

Please note that the title of this paper has been changed to 'Stengthening Independent Oversight of Children's issues and the Oranga Tamariki System: Consultation on Options'

Chair  
Cabinet Social Wellbeing Committee

## **CONSULTATION ON OPTIONS TO STRENGTHEN INDEPENDENT OVERSIGHT (CHILDREN'S ISSUES AND ORANGA TAMARIKI SYSTEM)**

### **Proposal**

- 1 This paper outlines preliminary work on options to strengthen independent oversight of children's issues and the Oranga Tamariki system and, as part of the policy development process, seeks agreement to undertake targeted consultation with key stakeholders outside government departments and selected oversight agencies.

### **Executive summary**

- 2 Recent reforms of the Oranga Tamariki system and new Government priorities (including the reduction of poverty and the child wellbeing strategy) provide an opportunity to also make changes to independent oversight arrangements to align with these reforms and priorities.
- 3 The Ministry of Social Development (MSD), with support from the State Services Commission (SSC), has been asked to identify how these arrangements might be strengthened to ensure that we have the level of independent oversight of children's issues that is now required.
- 4 Independent oversight functions include monitoring, advocacy, complaints review and investigations. In this context these functions operate at two levels. The first level is providing systemic assessment of government performance to improve the rights and position of all children in line with our obligations under the United Nations Convention on the Rights of the Child (UNCRC), and advocating for change at the national level. The second level is a specific focus on providing oversight of the welfare and safety of children and young people in the Oranga Tamariki system.<sup>1</sup>
- 5 A key question is what level and type of independent oversight best supports the needs of all children and the needs of those children and young people in the Oranga Tamariki system. Where government has intrusive and coercive powers, such as the power of Oranga Tamariki to remove children and young people from their families, or to place young people in secure residences, independent oversight is particularly important.

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<sup>1</sup> The term 'Oranga Tamariki system' is used in this paper to describe not only the statutory care and protection and youth justice system in the Oranga Tamariki Act 1989, but also the system for responding to children with early risk factors for future involvement in the statutory care and protection and youth justice system, and young people transitioning from care. There are around 30,000 children and young people who Oranga Tamariki is working with on any given day. This includes contact through family group conferences, visits and support, plans and assessments, court reporting, gathering information across care and protection, youth justice and Children's Teams, but not including those only working with contracted providers of Oranga Tamariki. Of these there are approximately 6,100 children and young people in the care and protection custody of the Chief Executive, and 250 young people in either youth justice custody or a combination of both. The 'system' also includes the roles of other agencies. For example, Courts, New Zealand Police, and the Department of Corrections have roles in the statutory system. The Ministries of Health and Education also provide services to children and young people with early risk factors for future statutory involvement, those who Oranga Tamariki works with, and care-experienced children.

- 6 A number of different entities are involved in the independent oversight of children's issues and the Oranga Tamariki system including the Ombudsman, the Independent Police Conduct Authority and the Children's Commissioner. Preliminary work has identified overlaps (particularly around systemic advocacy) and gaps in current independent oversight arrangements (primarily related to complaints and investigation functions); and has identified potential options to strengthen the oversight model in ways that improve outcomes for children and young people.
- 7 To date, engagement on opportunities to strengthen independent oversight has been focused on relevant government departments, Crown Entities (the Children's Commissioner, Human Rights Commissioners, the Health and Disability Commissioner, the Privacy Commissioner, and the Independent Police Conduct Authority) and the Ombudsman.
- 8 As part of the policy development process, I propose that targeted consultation is now undertaken with other key groups to test the analysis and options for change identified to date. This consultation will give priority to hearing the views of children and young people, including those with disabilities, and with iwi and Māori (including the Oranga Tamariki Māori Design Group). Others I propose be consulted include:
- the Principal Judges in the Youth Court and Family Court
  - other key individuals with particular expertise in the area, eg previous Children's Commissioners and academics
  - Pacific peoples representatives, including the Oranga Tamariki Pacific Peoples Panel
  - groups and associations representing children, social workers, caregivers and others involved with the Oranga Tamariki system, such as VOYCE - Whakarongo Mai, the Social Workers Registration Board, Fostering Kids, YouthLaw Aotearoa
  - non-government organisations involved in delivering services to children and young people in the Oranga Tamariki system, or who advocate for children's rights and wellbeing, including those with a focus on disabled children and young people.
- 9 Where possible, the Ministry of Social Development will leverage off the existing stakeholder networks of other agencies to connect with key stakeholder groups who have an interest in this area.
- 10 I also propose that there be ongoing consultation and engagement with the Children's Commissioner and the other oversight agencies.
- 11 Such consultation will provide an opportunity to test the work done to date with a small group of stakeholders and may find other options that better improve the oversight model and outcomes for children and young people.
- 12 I further propose that the consultation materials be based on the information in the Appendices to this paper, and that consultation take place, following Cabinet agreement, in April - May 2018. My intention is to bring final policy proposals to Cabinet for decision in May - June 2018.

## **Background**

- 13 The Government's commitments to improving child wellbeing and encouraging all children to reach their full potential signal that caring for children is one of the most important things people can do. Recent reforms of the Oranga Tamariki system and new Government priorities (including the reduction of poverty and the child wellbeing strategy) provide an opportunity to

also make changes to independent oversight arrangements to align with these reforms and priorities.

- 14 MSD (as the Ministry responsible for monitoring the Children's Commissioner), with SSC, was previously directed to undertake some preliminary work to identify:
  - overlaps and gaps in independent oversight of the Oranga Tamariki system, in light of the changes to the system and the Children's Commissioner's wider functions in relation to all children (eg UNCRC)
  - potential reform options to best support the new system, including what functions, powers and form the Children's Commissioner might have in the future.
- 15 The shift to a new system for Oranga Tamariki, and accompanying changes to legislation and regulations, has significant implications for the independent oversight of children and young people in this system.
- 16 Children and young people in the Oranga Tamariki system, their whānau, families, carers and the public have heightened expectations for what the new Oranga Tamariki system will achieve. There are increased responsibilities in legislation for complaints mechanisms, monitoring (including of care standards regulations) and reporting.<sup>2</sup> Under the Oranga Tamariki Act 1989, the Minister for Children is required to recommend the making of care standards in regulations by 13 July 2018, and appoint an independent agency or body to monitor and report on compliance with those care standards. The new regulations will cover a range of settings and will contain some minimum requirements with respect to the manner in which the regulations are monitored and reported on by an independent monitor [SWC-18-MIN-0010].<sup>3</sup>
- 17 The establishment of the Royal Commission of Inquiry into the historical abuse of individuals in State care (from 1950 - 1999) also highlights the importance of safeguarding those children and young people in State care today. While the creation of Oranga Tamariki reflects the need for the State system to better deliver outcomes for children and young people, we need to be vigilant to ensure that circumstances like those surrounding historical claims are less likely for those children and young people in State care today. We also need to ensure that children and young people are better able to raise complaints, have them dealt with effectively and quickly; and that there are robust systems to investigate issues as required.
- 18 Current independent oversight of children's issues for all children at both the national level and for children and young people in the Oranga Tamariki system is undertaken by a number of organisations which are separate to the agency providing services. These include, amongst others, the Children's Commissioner, Human Rights Commissioners, the Health and Disability Commissioner, the Privacy Commissioner, the Independent Police Conduct Authority, and the Ombudsmen. With the exception of the Children's Commissioner, these organisations do not have specific responsibility for children and young people. However, they can and do consider issues that affect children and young people.
- 19 I also note that upon its establishment Oranga Tamariki inherited a Chief Executive's Panel that comprised external appointees whose purpose is to conduct a review where a complainant is not satisfied with how a matter relating to them have been addressed internally. There are not a large number of complaints referred to the Panel and with few

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<sup>2</sup> More information about these changes is in Appendix 1.

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exceptions these are all made by adults. The purpose of the Panel is to advise the Chief Executive of Oranga Tamariki on what if any actions should result.

- 20 Another body with some oversight functions is the Vulnerable Children's Board. This was established by the previous Government in 2012 with the appointment of an independent chair and members made by Cabinet. Its role was to essentially provide cross-agency governance for the implementation of modernising Child, Youth and Family. Its terms of reference were recast in 2016 to take a high level oversight role including monitoring progress and performance of the transformation of the vulnerable children's system.
- 21 The Children's Commissioner has a key role in oversight arrangements and currently has a broad remit:
- Under the Children's Commissioner Act 2003, the Commissioner has general statutory responsibilities for all children under 18, including to advocate for the rights of all children and, in that regard, to advance and monitor the application of UNCRC.<sup>4</sup> This work is acknowledged as a particular strength of the Commissioner.
  - The Children's Commissioner also has some specific functions to provide oversight of Oranga Tamariki. These include monitoring the policies and practices of Oranga Tamariki as well as the policies and practices of any other person, body or organisation with functions, duties or powers under the Oranga Tamariki Act 1989; and undertaking investigations of decisions, recommendations, and acts or omissions under that Act in respect of any child or young person.
  - As a designated 'National Preventive Mechanism', the Commissioner also examines and monitors the treatment of children and young people detained in care and protection and youth justice residences for the purposes of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).<sup>5</sup> This designation is held concurrently with the Ombudsman.
  - The Minister of Justice is responsible for designating the agencies monitoring places of detention under OPCAT and the Ministry of Justice is currently considering the scope of the designations. The National Preventive Mechanisms would like to see the designations changed so that the Commissioner has sole responsibility for care and protection and youth justice residences; and so that the Commissioner also has responsibility (concurrently with the Ombudsman) for monitoring the wellbeing of children and young people in Youth Units in prisons, Mother and Baby Units in prisons, and in youth health and disability facilities.
- 22 Reflecting the Commissioner's broad remit, publications from the Commissioner's Office include the Child Poverty Monitor, the State of Care report, and reports on New Zealand's progress with implementing UNCRC.
- 23 The Government's focus on improving child wellbeing and reducing child poverty will also have ramifications for the Commissioner's work. The Commissioner needs to balance a broad statutory remit in what is a relatively small office with multiple responsibilities and expectations.

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<sup>4</sup> Work to consider the implications of New Zealand signing and ratifying the Optional Protocol to UNCRC on a Communications Procedure (OPCP) is also underway at the Ministry of Social Development. The OPCP provides a United Nations based mechanism for plaintiffs to pursue possible breaches of children's rights set out in UNCRC and associated optional protocols, by State parties who have ratified the OPCP.

<sup>5</sup> The monitoring of places of detention is an international obligation and is required under the Crimes of Torture Act 1989. Other National Preventive Mechanisms (NPMs) for the purposes of OPCAT include the Ombudsman and the Independent Police Conduct Authority. Each NPM has designated responsibility for monitoring particular places of detention.

- 24 The Minister for Children and I have met with officials to discuss the themes that have emerged from the initial consultation and analysis, and to consider some possible options to strengthen the system. I now seek agreement for wider stakeholder consultation to both test these options and potentially identify other options.

## **Comment**

### *Oversight of broad government activity and complaints*

- 25 Services provided to children and young people play a significant part in their lives. All children, and those who care for them, need to be assured that children's wellbeing, safety, interests and rights are at the heart of the services they receive. Independent oversight provides safeguards in addition to those provided by frontline services.
- 26 In this context, there are two broad roles for independent oversight. The first involves assessing government activity across national level policies and practices for all New Zealand children and advocating for further investment and changes to advance children's rights. As noted previously, the Children's Commissioner has a broad remit to advocate for the rights and interests of all children up until the age of 18. The Commissioner also has a role in assessing the government's progress in implementing the UNCRC. This general function allows the Commissioner to also comment and advocate on a range of issues related to the wellbeing of children.
- 27 At this broader level the Children's Commissioner also has a role in receiving complaints and investigating issues that impact a wide range of children. Recent examples include work with the School Trustees Association and the Human Rights Commission to pilot an appeals system for suspension, exclusion and expulsion decisions made by Boards of Trustees; and supporting the New Zealand Rugby Union to develop a child-friendly process for complaints of player conduct for under 18 year olds, separating the approach and process from that used with adult players.

### *Oversight of children in State care*

- 28 The second role is the oversight of the children and young people in the Oranga Tamariki system. Of particular interest is where government has intrusive and coercive powers, such as the power of Oranga Tamariki to remove children and young people from their families, or to place young people in secure residences. Here independent oversight is particularly important. Strong oversight provides these children and young people with:
- confidence that their wellbeing and safety is paramount, and they are treated with dignity and respect
  - assurance that their feedback will be taken seriously, and actions will be taken as a result.
- 29 For the public, independent oversight of the Oranga Tamariki system contributes to building transparency, trust and confidence that the powers of Oranga Tamariki and other agencies are being appropriately used, and that better outcomes for children and young people are being achieved.
- 30 For Oranga Tamariki itself, such oversight provides senior management and Ministers with ongoing access to independent perspectives on their organisational processes, including their decision-making and resource use. Together with internal processes that support accountability and reporting, findings from independent oversight contribute to an Oranga Tamariki culture as a learning organisation focused on continuous improvement.

- 31 Establishing stronger independent oversight now, particularly through monitoring, complaints review and investigations of the Oranga Tamariki system, will:
- support the prompt identification and addressing of concerns within the Oranga Tamariki system
  - provide opportunities for these oversight structures to be developed as the Royal Commission of Inquiry into Historical Abuse in State Care progresses
  - provide opportunities to ensure children and young people access complaints structures when they need to - we know few currently do.
- 32 There is also an opportunity to consider how other independent complaint and investigation models could be specifically designed to oversee Oranga Tamariki. There have been a number of calls over recent years for improvements to both internal and external complaints mechanisms for what was Child, Youth and Family. Examples of models used to oversee other government agencies with coercive powers include the Independent Police Conduct Authority and the role of the statutory inspectors at Corrections.

*Independent oversight involves monitoring, complaints review, investigations and advocacy*

- 33 At the broad system level, our work to date has identified that an independent oversight agency needs to be able to:
- monitor government performance across policies and systems that impact all children
  - review concerns raised or complaints received about failures to uphold children's rights or children being subject to practices that are not child focused or appropriate (a recent example is the use of restraints and seclusion in schools), and investigate as needed
  - advocate for change where issues are identified.

These functions are important and align with broader Government direction to ensure that New Zealand takes a wellbeing approach across our work with children.

- 34 With regard to children and young people in the Oranga Tamariki system, our work to date has identified that effective oversight requires similar functions to those noted immediately above. However, as they are applied in situations where the State's coercive powers have been exercised and/or where children's safety and wellbeing is solely reliant on State services, these functions require concerted focus and investment. In this context, the four primary oversight functions can be described as follows:
- *Independent Monitoring*: should provide regular, consistent, and transparent assessment of the system. It should also include monitoring key identified elements of the system so that trends and improvements can be tracked over time, and look at systemic issues and particular points of risk for children. It should also reflect what a high-performing system that improves outcomes for children and young people looks like with certainty around what will be reported on, and clarity around the outcomes and indicators used to assess progress. Such monitoring can, for example:
    - validate and complement the internal monitoring processes of Oranga Tamariki.
    - provide Oranga Tamariki and its contracted providers with an independent view of their services (as a 'critical friend') and a benchmark against which to measure performance
    - support a continuous learning culture, prevent/reduce harm, and improve services.

- *Independent Complaints Review*: Children and young people need access to an independent complaints review mechanism that is safe, timely, visible, accessible and responsive. They need to know they can use it, be listened to, be able to trust it, and feel confident that it addresses their concerns.
- *Independent Investigations*: Children and young people need assurance that when they make a complaint, it will be investigated in a fair and timely manner, action will be taken, and necessary improvements to services will be made. As well as investigating complaints, this function also supports investigation and remediation of recurring or emerging issues.
- *Independent Advocacy*: This supports children's voices to be heard, and enables them to influence decisions about them and the system that supports them. VOYCE - Whakarongo Mai has recently been established to provide independent individual and group advocacy for children in care, as well as advocating at the systemic level.

*Preliminary work has identified overlaps and gaps in current independent oversight arrangements*

- 35 MSD's preliminary analysis, and consultation to date,<sup>6</sup> has identified the following key issues and themes across the range of oversight functions for all children and for those in the Oranga Tamariki system.
- 36 There is consensus around the need to strengthen and invest further in current oversight mechanisms. Providing more investment is not sufficient on its own as core capability, skills and systems need to be strengthened.

*Advocacy*

- The broader advocacy role for all children within the Office of the Children's Commissioner (OCC) is seen as a strength (particularly its work on child poverty and assessing the government's implementation of UNCRC). However, it could be beneficial to consider how the Commissioner's focus on assessing Government's policies to reduce child poverty and on the implementation of a child wellbeing strategy at the national level could be aligned with government activity.
- There is a potential overlap in advocacy for children and young people in the Oranga Tamariki system between VOYCE - Whakarongo Mai and the OCC.

*Complaints and investigations*

- Current independent complaints processes for children and young people in the Oranga Tamariki system are insufficiently child-centred and culturally responsive and children do not use them.
- There is a need for robust investigation systems that are adequately resourced. This is at both the broader level for all children and for those in the Oranga Tamariki system.

*Monitoring*

- There is a need for timely monitoring so that issues for children and young people in the Oranga Tamariki system are caught quickly to prevent further harm, and so that the lessons learned can be applied to the system as a whole, as well as for the benefit of individuals.

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<sup>6</sup> More about who has been consulted so far is set out in paragraphs 50-51 of this paper.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- The Children’s Commissioner has indicated that he does not have all the powers needed to monitor effectively.

*Tensions in the current oversight arrangements*

- Finally, two broad tensions in current oversight arrangements emerged from our initial consultation:
  - There are challenges associated with balancing a broad remit to advocate for the rights and interests of all children at a national level alongside the necessary and sustained focus required for those children and young people subject to the coercive powers of the State in the Oranga Tamariki system. A reason for this is that one organisation combining both functions may have challenges focusing sufficiently on both groups.
  - There was a perception that an advocacy role does not fit appropriately alongside monitoring, complaints review and investigations functions and that this perception or view can detract from the objectivity and validity of recommendations arising from monitoring and investigation activity.

*Preliminary work has also identified some potential options to improve the oversight model*

37 Option 1: While more work has to be done to clarify the nature and extent of the functions we need from the oversight system before we reach views on the appropriate organisational form, I note that to address the tensions and issues identified to date, a key question is how to best cluster the oversight functions. One way could be to have:

- one agency that focuses on systemic advocacy for all children, including assessing government’s policies to reduce child poverty and
- another agency that focuses exclusively on independent monitoring, investigations and complaints review for children and young people in the Oranga Tamariki system.

38 There are advantages in separating these functions. For example, if the systemic advocacy function was separate from the other oversight functions it would address the perception of a lack of objectivity. Importantly, it would ensure that there is a clear and sustained focus on the rights, interests and safety of children and young people in the Oranga Tamariki system, given the State’s coercive powers over these children and young people.

39 Option 2: Another option is to retain the functions within a single structure. The Children’s Commissioner believes that important synergies come from one agency overseeing both groups of children. In particular, his view is that keeping the focus on all children alongside those children in the Oranga Tamariki system would ensure that their needs and wellbeing is aligned with other children; and the performance of the Oranga Tamariki system in achieving outcomes for children in their care could be assessed against our aspirations for all children.



- 40 The Commissioner also believes that it is important to have systemic advocacy across all of the oversight functions so that the oversight agency can identify patterns of issues, undertake thematic reviews, and then advocate for change.
- 41 If the functions are together, then an option is to retain all of the functions together in the OCC but strengthen the structures and systems to address perceived conflicts of interest and to ensure stable governance and continuity in delivery and focus. These changes would need to support the OCC to balance a focus on all children with a focus on the particular needs of children and young people in the Oranga Tamariki system.

*Consulting on two broad options*

- 42 On the basis of their initial analysis and consultation, MSD would like to test these two broad options. They are set out in more detail in Table 1 (on pages 11-13).
- 43 The potential options identified so far all assume that the independent oversight functions will need:
- to be child-focused and youth-focused, accessible to children and young people particularly Māori, and to children and young people with disabilities, and enable their voices to be heard
  - to reflect new Government priorities such as reducing child poverty and a child wellbeing strategy
  - to address gaps in oversight at the national level for all children, such as the resources to support investigations as required (a recent example is the use of restraints and seclusion in schools)
  - to ensure opportunities for partnerships with Māori
  - to demonstrate high levels of cultural capability – including capability to engage with tamariki Māori, their whānau, hapū and iwi
- 44 It is also assumed that:
- the independent monitoring, complaints review and investigations functions will have parallel internal processes in Oranga Tamariki
  - the body or bodies undertaking the four independent functions will be able to access relevant documents and data from Oranga Tamariki so that they can perform their roles as expected
  - the appropriation arrangements for the oversight functions and for new Government priorities relating to all children and young people will be such that Ministers gain confidence that each area is resourced (the type of appropriation structure would need to be confirmed with Treasury)
  - oversight functions will be undertaken by those with appropriate skills and knowledge, including of the complexity, scale and practices of the Oranga Tamariki system
  - oversight functions will be carried out in a timely way, recognising children and young people's sense of time.
- 45 Across the range of options presented in Table 1, there are opportunities to specifically increase the focus on the needs and interests of children and young people in the Oranga Tamariki system, including:

- ensuring that we develop a bespoke independent complaints review function and a more robust investigation approach that enables children and young people to make complaints easily and effectively and have issues investigated in a timely manner.
- the potential to shift to a more specialised evaluative method of independent monitoring that is based on an agreed understanding of what ‘good’ looks like and complements internal self-review and continuous improvement.
- addressing potential duplication of internal Oranga Tamariki monitoring functions with independent monitoring functions by refocusing the independent monitoring to the parts of the system that present the most risk to children and young people and where monitoring provides added value.

*Investment is required to support all potential options*

- 46 All options will require additional investment to varying degrees dependant on the proposed organisational structure. The investment would be required to, at a minimum:
- reflect increased workload from the Oranga Tamariki Act reforms (eg extending the age range of children in care and youth justice, supporting those transitioning from care, introducing care standards regulations, increasing partnerships with whā nau, hapū and iwi) and new Government priorities
  - build capability and capacity to undertake the different levels of independent oversight, including recruiting skilled personnel to lead and undertake oversight functions (including the skills required to implement a child friendly complaints review mechanism and to manage investigation activities).



*Legislative change*

- 47 To maximise these opportunities would require legislative change, options 1B, 2A and 2B outline the kinds of legislative change that could be considered.
- 48 All of the options (except option 1A) assume that there will be some level of change to the Children’s Commissioner Act to:
- balance the degree of oversight required for different groups of children
  - strengthen the organisational structure of the OCC
  - clarify and enhance the functions of the Commissioner/s (including creating the appropriate degree of separation between the systemic advocacy function and the other functions)
  - clarify and enhance the powers of the Commissioner/s<sup>7</sup>
  - align cultural components of the Children’s Commissioner Act with the purposes and principles in the Oranga Tamariki Act.
- 49 There is also the opportunity to consider where the designations for the OPCAT monitoring of children and young people in detention (including those in health and disability places of detention) are best placed. As noted previously, the Ministry of Justice is responsible for designating the monitoring agencies under OPCAT.

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<sup>7</sup> The term ‘Commissioner’ is used here for ease of reference, but there could also be other options, such as a Commission with more one Commissioner, supported by a management structure with a chief executive and managers for particular functions.

**Table 1: Potential options**

| <b>Option 1: Keep all four independent oversight functions together in the OCC (as they are now) but strengthen aspects of the OCC model</b>  |   |
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| <p><b>1A</b><br/>Keep current arrangements, and provide additional investment</p> <div style="text-align: center;"> <p><b>OCC</b></p>  </div>  | <p><b>Description</b></p> <ul style="list-style-type: none"> <li>No legislative change required.</li> <li>Changes could include:</li> <li>Additional investment could be provided to reflect increased workload from the Oranga Tamariki reforms, new Government priorities; and in the right capability and capacity (including recruiting skilled personnel to lead and undertake the new oversight functions).</li> </ul> <p><b>Implications</b></p> <ul style="list-style-type: none"> <li>Keeps all four oversight functions of the Oranga Tamariki system, and advocacy for all children, in one organisation recognised as being dedicated to children.</li> <li>Maintains the current focus and structure of the OCC Reduces opportunities to change the oversight system, as new requirements are added to a pre-existing system.</li> <li>No change to powers.</li> <li>This option keeps existing legislative settings in the Children's Commissioner Act.</li> </ul> <p><b>Risks</b></p> <ul style="list-style-type: none"> <li>Relies on current functions in the Children's Commissioner Act to assess government policies to reduce child poverty and to improve the wellbeing of all children.</li> <li>General functions relating to all children, and specific ones relating to children and young people in the Oranga Tamariki system, place large demands on a single Commissioner.</li> <li>Opportunities are missed to reshape parts of OCC to fully meet needs of the new Oranga Tamariki system (including to fully develop a child-focused complaints review mechanism).</li> <li>Priorities remain at the discretion of a single Commissioner.</li> <li>Could contribute to a perception of a lack of objectivity in monitoring and in complaints review and investigations.</li> <li>Difficulty recruiting for capability and diversity of skills required to cover each oversight function.</li> </ul> |
| <p><b>1B</b><br/>Make changes to the Children's Commissioner Act to enhance the OCC's structure, capability and powers</p> <div style="text-align: center;"> <p><b>OCC</b></p>  </div> | <p><b>Description</b></p> <ul style="list-style-type: none"> <li>Legislative change required.</li> <li>Changes could include:</li> <li>detailed independent complaints review function, and/or the investigations function</li> <li>involving additional people in exercising powers by having more than one Commissioner or other members on a governing board to support the OCC to better focus on and respond to the different groups of children and young people. For example there could be a separate Commissioner for complaints and investigations, and formal internal separation of other functions where there may be a conflict of interest and/or</li> <li>enhancing the Commissioner's* powers, eg to call and examine witnesses, require agencies to respond to recommendations, and escalate concerns</li> </ul> <p><b>Implications</b></p> <ul style="list-style-type: none"> <li>Depending on the choices made, implications may include:</li> <li>children and young children benefit from OCC having more consistent coverage of the range of issues affecting children and young people, which gives more assurance of improved outcomes for them</li> </ul>   |

| <b>Option 1: Keep all four independent oversight functions together in the OCC (as they are now) but strengthen aspects of the OCC model</b> |  |
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|  | <ul style="list-style-type: none"> <li>formal, internal separation for functions where there may be conflicts of interest (though this may not fully address perception risks)</li> <li>a board could provide participation opportunities for a diverse range of voices, including care experienced people and Māori</li> <li>appointing more Commissioners, making organisational changes and establishing new governance roles increases resourcing required.</li> <li>There is a longer implementation time than for proposals in Option 1A because legislative change is required.</li> </ul> <p>Risks</p> <ul style="list-style-type: none"> <li>Risks identified for option 1A can be mitigated depending on the choices made within this option.</li> </ul> |

| <b>Option 2: Separate the functions to ensure clear focus on particular functions, with some functions in the OCC and other functions elsewhere</b>   |                     |                     |            |            |          |                |   |
|---|---------------------|---------------------|------------|------------|----------|----------------|---|
| <p><b>2A</b><br/>Separate the functions with:</p> <ul style="list-style-type: none"> <li>independent systemic advocacy for all children and monitoring in the OCC (with organisational change)</li> <li>independent complaints review and investigations in a newly established body</li> </ul> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th>OCC</th> <th>New complaints body</th> </tr> </thead> <tbody> <tr> <td>Monitoring</td> <td>Complaints</td> </tr> <tr> <td>Advocacy</td> <td>Investigations</td> </tr> </tbody> </table> | OCC                 | New complaints body | Monitoring | Complaints | Advocacy | Investigations | <p>Description<br/>This option makes legislative change to:</p> <ul style="list-style-type: none"> <li>focus OCC on independent systemic advocacy for all children and young people, as well as a stronger focus on independent monitoring with a particular focus on Oranga Tamariki legislation, relevant international conventions, and new Government priorities (eg reducing child poverty, the child wellbeing strategy)</li> <li>set up a separate new organisation for independent complaints review and investigations, as well as 'own motion' investigations (with a quasi-judicial focus and appropriate powers) for children and young people in the Oranga Tamariki system (eg like the Independent Police Conduct Authority).</li> <li>Separating the functions in this way presents opportunities to: <ul style="list-style-type: none"> <li>allow a strong focus on the complementary expertise required for the complaints and investigations functions</li> <li>allow a strong voice for children in the monitoring of services (as the monitoring and advocacy functions are together)</li> <li>include some of the legislative changes noted in Option 1B (eg to strengthen structure).</li> </ul> </li> </ul> <p>Implications</p> <ul style="list-style-type: none"> <li>Strengthens OCC monitoring functions</li> <li>Provides children, young people and the public with assurance there is a clearly identifiable, independent body for complaints review and investigations.</li> <li>Children and young people benefit from Oranga Tamariki being provided with independent advice to address common issues arising through complaints and investigations.</li> <li>Requires new investment to cover two separate organisations.</li> <li>Requires legislative change, and will take longer to implement than proposals in Option 1.</li> </ul> <p>Risks</p> <ul style="list-style-type: none"> <li>Some reduction in synergies resulting from the focus on children and young people being spread across two organisations, rather than one.</li> <li>Does not fully address the perception risk associated with having the systemic advocacy function and the monitoring function in same agency.</li> </ul> |
| OCC   | New complaints body |                     |            |            |          |                |   |
| Monitoring  | Complaints          |                     |            |            |          |                |   |
| Advocacy  | Investigations      |                     |            |            |          |                |   |

| Option 2: Separate the functions to ensure clear focus on particular functions, with some functions in the OCC and other functions elsewhere   |                                    |                                    |          |            |  |            |  |                |   |
|--|------------------------------------|------------------------------------|----------|------------|--|------------|--|----------------|---|
| <p><b>2B</b><br/>Separate the functions with:</p> <ul style="list-style-type: none"> <li>systemic advocacy in the OCC (or could be relocated to a new Children’s Commissioner within the Human Rights Commission)</li> <li>independent monitoring, complaints review and investigations located together in a new monitoring and complaints body (or could be incorporated into an existing specialist oversight agency eg the Ombudsman)</li> </ul><br><table border="1"> <thead> <tr> <th>OCC</th> <th>New monitoring and complaints body</th> </tr> </thead> <tbody> <tr> <td style="background-color: #90EE90;">Advocacy</td> <td style="background-color: #ADD8E6;">Monitoring</td> </tr> <tr> <td></td> <td style="background-color: #FFB6C1;">Complaints</td> </tr> <tr> <td></td> <td style="background-color: #9370DB;">Investigations</td> </tr> </tbody> </table> | OCC                                | New monitoring and complaints body | Advocacy | Monitoring |  | Complaints |  | Investigations | <p><b>Description</b></p> <ul style="list-style-type: none"> <li>This option makes legislative change to:</li> <li>focus the OCC solely on independent systemic advocacy for all children</li> <li>create a new oversight body to undertake the other three oversight functions</li> <li>Separating the functions in this way presents opportunities to: <ul style="list-style-type: none"> <li>enable a clear focus on systemic advocacy for all children</li> <li>enable a clear and sustained focus on children and young people subject to the coercive powers of the State</li> <li>design a bespoke system for monitoring, complaints review and investigations</li> <li>include some of the legislative changes noted in Option 1B (eg to strengthen structure).</li> </ul> </li> </ul> <p><b>Implications</b></p> <ul style="list-style-type: none"> <li>Reflects different specialist skills required for advocacy, and the more analytical skills required for monitoring, complaints review and investigations.</li> <li>Separating advocacy provides greater public assurance that monitoring, complaints review and investigations are objective, based on robust analysis, and focused on improving outcomes for children and young people in the Oranga Tamariki system.</li> <li>Reduces current overlaps in independent advocacy functions resulting from the recent establishment of VOYCE – Whakarongo Mai, which advocates for children in care, and the work of other organisations that advocate for all children and young people.</li> <li>Requires additional investment to cover organisational changes.</li> <li>Requires legislative change, and will take longer to implement than proposals in Option 1.</li> </ul> <p><b>Risks</b></p> <ul style="list-style-type: none"> <li>Some reduction in synergies resulting from the focus on children and young people being spread across two organisations, rather than one.</li> </ul> |
| OCC  | New monitoring and complaints body |                                    |          |            |  |            |  |                |   |
| Advocacy   | Monitoring                         |                                    |          |            |  |            |  |                |   |
|  | Complaints                         |                                    |          |            |  |            |  |                |   |
|  | Investigations                     |                                    |          |            |  |            |  |                |   |

*Preliminary consultation to date*

- 50 To canvas preliminary views on the requirements for independent oversight and on gaps and overlaps in the current oversight arrangements, officials have met with Oranga Tamariki and government agencies with an interest in this work.
- 51 Officials have also met with the Office of the Children’s Commissioner, as well as Commissioners and others with oversight of other agencies or activities, including human rights, health and disability, privacy, the Independent Police Conduct Authority, the Chief Inspector of Corrections, and the Education Review Office. Meetings have also been held with the Chief Executive of VOYCE - Whakarongo Mai, [REDACTED], [REDACTED], the Chair of the Vulnerable Children’s Board, and the Oranga Tamariki Chief Executive’s Advisory Panel.
- 52 I propose that officials continue to engage with those government agencies with an interest in the work as broader consultation is undertaken.

53 The options identified in Table 1 are indicative only. MSD does not have a preferred position. Further analysis and input from stakeholders is required, and other options may be identified.

*Further targeted consultation required*

54 I am seeking Cabinet agreement to consult more widely to test the analysis done so far. This process may find other options for oversight that better improve the outcomes for children and young people, improve responsiveness to Māori, and improve accessibility for children and young people (including those with disabilities).

55 It will also allow the government to elicit views as to:

- the nature and extent of the functions needed from oversight arrangements
- how those options that involve a departure from the status quo would strengthen the oversight model and improve outcomes for children and young people,
- what other options should be considered.

56 I propose that targeted consultation is undertaken with key groups before final policy decisions are made. There are two groups that I recommend are prioritised. These are:

- Children and young people, including those with disabilities – The independent oversight system is for their benefit, and it is important that their voices, particularly those who are care experienced, are heard. Engaging with them will support the creation of oversight mechanisms that work for them and with them. Including their voices will mean they can better access independent complaints mechanisms, participate in investigations of their concerns, and be listened to during monitoring.
- Iwi and Māori – Improving outcomes for Māori, who are over-represented in the Oranga Tamariki system, is a significant focus of the reforms. Recent legislation places strong emphasis on partnerships with Māori, and effective ways of delivering improved outcomes for Māori children, young people and their whānau. A number of established Māori advisory groups, including the Oranga Tamariki Māori Design Group, the Māori Women's Welfare League, and the Whānau Ora Commissioning agencies could be consulted on these options. MSD will work with Te Puni Kōkiri to utilise its stakeholder networks to connect with key groups.

57 Others that I propose officials engage with include:

- the Principal Judges in the Youth Court and Family Court
- other key individuals with particular expertise in the area, eg previous Children's Commissioners and academics
- groups and associations representing children, social workers, caregivers and others involved with the Oranga Tamariki system, such as VOYCE – Whakarongo Mai, the Social Workers Registration Board, Fostering Kids, YouthLaw Aotearoa
- Pacific peoples representatives, including the Oranga Tamariki Pacific Panel. MSD will work with the Ministry for Pacific Peoples to utilise its stakeholder networks to connect with key groups
- non-government organisations involved in delivering services to children and young people in the Oranga Tamariki system, or who advocate for children's rights and wellbeing, including those with a focus on disabled children and young people.

58 Where possible, MSD will also leverage off the existing stakeholder networks of other agencies (including the Ministries of Education, Health and Justice) to connect with key stakeholder groups who have an interest in the area.

- 59 I further propose that the consultation materials be based on:
- a summary of the preliminary work and issues identified so far
  - the material in the Appendices to this paper.
- 60 These materials are likely to need adaptation to suit the requirements of some groups (particularly children and young people). I seek your agreement for the decision on the consultation materials to be made by me, in consultation with the Minister for Children.
- 61 I am not recommending general public consultation, as this will be resource-intensive and will considerably lengthen timeframes for establishing independent oversight mechanisms, resulting in delays in strengthening the system. I consider that the targeted approach outlined above will provide sufficient depth and diversity of views to contribute to policy development and implementation. If final policy decisions involve legislative change, there will be opportunities for wide public engagement during the Select Committee phase.

#### *Indicative Timeframes*

- 62 I intend that the proposed consultation be undertaken during April – May 2018, with final policy decisions being sought from Cabinet in May – June 2018. Regulatory impact analysis for proposals (including costings) will be provided when final policy decisions are sought.

#### **Consultation**

- 63 The following departments and agencies have been consulted on this paper: the State Services Commission, Oranga Tamariki – Ministry for Children, the Ministry of Education, the Education Review Office, the Ministry of Health, the Ministry of Justice, the Department of Corrections, the Ministry for Pacific Peoples, the Ministry for Women, Te Puni Kōkiri, the New Zealand Police, the Office for Disability Issues, the Treasury, and the Department of the Prime Minister and Cabinet.
- 64 The review team has engaged with the Children’s Commissioner on the work, and he and his Office have provided assistance and input.

#### **Financial implications**

- 65 The policy work and associated consultation is funded from within baselines. Relative costs of possible reform options will be considered as part of this work. Financial implications will be provided when final policy decisions are sought.

#### **Human rights implications**

- 66 This paper has no direct human rights implications. Following consultation, the Government may progress reform options that have implications for how New Zealand implements its international commitments regarding the rights of children and young people, including under UNCRC and OPCAT.
- 67 If this is the case, any such implications will be assessed comprehensively for compliance with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993, and with New Zealand’s international obligations, as appropriate.

## Legislative implications

- 68 This paper has no direct legislative implications. However, in case final policy decisions involve legislative change, the Independent Oversight (Children's Issues and Oranga Tamariki System) Bill has been included in the 2018 Legislation Programme with a category priority.

## Regulatory impact and compliance cost statement

- 69 As policy development is still in its early stages, regulatory impact analysis has not been undertaken yet. If legislative options are progressed, then this analysis will be undertaken prior to policy approval being sought.

## Gender implications

- 70 This paper has no specific gender implications. However, boys and young men are disproportionately represented in the youth justice system and slightly over represented in care; and women are more likely than men to be the primary caregivers for children and young people. Future reform options to strengthen the monitoring of the Oranga Tamariki system could be expected to benefit these people and their whānau.

## Disability perspective

- 71 This paper has no direct implications for children and young people with disabilities. However, these children and young people are significantly overrepresented within the statutory care and protection and youth justice system. It will be important to monitor how disabled children and young people are faring as a consequence of the changes to the statutory care and protection and youth justice system. Future reform options will benefit these groups where they provide greater assurance that services are provided to meet their diverse needs.

## Publicity

- 72 No specific publicity about the policy work or the proposed further consultation on it is planned. Any specific announcements will be co-ordinated by the Office of the Minister for Social Development. Information about the work could be put on MSD's website to enable wider input.
- 73 It is expected that there will be a strong level of interest among stakeholders, the media, and those involved with children's issues and the Oranga Tamariki System.

## Recommendations

- 74 It is recommended that the Committee:
- 1 **note** that recent reforms of the Oranga Tamariki system and new Government priorities (including the reduction of child poverty and the child wellbeing strategy) provide an opportunity to also make changes to independent oversight to align with these reforms and priorities
  - 2 **note** that a key question is what level and type of independent oversight best supports the needs of all children and the needs of those children and young people in the Oranga Tamariki system



- 3 **note** that a number of different entities are involved in the independent oversight of children issues and of the Oranga Tamariki system
- 4 **note** that:
  - 4.1 preliminary work by the Ministry of Social Development and the State Services Commission has identified overlaps and gaps in current independent oversight arrangements, and potential options to improve the independent oversight model in ways that improve outcomes for children and young people
  - 4.2 engagement on this work to date has been focused on relevant government departments and Crown Entities, and the Ombudsman
  - 4.3 targeted consultation with a wider group would provide an opportunity to test the work done to date and may find other options that better improve the oversight model to improve outcomes for children and young people, responsiveness to Māori, and accessibility for children and young people (including those with disabilities)
- 5 **agree** that, as part of policy development, targeted consultation include engagement with:
  - 5.1 children and young people, including those with disabilities
  - 5.2 iwi and Māori, including the Oranga Tamariki Māori Design Group (for example)
  - 5.3 Crown entities and Officers of Parliament (including the Office of the Children's Commissioner, Human Rights Commissioners, the Health and Disability Commissioner, the Privacy Commissioner, the Independent Police Conduct Authority, and the Ombudsman)
  - 5.4 the Principal Judges in the Youth Court and Family Court
  - 5.5 other key individuals with particular expertise in the area
  - 5.6 Pacific peoples representatives, including the Oranga Tamariki Pacific Panel
  - 5.7 groups and associations representing children, social workers, caregivers and others involved with the Oranga Tamariki system, such as VOYCE – Whakarongo Mai, the Social Workers Registration Board, Fostering Kids, YouthLaw Aotearoa
  - 5.8 non-government organisations involved in delivering services to children and young people in the Oranga Tamariki system, or who advocate for children's rights and wellbeing, including those with a focus on disabled children and young people
- 6 **note** that the Ministry of Social Development will work to leverage off the existing stakeholder networks of other government agencies to connect with key stakeholder groups who have an interest in the area
- 7 **agree** that the consultation materials be based on a summary of the preliminary work done so far (recommendations 4.1 and 4.2 refer) and the information in the Appendices to this paper
- 8 **agree** to decisions on the consultation materials being made by the Minister for Social Development, in consultation with the Minister for Children

Please note that recommendation 8 was changed on advice from the Cabinet Office to '**Authorise** the Minister for Social Development, in consultation with the Minister for Children, to take final decisions on the consultation materials for release'

- 9 **agree** that the indicative timeframes for the targeted consultation are April – May 2018
- 10 **invite** the Minister for Social Development to seek final policy decisions from Cabinet in May – June 2018.

Authorised for lodgement

Hon Carmel Sepuloni  
Minister for Social Development

## Appendix 1: Recent changes to the Oranga Tamariki system

- 1 Day-to-day accountability for the operation of Oranga Tamariki, the management of its workforce and its professional and organisational processes and practices sits with its Chief Executive. Legislation extends the duties of the Chief Executive of Oranga Tamariki to include:
  - complying with standards of care prescribed in regulations
  - establishing one or more timely, fair, child-centred complaints mechanisms
  - reporting to the public annually on the measures Oranga Tamariki has taken to improve outcomes for Māori children and young people who come to its attention.
- 2 New legislative responsibilities of the Minister for Children include to:
  - recommend the making of care standards in regulations by 13 July 2018, and appoint an independent agency or body to monitor and report on compliance with those care standards
  - report to Parliament (no later than 1 July 2022, and periodically thereafter) on whether:
    - existing legislation, policy and other arrangements that affect the accountability of the Minister for Children, the Chief Executive of Oranga Tamariki and others carrying out functions under the Oranga Tamariki Act 1989 ensure that the needs of children and young people, and the needs of Māori children and young people, are met
    - any amendments are necessary or desirable in order to ensure that those needs are met.
- 3 There is also a new regulation-making power providing for the appointment, by the Minister for Children, of a person or organisation (independent of Oranga Tamariki) to review the outcomes of the internal complaints mechanism(s) implemented by Oranga Tamariki.