

**In confidence**

Chair  
Cabinet Social Wellbeing Committee

**ARRANGEMENTS FOR THE MONITOR OF THE ORANGA TAMARIKI SYSTEM**

**Proposal**

- 1 This paper proposes arrangements to support the long-term operation of the Monitor for the Oranga Tamariki system.<sup>1</sup>

**Relation to government priorities**

- 2 Strengthening the settings for independent oversight of the Oranga Tamariki system is an integral part of supporting the Government's priority to ensure children and young people are empowered to reach their full potential.

**Executive summary**

- 3 A review in response to reforms of the Oranga Tamariki system and new Government priorities found that the oversight arrangements for the system require strengthening to address key issues and gaps. This included a lack of investment in the resources and powers required for effective independent monitoring.
- 4 Independent monitoring is an internationally recognised key component to an effective oversight system. It ensures the system is able to constantly review and improve its performance so children within the Oranga Tamariki system are able to access high quality and effective services. In March 2019 Cabinet agreed to strengthen independent oversight for the Oranga Tamariki system, which included strengthened systems performance monitoring [CAB-19-MIN-0113 refers].
- 5 At the time, Cabinet agreed, in principle, to transfer the independent monitoring function to the Office of the Children's Commissioner (OCC) once the function had been built within the Ministry of Social Development (MSD) and the Bill passed.
- 6 Since Cabinet agreed in-principle for the monitoring function to shift to the OCC it has become clear there is an inherent tension in one organisation being both advocate and monitor. There is a conflicting policy objective for the organisation to be both a trusted advisor to Ministers and fulfil the independent role of the Children's Commissioner. I therefore propose that the function will not transfer to the OCC and the Commission will instead retain a focus on advocating for the interests, rights and wellbeing of children and young people.

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<sup>1</sup> The Oranga Tamariki system is defined here as the system that is responsible for the support and services provided to children, young people and their whānau under, or in connection with, the Oranga Tamariki Act 1989; by agencies or by their contracted partners.

- 7 I consider the monitoring function should be placed within a departmental agency, led by a Statutory Officer, who will also be the agency's Chief Executive. I further propose that the host agency for the departmental agency be the Education Review Office (ERO) given both entities have a focus on children, and there are potential opportunities for each agency to cooperate and learn from one another.
- 8 I note there are strong expectations that monitoring will balance a need to provide trusted, responsive advice to Ministers, while also supporting transparency and public accountability, particularly for Māori, by providing trusted evidence and insights to the public.
- 9 To achieve this balance, I am proposing that the Prime Minister, the Minister responsible for monitoring and the Minister responsible for Oranga Tamariki will have the ability to request the Statutory Officer conduct reviews into specific matters of interest or concern. However, in making such requests, they may not direct the Statutory Officer to stop any existing monitoring activity or prevent any planned activity, to prioritise their request.
- 10 In addition, the Minister responsible for monitoring may direct the Statutory Officer to fulfil a requirement that is consistent with the Bill. However, the same constraints as above would apply.
- 11 I recognise that the Oranga Tamariki system is of particular interest and importance to Māori. As such, I am proposing that the Statutory Officer be required to establish and collaborate with a Māori Advisory Group in an effort to strengthen the involvement and influence of Māori over monitoring and outcomes delivered for tamariki, rangatahi and whānau Māori.
- 12 Subject to Cabinet agreement, I will instruct officials to commence work to establish the new departmental agency and prepare a plan to transition monitoring. This plan will deal with implications for the ERO and the OCC.

## **Background**

- 13 In March 2019 Cabinet agreed to strengthen independent oversight for the Oranga Tamariki system, which included strengthened systems performance monitoring [CAB-19-MIN-0113 refers]. At the time, Cabinet agreed, in principle, to transfer the independent monitoring function to the OCC once the function had been built within MSD and the Bill passed. MSD was appointed the Independent Monitor (the Monitor) from 1 July 2019 to establish and operate the monitoring function.
- 14 A decision on the permanent location is now needed to ensure the Bill appropriately provides for long-term arrangements and to enable officials to work together to consider any transition work that is required.
- 15 MSD officials have worked closely with the Te Kawa Mataaho - Public Service Commission and separately with MSD's Kāhui Group<sup>2</sup> to further inform work to date.

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<sup>2</sup> The Kāhui group is comprised of several senior Māori who are supporting MSD to develop practical commitments to give effect to Te Tiriti o Waitangi in the Bill.

## **Objectives for independent monitoring of the Oranga Tamariki system**

- 16 Cabinet has agreed that the Monitor will carry out impartial and evidence-based monitoring to provide decision makers and the public with insights and findings regarding:
  - 16.1 compliance with the Oranga Tamariki Act 1989, regulations, and standards under that Act
  - 16.2 the quality of services and practice within the Oranga Tamariki system
  - 16.3 how agencies within the Oranga Tamariki system are impacting on outcomes for children, young people and their families.
- 17 Monitoring will also help those delivering services to children, young people and their families to continuously improve.

## **Considerations when determining institutional arrangements**

- 18 In March 2019 Cabinet received advice that reflected the purpose of the Monitor was to provide trusted advice to Ministers to support them to gain insights into the performance of the Oranga Tamariki system and make decisions to improve outcomes for children, young people and their families [CAB 19 Min 0113 refers]. In addition, monitoring would also support system participants to learn and make improvements.
- 19 In the past two years officials have undertaken extensive engagement with the public and in particular, Māori. This engagement has highlighted that, in addition to being a trusted advisor to Ministers, monitoring also has a role in supporting Māori with trusted evidence and insights into how the Oranga Tamariki system is impacting on outcomes for tamariki, rangatahi and whānau Māori. Engagement has also highlighted that monitoring has a role, alongside the systemic advocacy work of the Children's Commissioner and the complaints and investigation focus of the Ombudsman, in supporting transparency and public accountability.
- 20 For independent monitoring to be successful the following matters need to be considered:
  - 20.1 **A dedicated focus on the interests, rights and wellbeing of children, young people and their families within the Oranga Tamariki system** – given the extreme vulnerability of this cohort, it is important that their needs are prioritised and that the agency responsible for monitoring is aligned with the needs of children and young people.
  - 20.2 **Provide for public trust and confidence, particularly for Māori** – I have received a clear and consistent message that if monitoring is to be widely trusted, particularly by Māori, monitoring must be independent. If monitoring arrangements hold the trust and confidence of the public and Māori, the Monitor will be able to more easily engage with key groups and subsequently its work is likely to hold greater value for decision makers.
  - 20.3 **Act as a trusted advisor for decision makers** – a key driver to strengthen independent monitoring of the Oranga Tamariki system is the need for decision makers, in particular Ministers, to receive advice that is independent of those providing services. Through well evidenced, impartial, and independent advice, I expect decision makers will be better placed to understand the impact of government policies and existing systems settings and make choices that improve outcomes for children, young people and their families.

20.4 **Reduce the fragmentation of the public sector and unnecessary cost** – over time small agencies can face challenges to maintain cost efficient systems and provide the development and progression opportunities to train and retain staff compared with larger agencies, therefore, opportunities to connect similar functions should be considered.

21 Several options, and variations on options, have been considered, including:

21.1 The OCC;

21.2 A new autonomous Crown Entity;

21.3 A new departmental agency headed by a statutory officer;

21.4 A new statutory officer within an existing agency;

21.5 A unit within an existing department.

22 Further detail on options is provided in Appendix 1.

### **The Children's Commissioner has a vital role as independent advocate for the rights, interests and wellbeing of all New Zealand's children**

23 Since Cabinet agreed in-principle for the independent monitoring function to shift to the OCC, further consideration has been given to the inherent tension between the policy objective for the Monitor to be a trusted advisor to Ministers and the independent role of the Children's Commissioner.

24 The operating models for an advocate and a monitor are different. Monitoring in the Oranga Tamariki system is intended to support decision makers, such as Ministers and service providers, to make decisions to improve policy, service delivery and practice. Monitoring also has a role in supporting public transparency about the outcomes being achieved by children and young people. Advocacy is focused on changes needed to improve outcomes for children and young people and have their views heard by decision makers. It requires taking a position on what policy, service, and practice settings should be and requires promoting that position, sometimes publicly. Monitoring evidence and insights may be used by the OCC to support them advocating for change.

25 The OCC is New Zealand's primary advocate for children. I consider that to maintain this standing and to argue effectively for the maintenance and promotion of rights for all children, it is important for the Commissioner to strengthen its focus in these areas. Although there are circumstances where it may be appropriate for advocacy and monitoring functions to be in the same organisation, given the policy objectives and specific context surrounding advocacy and monitoring within the Oranga Tamariki system, the independent advocacy functions and the monitoring functions described in this paper should not be combined in one organisation.

### **I propose to establish a new Statutory Officer to lead a departmental agency**

26 Following careful consideration of the options set out in Appendix 1, and consultation with the Minister for the Public Service, I propose to establish a Statutory Officer who would be the Chief Executive of a new departmental agency hosted within ERO.

- 27 In coming to this decision, I was especially concerned to ensure any arrangements maintained a dedicated focus on children, young people and families within the Oranga Tamariki system and that it should hold the confidence of Ministers and the public. Stakeholders consistently highlight that for monitoring to be trusted by both the public and decision makers, the Bill must provide for the operations and findings of the Statutory Officer to not only be sufficiently independent from Ministers, but also from existing government agencies.
- 28 The departmental agency option I am proposing aims to provide this appropriate balance by ensuring the Statutory Officer is operationally autonomous from all other departments, including its host department, in relation to how it goes about its monitoring role.
- 29 The further proposals I set out below, and elaborated on in Appendix 1, also recognise the need for the Monitor to provide impartial, evidence-based insights while being responsive and supportive of Ministers' needs to understand specific matters of interest or concern.
- 30 I have chosen ERO as the host agency given its existing focus on children and young people and the similarities in the strategic and day-to-day work of ERO and the Monitor. ERO also discharges a range of functions that are similar to those that will be performed by the Statutory Officer, including administering reviews, either general or relating to particular matters pertaining to service deliver, practice and performance.
- 31 I consider having the two entities aligned may also present opportunities for the Statutory Officer and the chief executive of ERO to work together on common issues.

### **Balancing the trust and confidence of Ministers and the public, in particular Māori**

- 32 Given the importance of maintaining trust and confidence of both Ministers and the public, I propose additional measures to ensure monitoring is responsive to Ministers while also maintaining public and Māori confidence that Ministers may not divert monitoring or influence the Monitor's findings.

#### *Clarifying the role of Ministers in monitoring*

- 33 Stakeholders have highlighted a particular concern that Ministers may limit the functions of the Statutory Officer by, for example, directing the Statutory Officer to stop monitoring particular indicators or not to conduct a particular review that the Statutory Officer has identified on its own initiative. This could affect the public's confidence in the Statutory Officer that would be detrimental to the purpose and effectiveness of monitoring.
- 34 I would expect that Ministers and the Statutory Officer would discuss any matters relating to the focus of monitoring and agree a way forward. However, for the avoidance of doubt, I propose the Bill clarify that the Prime Minister or a Minister may not stop or prevent the Statutory Officer undertaking any monitoring activity the Statutory Officer deems necessary.
- 35 The Minister responsible for monitoring may direct the Statutory Officer to fulfil a requirement that is consistent with the statutory functions, role and duties and the principles and objectives of monitoring in the Bill. This would enable the Minister to, for example, direct the Statutory Officer to commence monitoring of a particular indicator of interest.

#### *Minister-initiated reviews*

- 36 Cabinet agreed, in December 2019, that Ministers would be able to ‘request’ the Monitor to conduct a review into a specific matter of interest or concern [recommendation 11, CAB-19-MIN-0687 refers]. At the time, consideration was not given to the issue of whether requests for reviews ‘must’ be actioned. This helps to ensure that monitoring remains responsive to Minister’s needs.
- 37 To provide further clarity on this point, I propose that the Prime Minister, the Minister responsible for monitoring and the Minister responsible for Oranga Tamariki may request a review, and the Statutory Officer must undertake it. However, by virtue of the proposal set out in paragraph 34 above, the Statutory Officer may not be directed to stop, or be prevented from undertaking, monitoring activities to undertake the Minister initiated review. As above, I would expect the Ministers and Statutory Officer would discuss any request for a review to determine the relative priority of the request in light of the status of the current monitoring work programme.

### **Strengthening Māori trust and confidence in the Oranga Tamariki system**

- 38 I acknowledge there is a need for greater involvement of Māori in decisions about policy and systems settings related to the Oranga Tamariki system.
- 39 I therefore propose the Bill require the Statutory Officer to establish a Māori Advisory Group (the Group) and should collaborate with them to develop monitoring priorities, work programmes and monitoring approaches, and to support the Statutory Officer to meaningfully and effectively engage with Māori.
- 40 Decisions regarding monitoring priorities, work programme and approaches will have resourcing implications and must reside with the Statutory Officer, however, I expect the Statutory Officer should be required to have had regard to the views of the Group.
- 41 Having Māori working alongside the Statutory Officer will also support Māori to build a better understanding of the impact of policies and systems settings on tamariki, rangatahi and whānau Māori and better target their engagement with decision makers to support positive change.
- 42 I also note that in accordance with the Public Services Act 2020, as the Chief Executive, the Statutory Officer will be responsible for developing and maintaining the capability of the departmental agency to engage with Māori and to understand Māori perspectives. This is in addition to the requirements in the Bill, which also place obligations on the Statutory Officer to build cultural capability and engage with Māori.

### **Perceptions relating to Government’s commitment to reform the Oranga Tamariki system**

- 43 There may be a risk some stakeholders still perceive the proposed arrangements as positioning monitoring too close to decision makers and the public service. MSD’s Kāhui group would prefer the monitoring role to be placed within a Crown Entity but they are accepting of the departmental agency model. The OCC have also expressed the view that the proposed arrangements do not provide for adequate independence of the Monitor and that a Crown Entity arrangement would provide greater public assurance of the wellbeing of children and

young people in the Oranga Tamariki system. However, I consider the measures outlined above to ensure appropriate statutory and operational independence, if effectively communicated, can address these concerns.

- 44 In addition, the OCC have expressed the view that the Statutory Officer model does not adequately provide for partnership with Māori. Given the significant impact of the Oranga Tamariki system on tamariki and rangatahi Māori, OCC considers Māori should have decision making rights regarding monitoring matters. The OCC considers a Crown Entity arrangement is more appropriate as this would provide for governance and decision making through a board, which could be constituted with mandated Māori membership. I acknowledge these concerns, however I consider the proposal to establish a Māori Advisory Group provides for Māori to influence monitoring for the benefit of tamariki and rangatahi Māori.
- 45 MSD's Kāhui group have also expressed concerns about making ERO the host agency of the new monitoring agency. They have expressed the view that if the monitoring function is perceived to be too closely affiliated with ERO this may impact on the willingness of communities to engage with and trust the monitoring agency. They have also questioned whether a decision on the host agency might be postponed to allow time to consider alternative host agency options.
- 46 While noting these concerns, I believe it is important to agree the host agency now to allow this to be considered as part of the Select Committee process. I also consider the departmental agency option I am proposing is unlikely to be publicly perceived as closely linked with ERO. I note, for example, that the Office for Māori Crown Relations - Te Arawhiti is not widely perceived to be associated with the Ministry of Justice, despite being a departmental agency of this department.
- 47 ERO notes the clear separation between ERO and the new monitoring agency and recognises the different functions and mandates of the two organisations. While having clear separation will increase stakeholder confidence in the independence of the ICM, it will not preclude the CE and statutory officer working together when in the best interests of children.

## **Next steps**


- 48 The decisions on the institutional design of the Statutory Officer are to support final drafting ahead of consideration by the Legislative Committee and the Bill being introduced by mid-2021.
- 49 Officials from the Public Service Commission, the interim Monitor and ERO will work together to further consider the operational details and costs of the transition and ongoing operations. As part of this, Officials will be further updating me, the Minister for the Public Service, the Minister Responsible for ERO, and the Minister of Finance by the end of 2021.
- 50 The update will also address implications for the OCC monitoring function with the view of providing certainty, in particular for the OCC staff currently involved in monitoring.

## **Consultation**

- 51 The proposals in this paper have been consulted on with the MSD Kāhui Group, Te Kawa Mataaho Public Service Commission, ERO, the Ministries of Justice and Education, the Privacy Commissioner, the Children's Commissioner, Oranga Tamariki-Ministry for Children,

the Treasury, Te Arawhiti, Te Puni Kokiri and the Ombudsman. The Department of Prime Minister and Cabinet has also been informed.

## **Financial implications**

- 52 The Independent Children's Monitor is presently operating with 36 FTEs and a budget of \$10.337m covering operations and establishment. Baseline funding for 21/22 and outyears is \$10.5m.
- 53 The OCC has an operating baseline of \$3.157m per year, and received a \$1 million cost-pressure top up in 20/21. The OCC employed 40.225 FTE at 31 March 2021.
- 54 s 9(2)(f)(iv) 

## **Human rights implications**

- 55 A Privacy Human Rights and Ethics (PHRAE) report has been undertaken and will be further updated as required throughout the development of the Bill. If the PHRAE report does identify privacy issues that need to be addressed in the Bill, these will be worked through with the Office of the Privacy Commissioner.

## **Legislative implications**

- 56 The legislative proposals in this paper will be included in the Children and Young People's Commission and Oversight of Oranga Tamariki System Bill (the Bill).
- 57 The Bill has been accorded a category 4 priority on the 2021 programme.

## **Regulatory impact and compliance cost statement**

- 58 Treasury's Regulatory Impact Analysis team has determined that the proposed new oversight arrangements are exempt from the requirement to provide a Regulatory Impact Statement on the grounds that they have no or only minor impacts on businesses, individuals, and not-for-profit entities. Providers within the Oranga Tamariki system are subject to a cost recovery funding model, any regulatory burdens on providers associated with the new oversight arrangements would be passed on in full as a cost to Government.

## **Gender implications**

- 59 There are no gender implications.

## **Disability perspective**

- 60 Disabled children and young people are overrepresented in the Oranga Tamariki system. The work to strengthen the oversight of this system will provide insights intended to improve outcomes for this population.



## Publicity

- 61 I propose to proactively release this paper following Cabinet consideration. Proactive release will occur after relevant staff within ERO, the OCC and MSD have been informed.

## Recommendations

- 62 I recommend the Committee:

### The role of the Children's Commissioner

- 1 **note** further advice from officials highlights that due to the policy objectives and specific context surrounding advocacy and monitoring within the Oranga Tamariki system, the independent advocacy functions and the monitoring functions described in this paper should not be combined in one organisation
- 2 **agree** to rescind Cabinet's earlier in-principle decision [CAB-19-MIN-0113, Recommendation 11] to transfer the independent monitoring function to the Office of the Children's Commission

### Balancing trust and confidence of Ministers and the public, and the operation of monitoring

- 3 **agree** that a Statutory Officer, with responsibility for the functions, powers and duties of the Monitor as set out in the Oversight of the Oranga Tamariki System and Children and Young People's Commission Bill (Oversight Bill), lead a new departmental agency hosted by the Education Review Office
- 4 **agree** that a new departmental agency for monitoring will be established under the Public Service Act 2020
- 5 **authorise** the Minister for the Public Service and Minister for Social Development and Employment to make decisions about the name of the departmental agency, commencement date and strategic framework for the departmental agency subject to further advice from officials on the funding and establishment of the departmental agency
- 6 **invite** the Minister for the Public Service to instruct the Parliamentary Counsel Office to draft Orders in Council to add the new departmental agency to Part 2 of Schedule 2 of the Public Service Act 2020 and Part 1A of Schedule 1 of the Ombudsmen Act 1975 and to provide for transitional matters connected with the transfer of functions, subject to decisions under recommendation 5
- 7 **agree** the Bill provides that Ministers may not stop or prevent the Statutory Officer from undertaking a particular monitoring activity, where the Statutory Officer considers the particular activity is necessary to enable them to discharge their functions or duties or exercise their powers under the Bill
- 8 **agree** the Bill will provide that the above provision would not constrain the Minister responsible for monitoring from directing the Statutory Officer to commence or undertake additional monitoring activities that are within scope of their functions, duties or powers

- 9 **note** that I would expect a Ministerial direction would be undertaken in discussion with the Statutory Officer
- 10 **note** Cabinet agreed in December 2019 that the Minister responsible for monitoring, the Prime Minister, and the Minister responsible for Oranga Tamariki may 'request' a review into any matter of interest or concern within the Oranga Tamariki system but did not consider whether a request must be actioned
- 11 **agree** that the Statutory Officer must give effect to a request for a review made by the Prime Minister, Minister responsible for monitoring or Minister responsible for Oranga Tamariki
- 12 **note** in making a request for a review the Prime Minister or a Minister may not require the Statutory Officer to stop doing any existing monitoring activities or prevent any planned monitoring activities, in order to prioritise the request
- 13 **agree** the Bill require that the Statutory Officer must establish a Māori Advisory Group and should collaborate with them to:
  - 13.1 develop monitoring priorities, work programmes and monitoring approaches
  - 13.2 support meaningful and effective engagement with Māori
- 14 **agree** the Bill require that the Statutory Officer must have regard to the views of the Group

#### **Transition and technical legislative decisions for assigning statutory roles**

- 15 **agree** to commence work to establish a new departmental agency to be hosted by ERO, including any necessary provisions in the Bill
- 16 **note** that the transfer of the interim monitoring function from MSD to its permanent location will occur by the end of 2022, once the legislation has passed
- 17 s 9(2)(f)(iv)

**Next Steps**

18 **note** I am aiming for mid-2021 for introduction of the Bill

19 s 9(2)(f)(iv)



Hon Carmel Sepuloni  
Minister for Social Development and Employment

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## Appendix 1 – Analysis of options and assignment of the Statutory Officer role

### Assignment of the Statutory Officer Role

- 63 I propose that the Statutory Officer will be the chief executive of a new departmental agency of ERO. The chief executive of this departmental agency will be appointed by the Public Service Commissioner under the Public Service Act 2020. To support the transition process, the Public Service Commissioner may appoint the chief executive of the new departmental agency ahead of when the Bill has passed.
- 64 I propose to establish the Statutory Officer with responsibility for the functions, powers and duties of the Monitor as set out in the Bill. The Bill will provide that the Statutory Officer is to be the Chief Executive of a public service agency established under the Public Service Act 2020. This ensures public transparency about who is responsible for the role and provides some flexibility for any future changes in the system.

### Ministerial responsibilities

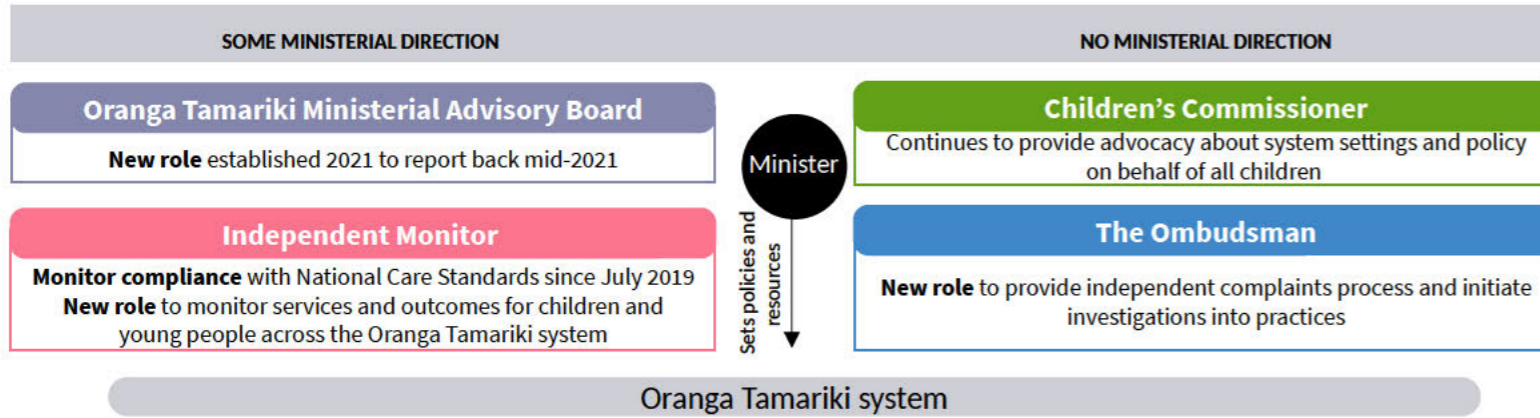
- 65 Until the Bill passes, the Monitor will continue to be appointed by the Minister for Children under the Oranga Tamariki Act 1989. In recognition of the conflict of interest that exists in being the Minister for Oranga Tamariki and the Minister for the Independent Monitor, the Minister for Children has delegated the administration of monitoring<sup>3</sup> to me.
- 66 Once the Bill passes, the Prime Minister will be required to assign ministerial responsibilities for the Act and the responsible Minister will submit an Order in Council to the Governor-General to establish the departmental agency and assign the Statutory Officer role to the Chief Executive of the new departmental agency of ERO.
- 67 It is important to note that just because the departmental agency that supports the Statutory Officer is hosted by ERO, the Minister responsible for ERO would not necessarily be assigned as the responsible Minister.
- 68 The Office of the Children’s Commissioner and the Kāhui group have indicated concern that the Bill does not presently clarify that the Minister responsible for monitoring must not also be the Minister responsible for Oranga Tamariki. The Legislation Design and Advisory Committee have advised against legislatively constraining the Prime Minister’s ability to assign portfolios. I also consider it would be unlikely for any Prime Minister to assign two roles, that are clearly in conflict, to a single Minister. However, I recognise that this is a risk.

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<sup>3</sup> Development of output agreements, management of appropriations, etc.

# ORANGA TAMARIKI MONITOR - INSTITUTIONAL DESIGN OPTIONS

## THE MONITOR IS ONE PART OF THE ORANGA TAMARIKI OVERSIGHT SYSTEM



## The Children's Commissioner is an independent advocate for the rights, interests and wellbeing of all New Zealand's children

In 2019, the Government agreed in principle for the monitoring function to sit with the Children's Commissioner.

There is an inherent tension between the policy objective for the Monitor to be a trusted advisor to Ministers and the independent role of the Children's Commissioner. We recommend that the monitoring function sit with a separate entity.

## A statutory role within the public service provides the Monitor with sufficient independence

The proposed statutory framework for the Monitor will ensure that it can make and publish findings about the quality and compliance of services and the outcomes for children, independent of the views of decision makers. The paper also proposes that Ministerial directions are not able to prevent the Monitor from undertaking activities the Monitor considers necessary.

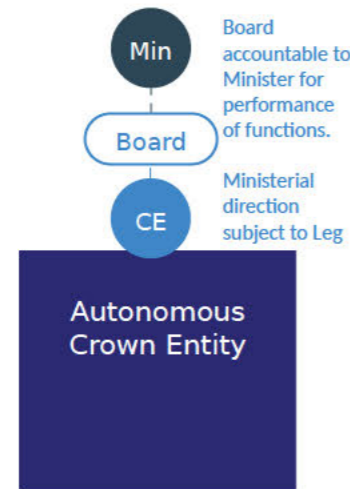
The Monitor while within government is independent from the Oranga Tamariki system it is monitoring. The Monitor will need to provide assurance, promote transparency, and build public trust and confidence that the wellbeing and safety of children and young people is paramount.

## OPTIONS ANALYSIS

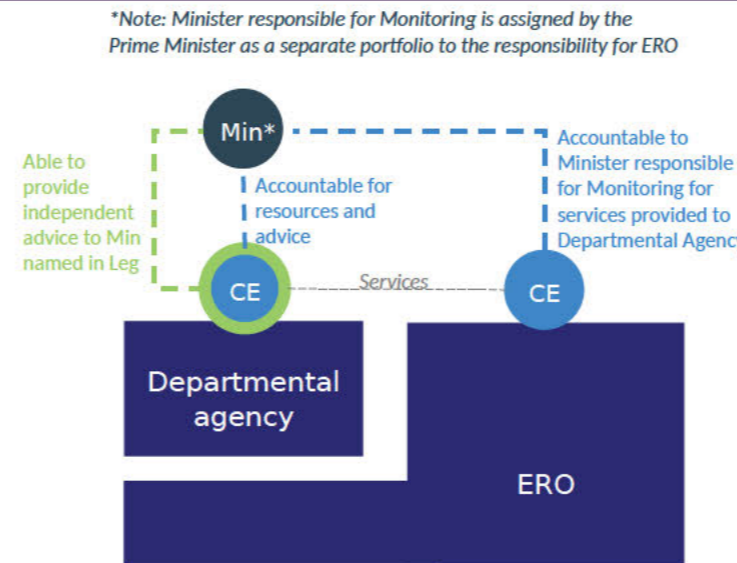
The key institutional choices are whether the monitor is inside:

- the public service
- a new agency

The independence of the role depends on both the form and its specific legislative framework.



Option 1 – Autonomous Crown Entity



Recommended  
Option 2 – Departmental Agency of ERO



Option 3 – Statutory Officer within ERO

Features

### Accountability and independence based on form

*Accountability for findings (what)* – Board  
*Accountability for operations (how)* – Board  
*Independence from Ministers* – Crown Entities Act 2004 requires entity to have regard to policy directions but it does not need to give effect to directions unless provided for in its legislation

*Accountability for findings (what)* – Dept Agency CE, subject to operating within the strategic intentions set by host department  
*Accountability for operations (how)* – Dept Agency CE except where services provided by host via Departmental Agency Agreement (e.g. corporate)  
*Independence from Ministers* – statutory role requires Dept Agency CE to ensure only relevant factors are used and establishes the CE as a statutory officer with some independence from Ministerial direction

*Accountability for findings (what)* – Statutory officer, who is able to do this independent of the views of the CE  
*Accountability for operations (how)* – Dept CE who retains accountability for how functions are performed and efficient, effective use of funds  
*Independence from Ministers* – same as Dept Agency case  
*Independence of statutory officer from CE* – in relation to what findings are made but they are accountable to CE for how they do their role and use resources

Policy objectives

### Provide for public trust and confidence, particularly from Māori

● Stakeholders see a stand-alone entity as a way to ensure priority and focus on the role

● Stakeholders see a stand-alone entity as a way to ensure priority and focus on children, young people and their families  
 There may be a risk some stakeholders still perceive the proposed arrangements as too close to decision makers and the host agency. However, I consider the statutory and operational independence can address this concern

● Stakeholders have raised concerns that a role within a wider organisation will lose focus and priority and the perceived uncertainty of splitting accountability for operations (CE) from accountability for findings (statutory officer)  
 Structural separation from the Oranga Tamariki system and the introduction of a statutory framework is provided under all options to strengthen public trust and confidence in the independence of the Monitor's findings compared to status quo

### Trusted advisor for decision makers

● Preventing Ministers from seeking specific reviews or priorities may reduce the effectiveness of the monitor in advising Ministers

● The combination of a departmental agency form and a statutory role provides for independence from Ministers and the host agency in making findings while still allowing Ministers to provide directions about including additional areas of work

● Same as Option 2

### Reduce public sector fragmentation & deliver cost effectiveness

● Increased fragmentation for all aspects  
 Highest cost to establish and operate including new Board and Chief Executive and corporate systems

● Minor fragmentation with some opportunities to leverage corporate systems and specialist expertise with host. Retains role in public service  
 Moderate cost to establish and operate, including establishing a new Chief Executive and the costs to ERO as a host

● Prevents fragmentation and provides greatest opportunities to leverage shared expertise across monitoring roles  
 Lowest cost option