

Chair
Cabinet Legislation Committee

ORANGA TAMARIKI (NATIONAL CARE STANDARDS AND RELATED MATTERS) AMENDMENT REGULATIONS 2019 (THE AMENDMENT REGULATIONS)

Proposal

- 1 This paper seeks Cabinet approval to submit Amendment Regulations to the Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018 (NCS Regulations) to the Executive Council.

Policy

- 2 The NCS Regulations prescribe the actions or steps that must be taken to help ensure children and young people in care or custody under Part 2 (care and protection) or Part 4 (youth justice) of the Oranga Tamariki Act 1989 (Oranga Tamariki Act) receive an appropriate standard of care that is consistent with the principles in the Oranga Tamariki Act. They also set out the support that must be provided to caregivers when they have a child or young person in their care. These regulations are set to come into force on 1 July 2019.
- 3 The Oranga Tamariki Act requires the Minister for Children to appoint an independent monitor to monitor Oranga Tamariki — Ministry for Children's (Oranga Tamariki) compliance with the NCS Regulations as soon as possible following 1 July 2019.
- 4 On 25 March 2019 Cabinet agreed that MSD be appointed the independent monitor from 1 July 2019 to establish the monitoring function, and on 9 April 2019 the Minister for Children formally appointed MSD [REP/19/4/294]. In principle the intention is that the monitoring function will be transferred to the Office of the Children's Commissioner, once a robust monitoring function is established and a new legislative framework is in place [CAB-19-MIN-0113 refers].
- 5 From 1 July 2019 MSD will be appointed as the independent monitor for the purposes of:
 - establishing the function
 - building the NCS assessment framework
 - monitoring information disclosed on serious harm in state care and how Oranga Tamariki is responding.
- 6 The development of the independent monitoring function will be a major new undertaking and will require significant time to build. It is not feasible to commence full independent monitoring on 1 July 2019 given the size and scale of the function and the legislative changes needed. Changes to the NCS Regulations are required prior to 1 July 2019 to clarify timing and monitoring requirements.
- 7 On 25 March 2019 Cabinet therefore agreed that the NCS Regulations be amended prior to 1 July 2019 in order to:

- change the commencement provisions to enable MSD sufficient time to develop the monitoring function, which will allow the assessment framework for the NCS to be developed over 2019/20 and the monitoring function to commence, in full, on, or before, 31 December 2020
 - clarify the scope of the independent monitoring function under the NCS [CAB-19-MIN-0113 refers].
- 8 The Minister for Children is responsible for the NCS Regulations and has approved the proposed amendments [REP/19/3/162]. Cabinet invited me to issue drafting instructions to the Parliamentary Counsel Office on these changes [CAB-19-MIN-0113 refers].

The Amendment Regulations will amend the NCS Regulations by clarifying timing and monitoring requirements

- 9 The following regulations will be amended to provide a commencement date of 31 December 2020:
- Regulation 79 – Sources of information to assess compliance
 - Regulation 80 – Method of assessing compliance with these regulations
 - Regulation 81– Reporting requirements for independent monitoring body
 - Regulation 83 – The obligation to do urgent reports of non-compliance where a child or young person is at risk
 - Regulation 84(1)(a) – The chief executive and any approved organisation with children or young persons in care or custody must provide any information requested by the independent monitor that is reasonably required for the purpose of reporting on the matters set out in regulation 81(2).
- 10 The rest of the NCS Regulations will continue to come into force on 1 July 2019.

Regulation 77 will be amended to specify that the independent monitor must develop and establish the assessment framework

- 11 Regulation 77 sets out that the independent monitor must establish a framework for monitoring. **s 9(2)(h)** the independent monitor will require time to undertake consultation, and to develop, test and refine the framework. The regulation will be amended to specify that the monitor must *develop* and establish the framework, to allow sufficient time for this work.
- 12 In the course of drafting the amendment to Regulation 77 it was noted that prescribing a date in regulations on which the framework must be developed and established would provide certainty. Cabinet was not asked to agree to a date when the policy decisions that underpin these amendments were taken. However, given the framework will be required to support full monitoring of NCS Regulations by 31 December 2020, the amendments reflect that this will also be the date which the framework must be developed and established by.

Regulation 83 will be amended to clarify the scope of the monitoring

- 13 Regulation 83 sets out that the independent monitor will be required to ensure it discovers all non-compliance with the NCS Regulations. s 9(2)(h) Regulation 83 will be amended to clarify the scope of the monitoring.
- 14 The scope of monitoring should only extend to non-compliance with the NCS Regulations that the independent monitor becomes aware of in the ordinary course of monitoring. If, in the course of performing its functions, the independent monitor becomes aware of any non-compliance with the regulations that places a child or young person in care or custody at immediate risk of suffering or being likely to suffer serious harm, the independent monitor must report the non-compliance to the chief executive or an approved organisation as a matter of urgency.
- 15 In the course of drafting the amendment to Regulation 83 it was noted that “abuse” and “neglect” will be covered by the definition of “serious harm” in section 14AA of the Oranga Tamariki Act 1989.¹ Accordingly new sub-clause 83(3) incorporates the definition of “serious harm” from section 14AA into the Amendment Regulations. MSD have also aligned the language of Regulation 83 with section 14AA.

Timing and 28-day rule

- 16 It is proposed that Cabinet refer the Amendment Regulations to the Executive Council on 27 May 2019. The Amendment Regulations will need to be notified in the New Zealand Gazette by 30 May 2019 to come into effect on 1 July 2019. This is in line with the 28-day rule.

Compliance

- 17 The Amendment Regulations comply, where applicable, with the following:
 - the principles of the Treaty of Waitangi
 - the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993
 - the principles and guidelines set out in the Privacy Act 1993
 - relevant international standards and obligations
 - Legislation Advisory Committee Guidelines: Guidelines on Process and Content of Legislation, published by the Legislation Advisory Committee.

Regulations Review Committee

- 18 There are no grounds for the Regulations Review Committee to draw the Amendment Regulations to the attention of the House under Standing Order 319.

¹ Section 14AA is to be inserted, as from 1 July 2019 or on an earlier date to be appointed by Order in Council, by section 17 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017.

Certification by Parliamentary Counsel

- 19 The Regulations have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Regulatory Impact Analysis

- 20 The Treasury has exempted these changes from Regulatory Impact Assessment. Impact analysis requirements do not apply to this paper since the proposals are not expected to impose any regulatory burden on businesses, individuals or not-for-profit organisations outside Government itself. I note that an impact assessment was undertaken when the NCS Regulations were agreed by the Cabinet Social Wellbeing Committee [SWC-18-MIN-0010]

Publicity

- 21 The Amendment Regulations will be notified in the New Zealand Gazette.
- 22 MSD developed communication procedures related to the announcement surrounding the review of independent oversight of the Oranga Tamariki system and children's issues and has already publicly released the Cabinet paper and Cabinet Minute detailing the proposed changes to the NCS Regulations.
- 23 Oranga Tamariki are also developing communication procedures around the commencement of the NCS Regulations from 1 July 2019.

Proactive Release

- 24 I intend to proactively release this paper in full (as required by CO (18) 4).

Consultation

- 25 MSD has consulted with Oranga Tamariki. The Department of the Prime Minister and Cabinet has been informed.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that the Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018 (NCS Regulations) are expected to come into force on 1 July 2019
- 2 **note** that amendments to the NCS Regulations are required prior to their commencement on 1 July 2019
- 3 **note** that Cabinet on 25 March 2019 agreed to amend the NCS Regulations in order to:
 - change the commencement provisions to enable MSD sufficient time to develop the monitoring function, which will allow the assessment framework for the NCS to be developed over 2019/2020 and the monitoring function to commence, in full, on, or before, 31 December 2020
 - clarify the scope of the independent monitoring function under the NCS [CAB-19-MIN-0113 refers]

- 4 **note** that in the course of drafting the amendment to Regulation 77 it was noted that prescribing a date in regulations on which the framework must be developed and established would provide certainty
- 5 **agree** that Regulation 77 is amended to provide that the assessment framework must be developed and established no later than 31 December 2020
- 6 **note** that “abuse” and “neglect” will be covered by the definition of “serious harm” in section 14AA of the Oranga Tamariki Act 1989
- 7 **agree** that new sub-clause 83(3) incorporates the definition of “serious harm” from section 14AA into the Amendment Regulations
- 8 **authorise** the submission to the Executive Council of the attached Amendment Regulations.

Hon Carmel Sepuloni
Minister for Social Development
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