broadly
 - commencing work on the design of the new procedures.

Engagement

Partnering with the Children's Commissioner and the Ombudsman

- 21 A number of meetings have been held with the Children's Commissioner and his Office; and with the Ombudsman's Office, as we progress work on the Bill and monitoring frameworks. We expect this close working relationship to continue as both are key partners in the oversight system.
- 22 The Children's Commissioner has provided his perspective on the future role and function of the independent monitor and the Commission and these are being considered through the policy development process.
- 23 We are also discussing with the Children's Commissioner the ways that the OCC staff might work more closely with the team - including exploring opportunities for secondments / formal resourcing arrangements.
- 24 You are meeting with the Children's Commissioner on 22 May. We will support this meeting with an aide memoire.

Partnering with Māori

- 25 We have appointed Donna Matahaere-Atariki to lead our engagement with Māori. This has been well received by Te Puni Kōkiri, Te Arawhiti and Oranga Tamariki. Donna is well regarded in this area and was very instrumental in a successful engagement with Māori in the Historical Claims process redesign.
- 26 Donna is providing advice on our engagement approach, which is being developed and implemented over the next two weeks. Initial engagements with Te Puni Kōkiri and Te Arawhiti have been positive with all parties in agreement that a mixed model for engagement with Māori will be required, to ensure the need to work closely with Māori is balanced with the timeframes for commencing the different phases for monitoring.

Collaboration with Oranga Tamariki

- 27 It is critical that the independent monitoring develops in line with the establishment of assurance systems within Oranga Tamariki. The organisations have been making good progress on connecting on the development of the Bill and the creation of monitoring frameworks.

Consultation with Approved Organisations

- 28 The approach for how we consult with approved organisations (who provide care services) on content of the new Bill and the creation of the operating model and assessment framework is being developed over the next two weeks.

Independence of the Monitoring Function

- 29 We are working through a number of different measures to ensure a level of independence of the monitoring function within MSD including:
 - locating the Establishment Programme team away from the operational teams as a general principle
 - all aspects of the monitoring function (including the corporate support required from MSD in the interim) will be designed from a perspective of building to "lift and shift"
 - seeking and employing external experts and capacity from outside of MSD to work within the establishment programme where possible.

Next steps

- 30 We will develop an aide memoire to support you for your meeting with the Children's Commissioner on 22 May. We will work with your Office to draft this.
- 31 We will provide a report to joint Ministers in early June on our progress on the issues surrounding information sharing and access.
- 32 We will update you early June to confirm readiness for 1 July commencement of the initial monitoring.
- 33 We would like to discuss with you at the Official's Meeting on Monday 13 May, the nature of on-going updates that you would like to receive (also with reference to the Cabinet paper which sets out that officials will report to you and other key Ministers, including the Minister of Māori Development and the Minister for Whānau Ora, regularly on progress with establishment of the monitoring function).

File ref: REP/19/4/345

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