

# **Terms of Reference: Independent Review of the Oversight of Oranga Tamariki System Act 2022 and Children and Young People’s Commission Act 2022**

## **Purpose**

- 1 This document sets out the Terms of Reference to conduct an independent review of the legislation that sets out the oversight of the Oranga Tamariki system, as commissioned by the Ministry of Social Development.

## **Background and context**

### *Background*

- 2 The Oranga Tamariki system is responsible for providing services and support to children, young people, and their families and whānau under, or in connection with, the Oranga Tamariki Act 1989. The system includes agencies such as Oranga Tamariki – Ministry for Children; New Zealand Police; the Ministries of Health, Social Development, Education, and Justice; Department of Corrections; and these agencies’ contracted partners.
- 3 Three entities are legislated to oversee the Oranga Tamariki system. Two were established in their current forms through the Oversight of Oranga Tamariki System Act 2022 (Oversight Act) and the Children and Young People’s Commission Act 2022 (Commission Act), which commenced in May and July 2023, respectively. They are:
  - 3.1 the Children and Young People’s Commission (the Commission), a new independent Crown entity replacing the Office of the Children’s Commissioner, broadly responsible for advocating for all children and young people in New Zealand, and
  - 3.2 the Independent Children’s Monitor (the Monitor), a departmental agency responsible for monitoring the Oranga Tamariki system.
- 4 In addition, the Oversight Act made enhancements to the Ombudsman's functions, including by extending their jurisdiction to investigate complaints about support and services provided by care or custody providers.

### *Upcoming changes in the oversight system*

- 5 On 2 May 2024, Hon Louise Upston, Minister for Social Development and Employment, announced the Government’s intention to strengthen the independence, monitoring, and oversight of the Oranga Tamariki system.

The proposed reforms will bring into effect structural changes to the Monitor and the Commission, specifically:

- 5.1 transforming the Monitor from a departmental agency hosted by the Education Review Office into an independent Crown entity with a small, part-time board, and
  - 5.2 reverting the Commission to a single Commissioner by disestablishing the Board (but maintaining its independent Crown entity status).
- 6 These changes are intended to ensure the entities involved in the oversight of the Oranga Tamariki system are truly independent and autonomous from government, have clearly defined roles and responsibilities, and ensure children and young people have a clear, visible advocate.

## **Objectives**

- 7 The Oversight Act and Commission Act require the responsible Minister to arrange for an independent review of each Act within three years of commencement. The reviews will be undertaken this year to align with the above changes planned for the Monitor and the Commission. This will give stakeholders an opportunity to have a say in how they think the oversight of the Oranga Tamariki system is working and how it could be improved.

## **Scope**

### *Minimum requirements*

- 8** The review will be guided, at a minimum, by the statutory requirements outlined in Section 58 of the Oversight Act and Section 38 of the Commission Act, which are outlined below:

#### *Section 58 of the Oversight Act:*

1. The Minister must arrange for an independent review of the operation and effectiveness of this Act and the operation of the Monitor under this Act.
2. The review must consider—
  - a. whether the functions, duties, and powers set out in this Act give effect to the purpose of this Act; and
  - b. whether the Monitor is—
    - i. working effectively with Ombudsmen and hapū, iwi, and Māori organisations; and

- ii. being effectively supported by agencies and their contracted partners in the Oranga Tamariki system, and whether there is any evidence that the Monitor is being obstructed in performing their functions, duties, or powers under this Act; and
  - iii. appropriately resourced to efficiently and effectively discharge their functions, duties, or powers under this Act and to support the resilience of the Oranga Tamariki system; and
  - c. whether any amendments to this Act are necessary or desirable; and
  - d. any other matters that the Minister considers appropriate, after consulting the Monitor, the Chief Ombudsman, and other Ministers of the Crown with relevant portfolios, as necessary.
3. The review must commence no later than 3 years after the commencement of this Act.
  4. The findings of the review must be reported to—
    - a. the Minister; and
    - b. the Minister responsible for the Monitor; and
    - c. the Minister responsible for administration of the Oranga Tamariki Act 1989; and
    - d. as far as they relate to Ombudsmen, the House of Representatives.
  5. The Minister must present a copy of the report on the review to the House of Representatives as soon as practicable after receiving the report.

*Section 38 of the Commission Act*

1. The Minister must arrange for an independent review of the operation and effectiveness of this Act and the operation of the Commission under this Act.
2. The review must consider—
  - a. whether the functions, duties, and powers set out in this Act are supporting the Commission to give effect to the purpose of this Act; and
  - b. whether the Commission is working effectively with hapū, iwi, and Māori organisations; and
  - c. whether any amendments to this Act are necessary or desirable; and

- d. any other matters that the Minister considers appropriate, after consulting the Commission and other Ministers of the Crown with relevant portfolios, as necessary.
3. The review must commence no later than 3 years after the commencement of this Act.
4. The findings of the review must be reported to the Minister.
5. The Minister must present a copy of the report on the review to the House of Representatives as soon as practicable after receiving the report.

*The operation and effectiveness of both Acts*

- 9 Are the Oversight Act and Commission Act operating effectively?
- 10 Are the Monitor and Commission operating effectively under the Oversight and Commission Acts respectively?

*Functions, duties, and powers*

- 11 Do the functions, duties, and powers set out in the Oversight Act give effect to the Act's purpose "to uphold the rights and interests and improve the well-being of children and young people who are receiving, or have previously received, services or support through the Oranga Tamariki system and promote the effectiveness of that system by:
  - 11.1 setting out the functions, duties, and powers of the Monitor; and
  - 11.2 giving the Ombudsman additional duties and powers when dealing with matters that may fall under the Ombudsmen Act 1975 and that relate to services or support delivered by—
    - 11.2.1 Oranga Tamariki, and
    - 11.2.2 care or custody providers<sup>1</sup>
  - 11.3 creating a framework for the Monitor and the Ombudsmen to work together in a comprehensive, cohesive, and efficient way and to consult one another and share information, as appropriate"?

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<sup>1</sup> Section 8(1) of the Oversight Act defines a 'care and custody provider' as any of the following, in their role as such an organisation or body under the Oranga Tamariki Act 1989:

- (a) an organisation into whose care any child or young person is placed under section 362 of that Act
- (b) an organisation that operates a residence established under section 364 of that Act
- (c) an organisation or body approved under section 396 of that Act.

- 12 Could the oversight system as a whole, and the Monitor in particular, benefit from any additional powers focused on enforcing compliance, additional powers of entry, and creating practical outcomes from their reporting?
- 13 Do the functions, duties, and powers set out in the Commission Act give effect to the Act's purpose to establish the Commission "to promote and advance the rights, interests, and participation of children and young people and to improve their well-being (without limitation) within the context of their families, whānau, hapū, iwi, and communities"?

*Optional Protocol on the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment monitoring function*

- 14 With respect to the Commission's designation<sup>2</sup> as a National Preventive Mechanism under the Crimes of Torture Act 1989 for the purposes of the Optional Protocol on the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which entity within the oversight system would you view as best placed to perform this designated function to the greatest effect?

*Effectively engaging with relevant stakeholders*

- 15 Is the Monitor working effectively with the Ombudsman, hapū, iwi, and Māori organisations, as required in the Oversight Act?
- 16 Is the Commission working effectively with hapū, iwi, and Māori organisations?
- 17 Are the Commission and Monitor working effectively with each other, and with the Ombudsman?

*Amendments to the Commission and Oversight Acts*

- 18 Are there any amendments to the Oversight and Commission Acts that are necessary or desirable?

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<sup>2</sup> As published in the NZ Gazette (22 June 2023: "The Children and Young People's Commission, for the purpose of examining and monitoring the treatment of children and young persons in:

- care and protection and youth justice residences established under section 364 of the Oranga Tamariki Act 1989;
- community based remand care homes; and
- health and disability places of detention established specifically for the care of children and young people, including youth forensic units and child and adolescent mental health units."

## *Specific considerations for the review of the Oversight Act*

- 19 Is the Monitor being effectively supported by agencies and their contracted partners in the Oranga Tamariki system to be able to prepare their monitoring reports under section 23 of the Oversight Act, and is there any evidence that the Monitor is being obstructed in performing their functions, duties, or powers under the Oversight Act?
- 20 Are the Monitor and the Commission appropriately resourced to efficiently and effectively discharge their functions, duties, and powers, and to support the resilience of the Oranga Tamariki system?

### **Out of scope**

- 21 The following issues are out of scope of the review:
  - 21.1 Role and functions of Oranga Tamariki – Ministry for Children, including recent changes to the Oranga Tamariki Act 1989.
  - 21.2 Any functions, duties, or powers of the Ombudsman that are not set out in the Oversight Act, and independent decisions and operations of the Ombudsman. The constitutional position of the Ombudsman as an Officer of Parliament and statutory restrictions on accessing material held by them mean that a Ministerial review cannot examine their decisions and operations.
  - 21.3 The decisions relating to, and timing of, the Minister’s proposed legislation to increase the independence of the Monitor and establish a single Commissioner for the Commission.

### **Process for the review**

- 22 The reviewer should consider:
  - 22.1 past feedback, particularly in relation to what children and young people have said they wanted; for example, Select Committee feedback during previous changes to the oversight of the Oranga Tamariki system, to mitigate the risk of re-engaging young people on the same topics, creating engagement fatigue, and
  - 22.2 recommendations from other relevant reports; for example, the Royal Commission of Inquiry into Abuse in Care, and the United Nations Convention on the Rights of the Child Concluding Observations.
- 23 Engagement should be conducted during the reviews, where practical within the timeframe, with key stakeholders in the Oranga Tamariki system,

including organisations that represent children and young people, children and young people themselves, and with hapū, iwi, and Māori organisations.

- 24 Māori voice should be sought early, and channels of communication continued throughout engagement, especially given that the oversight entities' ability to work with hapū, iwi, and Māori is a consideration in the reviews mandated by the Acts, and the disproportionate number of Māori engaged with the Oranga Tamariki system.
- 25 The reviewer should work with the Ministry of Social Development to connect with an engagement expert who has experience and connections to be able to engage sensitively, in age-and-stage-appropriate ways, with:
  - 25.1 children and young people, particularly those with care-experience,
  - 25.2 tamariki and rangatahi Māori,
  - 25.3 Pacific children and young people, and
  - 25.4 disabled children and young people.
- 26 The reviewer should also close the feedback loop and provide the people they engaged with a summary of the review, and where possible, have the opportunity to confirm their views have been captured correctly.

## **Reporting findings**

### *Commission Act*

- 27 The reviewer will provide a draft report on findings to the Ministry of Social Development, Commission, Monitor, and Ombudsman through the review period.
- 28 A final report is to be sent to the Minister for Social Development and Employment, as the responsible Minister, and the Minister of Justice as far as they relate to Optional Protocol on the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, no later than January 2025. It is also to be sent to the Commission, Monitor, and Ombudsman.
- 29 The Minister for Social Development and Employment will present the final report to the House of Representatives as soon as practicable.

### *Oversight Act*

- 30 The reviewer will provide a draft report on findings to the Ministry of Social Development, Commission, Monitor, Ombudsman, and Oranga Tamariki through the review period.

- 31 A final report is to be provided to the Minister for Social Development and Employment (as the Minister responsible for the Oversight Act and the Monitor), the Minister for Children (as the Minister responsible for administration of the Oranga Tamariki Act 1989), and the Speaker of the House as far as they relate to the Ombudsman, no later than January 2025. It is also to be sent to the Commission, Monitor, and Ombudsman.
- 32 The Minister for Social Development and Employment will present the final report to the House of Representatives as soon as practicable.