



Strengthening independent oversight of the Oranga Tamariki system and of children's issues in New Zealand: a consultation document

Ko te whakakaha i te tirohanga motuhake ki te pūnaha a Oranga Tamariki me ngā take tamariki i Aotearoa: He pukapuka matapaki



This work is licensed under the Creative Commons Attribution 3.0 New Zealand licence. In essence, you are free to copy, distribute and adapt the work, as long as you attribute the work to the Crown and abide by the other licence terms.

To view a copy of this licence, visit <http://creativecommons.org/licenses/by/3.0/nz/>. Please note that no departmental or governmental emblem, logo or Coat of Arms may be used in any way which infringes any provision of the Flags, Emblems, and Names Protection Act 1981. Attribution to the Crown should be in written form and not by reproduction of any such emblem, logo or Coat of Arms.

Published May 2018
Ministry of Social Development
PO Box 1556
Wellington 6140
New Zealand

Telephone: +64 4 916 3300
Facsimile: +64 4 918 0099
Email: info@msd.govt.nz
Web: www.msd.govt.nz

ISBN: 978-1-98-854120-4 (print)
ISBN: 978-1-98-854121-1 (online)

Contents

| | |
|---|-----------|
| New Zealand is strengthening the settings for independent oversight of children's issues and the Oranga Tamariki system..... | 3 |
| Current independent oversight arrangements | 4 |
| What are the drivers for strengthening independent oversight? | 5 |
| Reviewing current arrangements and settings to strengthen them | 7 |
| The closing date for sending your thoughts and views to us is Monday 2 July 2018 | 7 |
| What must independent oversight do?..... | 8 |
| What we think the core functions required for strong oversight are | 8 |
| What is critical for effective independent oversight? | 9 |
| Gaps, overlaps, constraints and challenges in the current arrangements and settings | 10 |
| Possible options for the future independent oversight functions | 12 |
| Kōrero Mai! Conversation starters | 13 |
| Appendix A | 15 |
| What is the Oranga Tamariki system and how many children and young people use it? | 15 |
| Māori children and young people | 15 |
| Appendix B | 16 |
| Additional details on four possible options for oversight strengthening and reform | 16 |
| Possible options in detail | 17 |



Kia tupato o tatou Tamariki. Tangohia tiaki o ta ratou rongo, kia tupato o ta ratou e kite, kia tupato o ta ratou ite. Ma te aha hoki nga Tamariki tupu, pera ka te āhua o Aotearoa.

Take care of our children. Take care of what they hear, take care of what they see, take care of what they feel. For how the children grow, so will be the shape of Aotearoa.

Dame Whina Cooper

New Zealand is strengthening the settings for independent oversight of children's issues and the Oranga Tamariki system

New Zealand has high aspirations for all of its children and young people. This is demonstrated by the Government's commitment to put child wellbeing at the heart of what we do, encouraging all children to reach their full potential.

Recent changes to the Oranga Tamariki system* reflect a bold overhaul of how New Zealand is responding to the needs of our most at-risk children and young people. These changes are transformational.

There are also new Government priorities to reduce child poverty for all children and embed a child wellbeing strategy.

New Zealand has existing arrangements for oversight of how the State is delivering for children and young people. It includes both internal and independent oversight. Independent oversight contributes to building transparency, public trust and confidence. In conjunction with agency and State internal oversight mechanisms, it gives New Zealanders assurance that government agencies are using their powers appropriately, and that children and young people are achieving better outcomes.

Independent oversight is particularly important where government has statutory powers to protect children, such as the power to apply to the Family Court to remove children and young people from their families, and to place them with caregivers or in care and protection residences. Strong oversight provides children and young people with confidence that their wellbeing and safety is paramount, and they are treated with dignity and respect. It also provides assurance that their feedback will be taken seriously, and actions will be taken as a result.

Independent oversight can improve practices and processes, as well as how people experience the system. It provides agency leaders, managers and Ministers with on-going access to a different and important perspective on agency processes and services, their decision-making and resource use. In this way, independent oversight contributes to a continuous learning culture and has valued system benefits.

*Appendix A describes the Oranga Tamariki system.

Current independent oversight arrangements

In the current settings independent oversight of children's issues has two main purposes.

These are to:

- assess the Government's performance in improving the rights and position of all New Zealand 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, and
- ensure the welfare and safety of children and young people in the Oranga Tamariki system.

The Children's Commissioner

Under the Children's Commissioner Act 2003, the Children's Commissioner has the key role in oversight of systems and outcomes for children. Currently the Commissioner has a broad remit, particularly in two main areas.

1. General statutory responsibilities for all children under 18, including advocating for the rights of all children

These include advancing and monitoring the application of the United Nations Convention on the Rights of the Child (UNCRC). 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 (OPCAT). The Government's focus on improving child wellbeing and reducing child poverty could also be considered by the Commissioner under this remit.

The Commissioner also has a role in receiving complaints and investigating issues that impact a wide range of children.

2. Some specific functions to provide oversight of the children and young people within the Oranga Tamariki system

These include monitoring Oranga Tamariki policies and practices, and investigating decisions, recommendations, and acts or omissions in respect of any child or young person.

The Vulnerable Children's Board

The Vulnerable Children's Board also has some oversight functions. The previous Government established the board in 2012 with Cabinet appointing its members and an independent chair. Its role is to provide cross-agency governance for implementing the modernisation of Child, Youth and Family (now called Oranga Tamariki—Ministry for Children).

VOYCE-Whakarongo Mai

The new NGO, VOYCE-Whakarongo Mai, is primarily focus on providing independent individual and collective advocacy for children and young people in care, and it may also advocate at a systemic level.

Other oversight bodies

There are a number of other organisations with 'independent oversight' roles that are not specific to children. These organisations can and do consider issues that affect children and young people. These include the:

- Human Rights Commissioners
- Health and Disability Commissioner
- Privacy Commissioner
- Independent Police Conduct Authority
- Ombudsman.

What are the drivers for strengthening independent oversight?

A new policy agenda that puts the focus on the wellbeing of all children

New Zealand is committed to the reduction of child poverty for all children. The Child Poverty Reduction Bill, currently before Parliament – includes in its current form, intentions for the Government to develop a strategy to improve wellbeing for all children, and for the Government's children's agencies to work together on an oranga tamariki action plan¹.

The Government's intent to improve child wellbeing and reduce child poverty has ramifications for oversight mechanisms. A consideration is 'what is the right balance of oversight responsibilities, expectations and priority for oversight of this area of policy?'

The Royal Commission of Inquiry

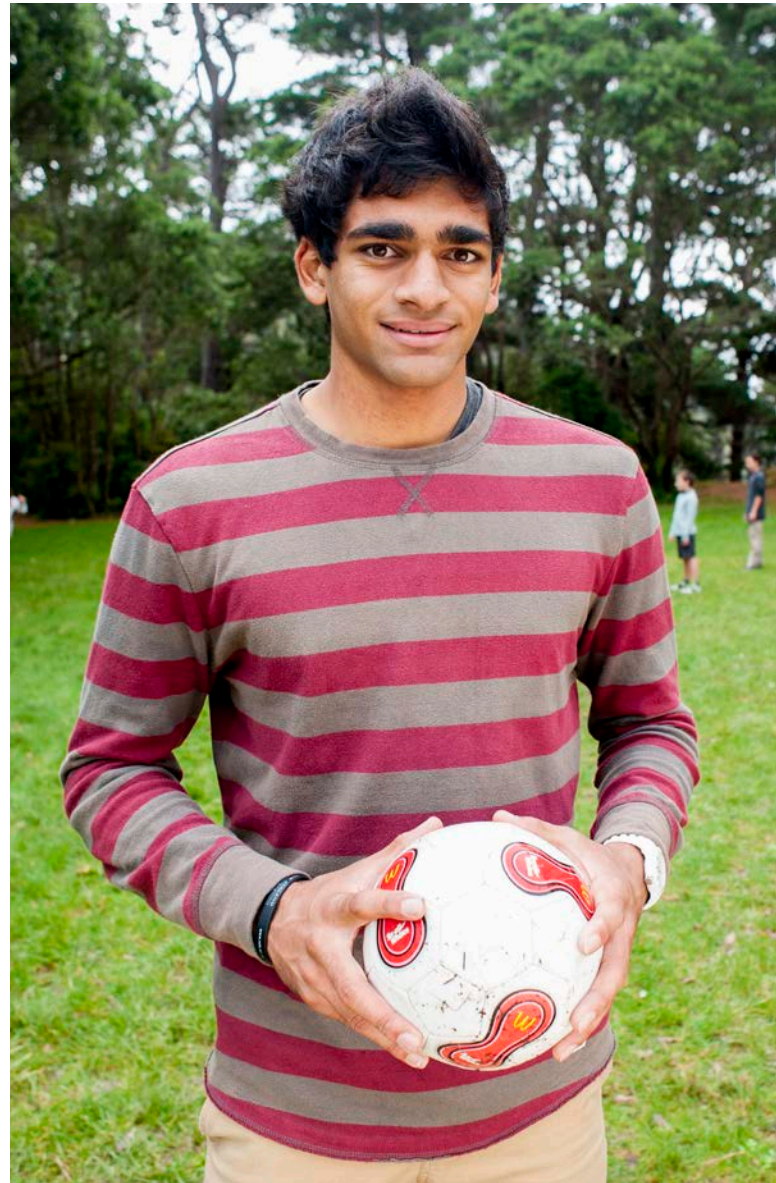
The establishment of the Royal Commission of Inquiry into Historical Abuse in State Care (from 1950–1999) highlights the importance of safeguarding the children and young people in State care today.

The new Oranga Tamariki system will better deliver outcomes for those children and young people than in the past, but we need to be vigilant to ensure circumstances such as those surrounding historical claims are less likely for those children and young people in State care today.

It is important that appropriate levels of independent oversight are in place as soon as possible. Establishing stronger independent oversight now, will:

- provide opportunities to ensure children and young people can access complaints arrangements when they need to – we know few currently do – with the confidence they will be heard
- ensure that there is a robust system – or systems – to investigate issues as required.

While we are working on strengthening independent oversight now, that will not preclude consideration later of any relevant findings and recommendations from the Royal Commission.



¹ The Child Poverty Reduction Bill (not yet finalised) refers to children's agencies. These would include Oranga Tamariki—Ministry for Children, NZ Police, and the Ministries of Health, Education, Justice, and Social Development.



Reform of Oranga Tamariki

New Zealand is committed to doing better for our most at-risk children. Reforms in this sector have been widespread. A new operating model puts the needs, interests and wellbeing of children at the centre of how the State delivers care and support.

Specific changes include that:

- the age range of children in care and youth justice has been extended
- there is more support for children and young people transitioning from care, and new responsibilities for Oranga Tamariki and other agencies that go with this
- Oranga Tamariki is required to increase partnerships with whānau, hapū and iwi; the Chief Executive of Oranga Tamariki must also report annually on the measures taken to improve outcomes for Māori children and young people
- New Zealand Police, the Ministries of Health, Education, Justice, and Social Development and Oranga Tamariki—Ministry for Children have new legislated responsibilities
- the Minister for Children and the Chief Executive of Oranga Tamariki—Ministry for Children have increased responsibilities in legislation for complaints review mechanisms, monitoring and reporting; in particular:
 - new National Care Standards will be established in regulations, and the Minister for Children will appoint an independent agency or body to monitor and report on compliance with these standards
 - a new regulation-making power providing for the establishment of a complaints review mechanism, but this hasn't come into force.

These reforms will increase Oranga Tamariki—Ministry for Children's responsibilities and workload. The effectiveness of the broader range of agencies with responsibilities for vulnerable children to work as a system, will impact on results for children and young people and their experiences with the Oranga Tamariki system. Children and young people, their whānau, families, caregivers and the public also have heightened expectations for what that system will achieve.

It is clear that the new Oranga Tamariki system and accompanying changes to legislation and regulations will have significant implications for independent oversight settings and arrangements.

Reviewing current arrangements and settings to strengthen them

All these factors are driving a need to consider how to further strengthen the current arrangements and settings for independent oversight and ensure we have the best, strongest model going forward.

The document sets out preliminary thinking so far about what we understand would be critical to effective oversight and the core functions of an oversight body (or bodies). It sets out issues to consider within the current arrangements and possible ways oversight functions could be configured for the future.

This consultation

We are undertaking targeted consultation with key stakeholders, Māori organisations and representatives and with children and young people.

We want to test our assumptions and thinking about the functions required of independent oversight. We want to know what skills, capabilities and resources are required to carry out those functions. We are interested in your views on how an oversight function should balance a focus on all children with the most vulnerable in the Oranga Tamariki system, and what level or levels of oversight are most critical.

Finally we want to hear your views on how oversight should be arranged to be really effective.

Kōrero Mai! We want to tap into your experience and to hear your thoughts and opinions on how we can make the independent oversight arrangements stronger. Please read the consultation materials provided.

Conversation starters are provided on pages 13 & 14. A template for responses is available online at www.msd.govt.nz/oversight-for-children. You do not have to use the template if you want to respond in a different way.

Confidential information

Responses and documents associated with this consultation process meet the definition of official information and are subject to the Official Information Act 1982. We may publish your response and we will publish a summary of all responses.

If your response contains any confidential information, please indicate that clearly on the first page, and also mark the parts of your response that are confidential. Please also clearly indicate if you do not want your name to be included in any summary of responses that we may publish.

The closing date for sending your thoughts and views to us is Monday 2 July 2018

Responses can be emailed:

Childrens_independent_oversight_review@msd.govt.nz

or mailed to

Children's Independent Oversight Review
PO Box 1556, Wellington 6140

If you have any questions, please email Childrens_independent_oversight_review@msd.govt.nz

What must independent oversight do?

At a broad system level, the functions of independent oversight are 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-centric or appropriate (eg using restraints and seclusion in schools), and investigate as needed
- advocate for change where issues are identified.

What we think the core functions required for strong oversight are

1. Independent monitoring:

This includes providing assurance that the services that children and young people receive are focused on improving their wellbeing and keeping them safe.

There are requirements for monitoring at service level that are specified in laws and rules. Examples include arrangements under the OPCAT for young people in secure residences, and the soon to be introduced requirements for an independent monitor of compliance with national standards for children in care.

System level monitoring is also important. 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) is an example.

2. Independent complaints review:

Children and young people, their parents, whānau, families and caregivers need an independent complaints review function that is safe, timely, visible, accessible and responsive. They must be able to access complaints arrangements when they need to – with the confidence they will be heard. This is particularly important when the State has strong statutory powers.

3. Independent investigations:

Children and young people, their parents, whānau, families and caregivers 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 might also support investigation and remediation of recurring or emerging issues.

4. Independent advocacy:

This supports children's voices to be heard and enables them to influence decisions about them and the system that supports them. It helps to ensure that their rights, interests and wellbeing are addressed in decisions about them.

There is a distinction between advocacy for individual children and young people, and advocacy at a systemic level (ie within Oranga Tamariki—Ministry for Children). Both are required.

What is critical for effective independent oversight?

Preliminary thinking has identified some features that may be critical to success. These include that arrangements and settings must:

- be child-centric and child-facing (particularly for Māori children and young people and for those with disabilities) to enable their voices to be heard
- be carried out in a timely way, recognising children and young peoples' sense of time
- be clear, transparent and visible to children and young people and to other oversight bodies, eg complaints pathways must be easy to understand
- ensure opportunities for partnerships with Māori
- demonstrate high levels of cultural capability – including the capability to engage with tamariki Māori, their whānau, hapū and iwi
- be undertaken by those with appropriate skills and knowledge, including of the complexity, scale and practices of the Oranga Tamariki system
- support access by the body or bodies undertaking oversight functions to relevant documents and data eg from Oranga Tamariki so they can perform their roles as expected
- take a systems-level view, including considering the entry and exit points to systems
- reflect new priorities of reducing child poverty and boosting wellbeing
- address gaps in oversight at the national level for all children (such as the resources to support investigations as required)
- be supported by additional investment to reflect workload from the Oranga Tamariki Act 1989 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 whānau, hapū and iwi) and new Government priorities
- be able to prioritise resources to the work that adds greatest value to outcomes for children and young people
- build the right capability and capacity to undertake the different levels of independent oversight, including recruiting skilled personnel to lead and undertake oversight functions (such as the skills and knowledge required to implement a child-centric, child-facing complaints review mechanism and to manage investigation activities, and the knowledge and relationships to make well considered, implementable recommendations for system level improvements).





Gaps, overlaps, constraints and challenges in the current arrangements and settings

Preliminary work into improving oversight mechanisms has identified the following key issues and themes. Overall 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 OCC is seen as a strength (particularly its work on child poverty and assessing government's implementation of UNCRC). However, it could be beneficial to consider how the Children's 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 Commissioner.

Complaints and investigations

Current independent complaints processes for children and young people, their parents, whānau, families and caregivers 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.

Monitoring, complaints review and investigations of Oranga Tamariki in particular, will support prompt identification and addressing of concerns within that system. This is particularly valuable now as reforms are being embedded and the best ways of working are evolving.

Challenges and tensions in the current oversight arrangements

The OCC may not be set up or fully resourced to deliver the full range of oversight functions at the level and scale needed in the future.

For example, the Commissioner has indicated that he does not have all the powers needed to effectively carry out investigations, make findings and compel remedial action. The future oversight body will also need mature systems for complaints review. A refined monitoring framework will also be needed to fulfil the role of independent regulatory monitoring of National Care Standards when they are implemented. Other skills, capabilities and systems may be needed – this is a line of enquiry in consultation – and it will be important to reflect on current capacity, capabilities and resources and any gaps in the oversight system.

Some 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 and young people at a national level alongside the necessary and sustained focus required for those children and young people subject to the statutory 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 can detract from the objectivity and validity of recommendations arising from monitoring and investigation activity.
- There is a question on the level at which oversight is best pitched. Should the oversight body consider strategy and take a 'whole of system' view, or focus on practice? Key considerations are what would add greatest value, and what is the unique view of bodies like the OCC.
- Scope needs clarification. Should the focus of oversight be Oranga Tamariki—Ministry for Children or the broader range of children's agencies implicated in the Oranga Tamariki system? A specific example is, should the complaints review function be applied to Oranga Tamariki—Ministry for Children only, or should it apply to any complaint made by a child or young person, their parents, whānau, families and caregivers, who is in care and protection, in the youth justice system, or in transition from or at risk of entry into these systems?

Possible options for the future independent oversight functions



When considering ways to strengthen independent oversight, a key question is how to cluster functions to best support the new system.

Broadly there are two main options we want to test with you.

1. Keep all four functions together in the OCC (as they are now):

but clarify and strengthen aspects of the OCC model (two possible options have been identified so far – see 1A, 1B).

2. Separate the functions:

with some remaining in the OCC and others being performed elsewhere (see 2A, 2B).

The appendix details the two main options that we want to test with you, and a variation on each of those two options. It first describes the legislative changes that would be required for options other than 1A, and assumptions that are common across options.

Given the current roles that the Office of the Children's Commissioner has, all of the options have a direct bearing on its function and form.

We welcome your views on those potential configurations.

Kōrero Mai! Conversation starters

Please consider all or some of these questions when thinking about how to best strengthen oversight of children's issues and the Oranga Tamariki system.

1. What are the benefits of independent oversight for all children and young people, and those in the Oranga Tamariki system? What do you think are the most critical benefits that oversight must achieve?
2. So far four independent oversight functions have been identified – monitoring, complaints review and investigations, and systemic advocacy.
 - i. Have we identified the right ones?
 - ii. Are all oversight functions equally important?
3. Oversight could operate at a number of levels – at system and strategy level, at policy level, or operational. It might also act for individuals. For each of the four functions, where can oversight add greatest value?
4. Taking each of the four oversight functions in turn, what is important in terms of how each function is carried out (ie what principles or ways of working are important) for:
 - i. being child-centric and child-facing
 - ii. providing a practical commitment to the principles of the Treaty of Waitangi (te Tiriti o Waitangi)
 - iii. recognising mana tamaiti (tamariki), whakapapa, and the practice of whanaungatanga for children and young people
 - iv. driving and supporting system or policy improvements
 - v. building public trust and confidence?
5. What are the key skills, knowledge and capabilities required for each function?
6. How could the oversight system balance the focus on children and young people in the Oranga Tamariki system and on all children?
7. How regular and systematic should monitoring of Oranga Tamariki be? And children's wellbeing and poverty?
8. Do you think systemic advocacy sits well with a broad monitoring/regulatory mandate? What are the challenges and opportunities of having these together?
9. What is your view of which of the functions fit best together?
10. When separating functions is there a risk of silos that needs to be managed? If the functions were to be separated what would need to be the connectors?
11. So far we've thought about some options for how independent oversight functions could be organised:
 - i. What do you think of those proposals? Is there any option you prefer over another?
 - ii. How can these or other options be developed to be relevant and responsive to the needs of children and young people who are Māori, and to their parents, whānau, families and caregivers?
 - iii. Do you see other options for strengthening oversight arrangements?
12. We will be asking children and young people about their views on what child-centric, child facing, and timely complaints, monitoring and investigations system would work best for them (primarily with a view to Oranga Tamariki). Do you have knowledge or experience of this? What helps or stops children and young people from saying what is not working for them, and what does that mean for design and principles?
13. Beyond being child-centric and child-facing, what else is important, eg procedural fairness, cost effectiveness, prioritisation?

More questions over the page



14. If we consider Oranga Tamariki as a system, should the complaints review mechanism sit across the system, or have common features across all agencies? What would be the challenges and opportunities?
15. An independent complaints review mechanism could potentially operate at many levels. Is there a need for a complaints triage function, for independent review of individual complaints, or for oversight of how effective agency complaints mechanisms are? What would have greatest value in the next few years?
16. How well do the current oversight arrangements – the different independent bodies as well as internal arrangements – work as a collective? What are the priority improvements to make?
17. It is more likely than not that legislative change will be required to strengthen independent oversight. Legislative changes that are associated with each of the options we would like you to consider are listed (see ‘Possible options in detail’ on pages 16 to 22). Are there other changes that should be considered?

Appendix A

What is the Oranga Tamariki system and how many children and young people use it?

The 'Oranga Tamariki system' includes the statutory care and protection and youth justice system in the Oranga Tamariki Act 1989. It also includes 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.

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—Ministry for Children works with, and care-experienced children.

New Zealand has about 1.12 million children under 18. Oranga Tamariki works with around 30,000 children and young people on any given day. Of those, around 6,100 children and young people are in the care and protection custody of the Chief Executive, and 250 young people are in either youth justice custody or a combination of both types of custody.

Māori children and young people

Of the 6,100 children and young people in care and protection custody, around 66 per cent identify as Māori, as do approximately 80 per cent of those in youth justice custody (this includes children and young people on remand).

Appendix B

Additional details on four possible options for oversight strengthening and reform

This section details the two main options that we want to test with you, and a variation on each of those two options. It first describes the legislative changes that would be required for options other than 1A, and assumptions that are common across options.

Legislative change

All of the options, except option 1A, would require legislative change to the Children's Commissioner Act 2003 to optimise opportunities. Changes include:

- balancing the degree of oversight required for different groups of children
- strengthening the organisational structure of the OCC
- clarifying and enhancing the functions of the Commissioner (or Commissioners, if other Children's Commissioners are created), including creating the appropriate degree of separation between the systemic advocacy function and the other functions
- clarifying and enhancing the powers of the Commissioner/s
- aligning cultural components of the Children's Commissioner Act 2003 with the purposes and principles in the Oranga Tamariki Act 1989.

Common assumptions across all options

- The independent monitoring, complaints review and investigations functions will have parallel internal processes in Oranga Tamariki.
- 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 adequately resourced.
- Oversight functions will be undertaken by those with appropriate skills and knowledge, including of the complexity, scale and practices of the Oranga Tamariki system.
- Additional investment is required to reflect increased workload from the Oranga Tamariki reforms, new Government priorities, and to build the right capability and capacity in the overseeing body/bodies (including recruiting skilled personnel to lead and undertake the new oversight functions).

Possible options in detail

| Option 1: Keep all four independent oversight functions together as they are now, but strengthen aspects of the oversight model | | | | | | |
|---|-----|------------|------------|----------------|----------|---|
| <div>1A</div> <div>Keep current arrangements, and provide additional investment for OCC</div> <div><table><tr><td>occ</td></tr><tr><td>Monitoring</td></tr><tr><td>Complaints</td></tr><tr><td>Investigations</td></tr><tr><td>Advocacy</td></tr></table></div> | occ | Monitoring | Complaints | Investigations | Advocacy | <div>Description</div> <p>This option keeps existing legislative settings in the Children’s Commissioner Act 2003 (ie no legislative change is required). However, there is additional investment to reflect increased workload from Oranga Tamariki reforms, new Government priorities; and in the right capability and capacity.</p> <div>Implications</div> <ul style="list-style-type: none">• Keeps all four oversight functions of the Oranga Tamariki system, and advocacy for all children, in one organisation recognised as dedicated to children.• 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.• No change to Children’s Commissioner’s powers. <div>Risks</div> <ul style="list-style-type: none">• 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.• 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.• Opportunities are missed to reshape parts of the OCC to fully meet needs of the new Oranga Tamariki system (including to fully develop a child-centric and child-facing complaints review mechanism).• Priorities remain at the discretion of a single Commissioner.• Including the advocacy role may hinder the effectiveness of the OCC as it could contribute to a perception of a lack of objectivity in monitoring, complaints review and investigations.• Difficulty recruiting for capability and the diversity of skills required to cover each oversight function within a single organisation. |
| occ | | | | | | |
| Monitoring | | | | | | |
| Complaints | | | | | | |
| Investigations | | | | | | |
| Advocacy | | | | | | |

Option 1: Keep all four independent oversight functions together as they are now, but strengthen aspects of the oversight model

1B

Make changes to the Children's Commissioner Act to enhance the OCC's structure, capability and powers

OCC

Monitoring

Complaints

Investigations

Advocacy

Description

This option makes legislative changes to the Children's Commissioner Act, potentially including the following.

- Revisions to reflect new Government priorities (eg reducing child poverty and the child wellbeing strategy).
 - Revising functions to reflect the oversight of children's issues and of the new system, such as:
 - Identifying monitoring scope by specifying what is to be monitored, such as provisions in the Oranga Tamariki legislation (including the new care standards regulations) and relevant international conventions (including UNCRC) affecting all children and young people
 - Detailing independent complaints review function, and/or the investigations function.
 - Involving additional people in exercising powers, and separating key functions, by having more than one Commissioner* or other members on a governing board. This would 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 review and investigations, and formal internal separation of other functions where there may be a conflict of interest
 - a separate Commissioner for advocacy
 - a separate Commissioner for monitoring
 - a board made up of more than one Commissioner (or other kinds of member) that is supported by a Chief Executive and management team.
- Enhancing the Commissioner's (or Commissioners') powers, eg to call and examine witnesses, require agencies to respond to recommendations, and escalate concerns.
 - Aligning cultural components of the Children's Commissioner Act with those in the Oranga Tamariki Act.

* The term Commissioner is used here, but there could also be other options, such as a Commission with more than one Commissioner, supported by a management structure with a Chief Executive and managers for particular functions.

Option 1: Keep all four independent oversight functions together as they are now, but strengthen aspects of the oversight model

Implications

Depending on the choices made, implications may include the following.

- Children and young people benefit from the OCC having more consistent coverage of the range of issues affecting children and young people, giving more assurance of improved outcomes for them.
- Formal, internal separation for functions where there may be conflicts of interest (though this may not fully address perception risks).
- A board could provide participation opportunities for a diverse range of voices, including care experienced people and Māori.
- Increased resources required to appoint more Commissioners, make organisational changes and establish new governance roles.
- A longer implementation time is needed than for proposals in Option 1A as legislative change is required.

Risks

- Risks identified for option 1A can be mitigated depending on the choices made within this option.

Option 2: Separate functions to ensure clear focus on particular functions, with some remaining in the OCC and other functions established elsewhere

2A

Separate the functions with:

- independent systemic advocacy for all children and monitoring staying in the OCC (with organisational change)
- independent complaints review and investigations conducted from a newly established body

| OCC | New complaints review body |
|------------|----------------------------|
| Monitoring | Complaints |
| Advocacy | Investigations |

Description

This option would make legislative change to:

- focus the 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 and the child wellbeing strategy)
- 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 (similar to the Independent Police Conduct Authority).

Separating the functions in this way presents opportunities to:

- allow a strong focus on the complementary expertise required for the complaints and investigations functions
- allow a strong voice for children in the monitoring of services (as the monitoring and advocacy functions are together)
- include some of the legislative changes noted in Option 1B (eg to strengthen structure).

Implications

- Focuses and strengthens OCC monitoring functions on components that make the greatest difference to improving outcomes for children and young people in the Oranga Tamariki system, and on new Government priorities for children and young people.
- Provides children, young people and the public with assurance there is a clearly identifiable, independent body for complaints review and investigations.
- Children and young people benefit from Oranga Tamariki being provided with independent advice to address common issues arising through complaints and investigations.
- New investment required to cover two separate organisations.
- Requires legislative change, so will take longer to implement than proposals in Option 1.

Risks

- Some reduction in synergies resulting from the focus on children and young people being spread across two organisations, rather than one.
- Does not fully address the perception risk associated with having the systemic advocacy function and the monitoring function in same agency.

Option 2: Separate functions to ensure clear focus on particular functions, with some remaining in the OCC and other functions established elsewhere

2B

Separate the functions with:

- only systemic advocacy remaining in the OCC (or perhaps even reallocated to a new Children's Commissioner within the Human Rights Commission)
- the other three functions – 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))

| | |
|----------|---|
| OCC | New monitoring and complaints review body |
| Advocacy | Monitoring |
| | Complaints |
| | Investigations |

Description

This option would make legislative change to:

- focus the OCC solely on independent systemic advocacy for all children, including those in the Oranga Tamariki system
- create a new oversight body to undertake the other three oversight functions
- reflect Government priorities for all children and young people (eg reducing child poverty, the child wellbeing strategy)

Separating the functions in this way presents opportunities to:

- enable a clear focus on systemic advocacy for all children and young people
- drive change for all children and young people, including reducing child poverty, improving child wellbeing and compliance with UNCRC and to assess government progress in these areas
- enable a clear and sustained focus on children and young people subject to the statutory powers of the State
- design a bespoke system for monitoring, complaints review and investigations
- include some of the legislative changes noted in Option 1B (eg to strengthen structure).

Implications

- Reflects different specialist skills required for advocacy, and the more analytical skills required for monitoring, complaints review and investigations.
- 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.
- 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.
- New investment required to cover two separate organisations.
- Requires legislative change and will take longer to implement than proposals in Option 1.

Risks

- Some reduction in synergies resulting from the focus on children and young people being spread across two organisations, rather than one.



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

The Aurora Centre, 56 The Terrace,
PO Box 1556, Wellington 6140, New Zealand

New Zealand Government