In Confidence

Office of the Minister for Social Development and Employment Cabinet Social Outcomes Committee

Next steps for strengthening the oversight of the Oranga Tamariki system

# Proposal

1. This paper seeks agreement to:
   1. begin drafting instructions for an omnibus Bill to strengthen the oversight of the Oranga Tamariki system, and
   2. Terms of Reference for an independent review of the Oversight of Oranga Tamariki System Act 2022 and Children and Young People’s Commission Act 2022.

# Relation to government priorities

1. This proposal will contribute to fulfilling a commitment in the National-Act Coalition Agreement to create a truly independent monitoring and oversight agency for Oranga Tamariki. It will also enhance public confidence in the oversight of the Oranga Tamariki system by supporting a series of changes intended to strengthen oversight.

# Executive Summary

1. Legislative amendments are proposed to fulfil the National-Act Coalition agreement commitment to make a truly independent monitoring agency by changing the form of the Independent Children’s Monitor (the Monitor) from a departmental agency to an independent Crown entity. Alongside this change, I propose additional legislative amendments to increase the visibility of the Children and Young People’s Commission (the Commission) as an advocate for children and young people by changing its governance from a multi- member board to a corporation sole independent Crown entity. [Redacted content].
2. As I signalled to Cabinet in April 2024, these changes will be made through the *Strengthening the Oversight of the Oranga Tamariki System Omnibus Bill* (the Bill). Cabinet agreement is sought to progress policy proposals and to begin drafting instructions for the Bill. [Redacted content].
3. The changes to the Monitor and the Commission will be fiscally neutral to the Crown, with costs being met by reallocating existing funding.
4. [Redacted content].
5. I have brought forward the statutory independent review of the Oversight of the Oranga Tamariki System Act 2022 (Oversight Act) and the Children and Young People’s Commission Act 2022 (Commission Act). This will enable any amendments within scope of the policy proposals described in this paper to be made to the Bill during the Select Committee process. I propose agreement to the Terms of Reference for the review, which have been informed by feedback from targeted engagement with key stakeholders. I expect the reviewer to consider relevant recommendations from the Royal Commission of Inquiry into Abuse in Care, as well as other relevant reports. The independent reviewer will provide their report to me by the end of January 2025, after which I will provide an update to Cabinet.

# Background

1. In April 2024, Cabinet agreed in-principle to strengthening independent monitoring by shifting the Monitor to an independent Crown entity, which is part of the National-Act coalition agreement [SOU-24-MIN-0025 refers]. Cabinet noted my intention to reconsider arrangements for the Commission by making it a corporation sole independent Crown entity with a single Commissioner, which will enhance its advocacy function. [Redacted content].

# Amendments will enhance the independence of the Monitor

*The Monitor will become an independent Crown entity*

1. The Monitor is responsible for monitoring the performance of the Oranga Tamariki system[1](#_bookmark2). This includes compliance, quality of practice and outcomes, and identifying areas for improvement. The Monitor has been operating as a departmental agency hosted by the Education Review Office (ERO) since

mid-2023[2](#_bookmark3). While it is able to carry out its monitoring function independently, I view this structure as insufficient for true separation from government.

1. Under the Crown Entities Act 2004, independent Crown entities cannot be directed by Ministers on government policy unless an enactment specifies otherwise.

[1](#_bookmark0) The Oversight Act, section 9, states that the Oranga Tamariki system means the system that is responsible for providing services or support to children, young people, and their families and whānau under, or in connection with, the Oranga Tamariki Act 1989.

[2](#_bookmark1) The Monitor is a statutory officer who is also the Chief Executive of the departmental agency as Aroturuki Tamariki-Independent Children’s Monitor / the Independent Monitoring Agency of the Oranga Tamariki System.

1. While the Monitor will become more independent, the responsible Minister retains the ability, under section 25 of the Oversight Act, to request a review into any relevant topic provided the request does not prevent the Monitor from carrying out current or scheduled monitoring work. This provides the Minister an opportunity to receive independent and expert insight into matters without compromising the core functions or independence of the Monitor.
2. As a departmental agency, the Monitor currently has shared back-office services provided by ERO. There will be some additional costs related to the Monitor’s new status, for example the need to provide separate financial reporting and be audited separately.

*New governance arrangements for the Monitor will be needed*

1. I have considered both a commissioner sole and board model for the Monitor as an independent Crown entity. It is standard for an independent Crown entity to be governed by a board. Therefore, I propose that the Monitor’s governance as an independent Crown entity is provided by a board [Redacted content].
2. Crown entity boards are generally responsible for appointment of the entity’s chief executive (including deciding whether to have one) and engaging with the responsible Minister and monitoring agency. A board will assist with strategic and corporate matters, while the staff and functions of the Monitor will continue to operate as present for the most part. As the governing body of the entity, the board will be required to give effect to the independent monitoring function under the Oversight Act.

[Redacted content]

1. [Redacted content].

[Redacted content]

1. [Redacted content].

[Redacted content]

1. [Redacted content]. A monitoring agency is required for every independent Crown entity, which can be performed by a Public Service department or another Crown entity. The role of the monitoring agency as outlined in section 27A of the Crown Entities Act 2004 is to assist the responsible Minister to carry out their role and functions, including administering appropriations, tendering advice to Ministers on behalf of the Crown entity, and supporting appointment processes for board members.

# Funding arrangements are required for the Monitor’s transition to an independent Crown entity

1. I intend to reallocate existing funding so that the proposed changes to the Monitor are fiscally neutral to the Crown. There are two elements to consider:
   1. transition costs, which have been met by a transfer of funding from 2023/24 to 2024/25 approved by Cabinet as part of Budget 2024, and
   2. the transfer of existing funding, assets and liabilities.

*Transition costs have been covered in Vote Education Review Office*

1. As part of Budget 2024, Cabinet approved a transfer of $0.290 million from 2023/24 to 2024/25 in the Vote Education Review Office’s Independent Monitoring and Assurance of the Oranga Tamariki System appropriation. I propose that this is used to fund the Monitor’s one-off transition costs.
2. The transition may have other financial impacts on ERO. Where ERO incurs costs directly related to the Monitor’s transition to an independent Crown entity, these costs will be charged against the Monitor’s appropriation within Vote Education Review Office.
3. ERO may also incur costs from the removal of hosting responsibilities on its corporate services function, including updating systems, processes, and right sizing support roles. As part of the Budget 2024 process, ERO sought an in- principle expense transfer in its Evaluations of the Quality of Education appropriation of up to $0.600 million from 2023/24 to 2024/25 and $0.900 million from 2023/24 to 2025/26. ERO may need to rephase the value of the transfers to 2024/25 and 2025/26 as part of the 2024 October Baseline Update to reflect this. The final amount to be transferred will be confirmed following the completion of ERO’s 2023/24 financial statements.

[3](#_bookmark4) Cabinet Office *Cabinet Manual 2023* at paragraph 3.53.

*A new appropriation needs to be established in Vote Social Development*

1. I propose that the Minister of Finance and myself (as Minister for Social Development and Employment) are delegated authority to:
   1. establish a new appropriation for the Monitor within Vote Social Development once the Bill has passed, and
   2. transfer funding from the Monitor’s appropriation in Vote Education Review Office to the new appropriation in Vote Social Development.
2. I also propose that authority is delegated to the Minister of Finance, the Minister of Education and myself (as Minister for Social Development and Employment), to approve the transfer of capital from ERO to the new independent Crown entity, and to make any consequential financial decisions, for example to ensure that leave liabilities are correctly reflected.
3. The Monitor’s 2023/24 operational expenditure is $11.578m ($500,000 of which was carried forward from 2022/23 for establishment activities). The Monitor has capital reserves of $3.371m, which currently sit under ERO as a departmental agency, and corporate costs of $1.313 million. Corporate costs cover ICT, Finance, Payroll, and Information Management, with the majority of the cost in ICT ($1.068 million).

*There will be one-off and ongoing additional costs as an independent Crown entity*

1. Estimates of additional one-off and ongoing costs are in the table below.

|  |  |  |
| --- | --- | --- |
| **Additional costs for the Monitor operating as an independent Crown entity** | | |
| ***Corporate costs*** | ***One-off set up cost*** | ***Ongoing annual cost*** |
| Finance | $38,000 | $20,000 |
| Payroll | $12,000 | (Payroll costs subsumed in Finance) |
| ICT | $110,000  (includes $10,000 for programme management) | - |
| Audit Fees | - | $40,000 |
| ***Total corporate costs (rounded)*** | **$160,000** | **$60,000** |
| Board costs | - | [Redacted content] |

1. [Redacted content].
2. [Redacted content].

# Amendments will increase the visibility of the Commission as an advocate for children, including those in the Oranga Tamariki system

*The Commission will become a corporation sole independent Crown entity*

1. I propose to shift the governance of the Commission from an independent Crown entity with a multi-member board to a corporation sole, which is led by one Children’s Commissioner. This change will strengthen its advocacy function in the oversight of the Oranga Tamariki system by establishing a single visible advocate for children and young people. No change is proposed to the Commission’s independence.
2. This proposal aligns with feedback during the Select Committee process for the Oversight Act and Commission Act, which emphasised the value of a visible, single person holding the title of Children’s Commissioner rather than a board. This helps provide a recognised ‘face’ for advocacy, and that children and young people, including those in state care or transitioning out of care, know who their advocate is.
3. [Redacted content].

*Advocacy mandate of the sole Commissioner is maintained*

1. I propose to retain the advocacy mandate outlined in the Commission Act for the sole Commissioner. The Commission Act expanded on the advocacy scope of previous Children’s Commissioners by including young people with care-experience up to 25 years old. The age scope was extended to align with the broader age range reflected in the Oranga Tamariki Act 1989.
2. The Commission currently advocates for children and young people’s rights, interests, participation and well-being in accordance with the United Nations Convention on the Rights of the Child. The Commission is required, under domestic legislation as well as international obligations, to have a specific focus on the rights and needs of children and young people in state care due to their vulnerable situation.

[Redacted content]

1. Section 13 of the Commission Act outlines the experience and knowledge that the board must have on a collective basis. I consider that this section remains appropriate and should be retained. [Redacted content].

[Redacted content]

1. [Redacted content].
2. Currently, the processes include convening a nominations panel which assesses and recommends candidates to the responsible Minister. The responsible Minister must generally have regard to the recommendations of the nominations panel when in turn recommending the appointment of candidates to the Governor-General. Candidates must additionally have the endorsement of a relevant agency listed in regulations made under section 37(1)(a) of the Commission Act. The relevant agencies specified in regulation include key children’s sector stakeholders.

[Redacted content]

1. [Redacted content].
2. [Redacted content].
3. [Redacted content].

# An omnibus bill is proposed to be introduced [Redacted content]

1. I seek agreement to issue drafting instructions to the Parliamentary Counsel Office to progress the decisions set out in this paper. [Redacted content]. Subject to the approval of the Cabinet Legislation Committee, I propose that the Bill be introduced into the [Redacted content].
2. I intend for the Bill to be introduced as a single omnibus bill under Standing Order 267(1)(a) and be split into two bills during the Committee of the Whole House, subject to advice from the Office of the Clerk.

# Consequential and transitional issues need to be developed for the Bill

1. Officials are working to identify the consequential and transitional arrangements needed following from the structural changes to the Monitor and the Commission. [Redacted content].
2. [Redacted content].
3. I expect that MSD and ERO will assist as required to ensure the Monitor has a smooth transition to its new form.

# Terms of Reference are proposed for the independent review

1. I have decided to bring forward an independent review of the Oversight Act and the Commission Act so that it will be [Redacted content]. Advancing the review will allow for updated perspectives on the current state of the oversight of the Oranga Tamariki system as structural changes to the Monitor and Commission are progressed.
2. Both Acts require the responsible Minister to arrange for an independent review of the operation and effectiveness of each Act, the operation of the Monitor and the Commission under the Acts respectively, and whether any amendments to the Acts are necessary or desirable. The Acts also allow for the inclusion of any other matters that the responsible Minister considers appropriate.
3. An initial Terms of Reference was developed based on the minimum requirements in the Acts for the reviews and was tested through engagement with the Commission, the Monitor and the Ombudsman. Over two weeks from 20 to 31 May 2024, MSD undertook targeted engagement on what the final scope of the review of the two Acts should cover with key external stakeholders, which included peak bodies that interact regularly with children and young people in the Oranga Tamariki system.
4. [Redacted content].

*Targeted engagement has informed the final Terms of Reference*

1. I seek approval of the Terms of Reference for the independent review, attached to this paper as Appendix one.
2. Insights from targeted engagement led to additional questions being included, such as examining whether additional powers focused on enforcing compliance and practical outcomes could benefit the Monitor. Minimum review requirements specific to the Monitor have been extended to the Commission, including examining whether they are appropriately resourced.
3. Stakeholders wanted the Terms of Reference to include details of the process of the independent review, so additional information was included to prompt the independent reviewer to work with hapū, iwi, and Māori early in the review process, work with an engagement expert to engage specific groups (particularly in relation to children and young people) and close the feedback loop with those engaged.
4. I intend to publicly release a summary of key findings from the targeted engagement. MSD officials will provide an update to those consulted.
5. In addition, I have agreed with the Minister of Justice on the inclusion in the Terms of Reference of a question on the Optional Protocol on the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) monitoring role currently designated for the Commission under the Crimes of Torture Act 1989. The question focuses on which entity within the Oranga Tamariki oversight system would be viewed as best placed to perform this designated function to the greatest effect in relation to where children and young people are detained. The review is an opportunity to consider this matter given there will be a similar range of stakeholders for the reviewer to engage with alongside the other questions.
6. I also expect the independent reviewer to consider the recommendations from the Royal Commission of Inquiry into Abuse in Care, which relate to oversight and monitoring of the care system.
7. I intend to delegate the appointment of the reviewer to MSD because of the focus on operational and technical effectiveness of the legislation. Once the Terms of Reference is approved, MSD will begin the procurement process to find an independent reviewer with the necessary skills and experience for a policy review. It will also connect the reviewer with an engagement expert who can engage with children and young people, tamariki and rangatahi Māori, and disabled children and young people. [Redacted content]. The independent reviewer will provide their report to me by the end of January 2025. I will provide an update to Cabinet in early 2025.

# Cost-of-living Implications

1. No cost-of-living implications are associated with this proposal.

# Financial Implications

1. The Cabinet approved transfer of $0.290 million from 2023/24 to 2024/25 in the Vote Education Review Office’s Independent Monitoring and Assurance of the Oranga Tamariki System appropriation as part of Budget 2024 will be utilised for the Monitor’s one-off transition costs.
2. A new appropriation is required to shift funding for the Monitor from Vote Education Review Office to Vote Social Development. The transfer of funding is fiscally neutral.
3. The financial implications associated with establishing a new independent Crown entity are estimated to include:
   1. one-off transition costs of approximately $160,000,
   2. the transfer of existing funding, assets, and liabilities,
   3. ongoing corporate costs of approximately $60,000, and
   4. [Redacted content].
4. [Redacted content].

# Legislative Implications

1. The legislative proposals in this paper will be included in the Bill, which has been accorded a category five on the 2024 Legislation programme. This means it should proceed to Select Committee by the end of 2024.
2. To provide time to complete the establishment and operational transfers of the Monitor and Commission to new independent Crown entities, the Bill will provide for a [Redacted content].
3. Sections 8 and 12(2) of the Oversight Act will need to be amended to make it clear that the new independent Crown entity will be the statutory ‘Independent Monitor of the Oranga Tamariki system’.
4. Section 16 of the Oversight Act reflects that the Monitor is part of the Public Service, and therefore for it to only act independently of directions from Ministers where this is prescribed by law. This section should be amended, or may not be needed at all, as independent Crown entities are independent of direction of its responsible Minister unless specifically provided in legislation. This will ensure the role of the independent Monitor is continued while changes are made to the form of the entity.
5. The proposal for the Monitor’s governance to be provided by a board [Redacted content] will be prescribed in the Oversight Act, alongside the expertise that the Monitor’s board must have collectively.
6. Primary legislation is required to establish a sole Children’s Commissioner. [Redacted content].
7. [Redacted content].
8. This Bill will include consequential and transitional amendments to other legislation, either to remove references to the current Monitor as a departmental agency and the Commission, add references to the new entities, or replace references to the current Monitor and Commission with references to the new entities. These include the Crown Entities Act 2004, the Public Service Act 2020, the Remuneration Authority Act 1977, and the Ombudsman Act 1975.

# Impact Analysis

**Regulatory Impact Statement**

1. The Treasury’s Regulatory Impact Analysis team has determined that this proposal is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

# Climate Implications of Policy Assessment

1. No climate implications are associated with the proposals.

# Population Implications

1. There are no population implications from the proposals because there are no changes to the role or functions of the Monitor or Commission. However, I expect these proposals will enhance the rights of children and young people in state care. [Redacted content].

# Human Rights

1. The Bill will be assessed comprehensively for compliance with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.
2. The proposals should enhance the rights of children and young people and strengthen protective mechanisms in the oversight of the Oranga Tamariki system through more independent monitoring and strong advocacy for children and young people.

# Consultation

1. The Monitor, Commission and Ombudsman have been consulted on these proposals.
2. The Commission has emphasised throughout this consultation the need to ensure ongoing stability, continuity and visibility of the Commissioner as the role with the responsibility to advocate independently for and with children and young people. The Commission has also emphasised the importance of upholding children’s rights throughout the process of the independent review and proposed changes to the Commission, including through engagement with children and young people.
3. Other agencies consulted on this paper include Oranga Tamariki, Te Puni Kōkiri, the Treasury, the Public Service Commission, Te Arawhiti, the Remuneration Authority, Ministries of Business, Innovation and Employment, Women, Health, Education, Justice and Youth Development, Ministries for Pacific Peoples, Ethnic Communities, Ministry of Housing and Urban Development, Ministry of Disabled People – Whaikaha, Departments of the Prime Minister and Cabinet, Corrections, and Internal Affairs, the Human Rights Commission, Accident Compensation Corporation, and the New Zealand Police.

# Communications

1. Communication of these changes will be crucial to ensuring public trust and confidence in the Oranga Tamariki system and effective operation of the oversight system, especially during transition to the new arrangements. MSD will communicate with stakeholders engaged through the targeted consultation to provide an update. I intend to publicly release a document summarising feedback from targeted engagement on a draft Terms of Reference for the Acts’ review.

# Proactive Release

1. I intend to proactively release this paper in line with the Official Information Act 1982.

# Recommendations

I recommend the Cabinet Social Outcomes Committee:

1. **note** that in April 2024, Cabinet agreed in-principle to strengthening independent monitoring by shifting the Independent Children’s Monitor (the Monitor) to an independent Crown entity, which is part of the National-Act coalition agreement, and noted the intention to change the Children and Young People’s Commission (the Commission) from an independent Crown entity with a multi-member board to a corporation sole independent Crown entity [SOU-24-MIN-0025 refers]
2. **note** that the *Strengthening the Oversight of the Oranga Tamariki System Omnibus Bill* (the Bill), currently holds a category five priority on the 2024 Legislation Programme and will progress amendments to the Oversight of the Oranga Tamariki System Act 2022 (Oversight Act) and the Children and Young People’s Commission Act 2022 (Commission Act)

*Changes relating to the Monitor*

1. **agree** that the Monitor will become an independent Crown entity
2. **agree** that the Monitor will be governed by a board [Redacted content].
3. [Redacted content].
4. **agree** that the Bill will not specify appointment provisions in addition to those provided in the Crown Entities Act 2004 for the Monitor’s board members
5. [Redacted content].

*Funding arrangements for the Monitor*

1. [Redacted content].
2. **note** the Commission will need some of the tagged contingency fund to support its continuing to function and to achieve its strategic objectives
3. **note** that transfers of funding between Vote Education Review Office and Vote Social Development will be required to provide for the Monitor once the Bill has passed including the establishment of a new appropriation within Vote Social Development
4. **authorise** the Minister of Finance, Minister for Social Development and Employment and Minster of Education to jointly agree to establish a new

appropriation for the Monitor within Vote Social Development and to transfer funding between Votes with no impact on the operating balance and/or net debt across the forecast period

1. **note** the financial implications associated with establishing a new independent Crown entity are estimated to include:
   1. one-off transition costs of approximately $160,000
   2. the transfer of existing funding, assets, and liabilities
   3. ongoing corporate costs of approximately $60,000
   4. [Redacted content].

*Changes relating to the Commission*

1. **agree** that the Bill provide for disestablishing the Commission and establishing a new corporation sole independent Crown entity which is governed by a Children’s Commissioner
2. **agree** to retain the advocacy mandate outlined in the Commission Act for the sole Commissioner
3. [Redacted content].
4. [Redacted content].
5. [Redacted content].

*Legislative process for changes to the Monitor and the Commission*

1. **invite** the Minister for Social Development and Employment to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above decisions and any associated changes required for the Bill
2. **agree** to the commencement date of [Redacted content] for the Bill
3. **authorise** the Minister for Social Development and Employment to make any necessary decisions on minor and technical matters that may arise during the drafting process for the Bill that are consistent with policy decisions agreed by Cabinet
4. **authorise** the Minister for Social Development and Employment to work with the Minister for the Public Service and the Minister of Education on any consequential and transitional arrangements associated with the changes to the Monitor and the Commission to inform the drafting instructions for the Bill
5. **note** that the Minister for Social Development and Employment will report back to the Cabinet Legislation Committee [Redacted content] with a draft Bill, and on any agreed consequential and transitional arrangements

*Independent review of the Oversight Act and Commission Act*

1. **note** that officials undertook targeted engagement with the Monitor, Commission and Ombudsman, and key external stakeholders on a draft Terms of Reference for an independent review of the Oversight Act and the Commission Act
2. **note** that a summary of key findings from targeted engagement will be publicly released
3. **approve** the Terms of Reference attached in Appendix one for the independent review
4. **note** that following approval of the Terms of Reference, MSD will begin the procurement process for an independent reviewer
5. **note** that the Minister for Social Development and Employment will report to the Cabinet Social Outcomes Committee in 2025 on the independent review.

Hon Louise Upston

Minister for Social Development and Employment

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