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Office of the Minister for Social Development and Employment

Cabinet Legislation Committee

Oversight of Oranga Tamariki System Legislation Amendment Bill: Approval for Introduction

Proposal

- 1 This paper seeks Cabinet agreement to introduce the *Oversight of Oranga Tamariki System Legislation Amendment Bill* (the Bill).


Policy

- 2 In April 2024, Cabinet agreed in-principle to strengthen 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 [SOU-24-MIN-0025 refers].
- 3 In July 2024, Cabinet further agreed to [SOU-24-MIN-0077 refers]:
 - 3.1 the Monitor becoming an independent Crown entity governed by a board of at least three members;
 - 3.2 the Children and Young People's Commission (the Commission) being disestablished and establishing a new corporation sole independent Crown entity, which is governed by a Children's Commissioner;
 - 3.3 begin drafting instructions for an omnibus bill to strengthen the oversight of the Oranga Tamariki system; and
 - 3.4 the Terms of Reference for the independent review of the Oversight of Oranga Tamariki System Act 2022 (Oversight Act) and Children and Young People's Commission Act 2022 (Commission Act).
- 4 The Bill is required to change the institutional arrangements of the Monitor to an independent Crown entity and the Commission to a corporation sole. Amendments need to be made to the Oversight Act and the Commission Act respectively, to transition:
 - 4.1 the Monitor from a departmental agency to an independent Crown entity with a multi member board; and
 - 4.2 the Commission from an independent Crown entity led by a multi-member board to a corporation sole governed by the Children's Commissioner.

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- 5 The Bill is still undergoing checks and may need minor changes to settle drafting on technical matters in line with Cabinet’s previous policy decisions and feedback from Parliamentary Counsel Office quality assurance processes up until the Bill is introduced in November 2024.

Changes relating to the Monitor

- 6 The Monitor will be disestablished and a new independent Crown entity governed by a board, will be established.
- 7 The Bill proposes that the Monitor be governed by a board which must consist of three members (note this differs from Cabinet decisions in SOU-24-MIN-0077, which agreed for the Monitor to be governed by a board of at least three members). This change is to further clarify that the board for the Monitor should not consist of more than three members.
- 8 The Bill will specify key areas of expertise and knowledge for the Monitor’s board members, such as quality assurance, data governance and knowledge of the Oranga Tamariki system. However, it will not specify the ‘governance and government operations’ of the Monitor (note this differs from Cabinet decisions in SOU-24-MIN-0077, which agreed to the Bill specifying ‘governance and government operations’). § 9(2)(h)

- 9 The Bill will not specify appointment provisions for the Monitor’s board members beyond those provided in the Crown Entities Act 2004.

Changes relating to the Commission

- 10 The Commission will be disestablished and a new corporation sole Crown entity, which is governed by a Children’s Commissioner, will be established.
- 11 The experience and knowledge required on a collective basis for the current board in the Commission Act will be amended to the experience and knowledge the Minister must have regard to when appointing the sole Children’s Commissioner.
- 12 The Bill will include a provision that allows the responsible Minister to recommend the appointment of a Deputy Commissioner, if one is desired.
- 13 The Children’s Commissioner will retain the advocacy mandate outlined in the Commission Act for the Commission.
- 14 The current appointment process outlined in the Commission Act will remain to appoint the Children’s Commissioner.

Transitional and consequential changes

- 15 Cabinet agreed to 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 agreements associated with the changes to the Monitor and the Commission [SOU-24-MIN-0077 refers]. Officials provided advice in

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August 2024 to these Ministers on transitional provisions, which led to the decisions provided in paragraphs 17-24.

- 16 The approach to the transfer of the Monitor and the transfer of the Commission will be consistent with each other, where applicable, or will otherwise be consistent with previous transfers of functions from the public service to other Crown entities or the transfer of functions between Crown entities¹.

Transitional and consequential changes to the Monitor

- 17 The Bill will legislate for the current Chief Executive of the Monitor to continue in office as the Chief Executive of the new independent Crown entity for one year, so the appointment will finish on 30 June 2026. This requires provisions changing how the Crown Entities Act 2004 is applied. Namely, that section 117 of that Act, which allows the board to choose their Chief Executive, will not apply to the appointment of the first Chief Executive of the Monitor for one year from commencement of the Bill. This will ensure a degree of continuity for the Monitor and their staff during a period of change.
- 18 The Bill consequentially amends the Crown Entities Act 2004, the Remuneration Authority Act 1977, Ombudsmen Act 1975, and the Public Service Act 2020 to reflect the Monitor's new status as a Crown entity.
- 19 The current employees of the Monitor will continue service as employees of the new independent Crown entity on the same terms and conditions that applied to them immediately before they became employees of the new independent Crown entity.
- 20 The Bill will transfer all assets, liabilities, information held, and any work underway from the Monitor to the new independent Crown entity.

Transitional and consequential changes to the Commission

- 21 The appointment of the first Children's Commissioner will be legislated by the Bill, as joint Ministers have decided the standard appointment process under the Commission Act will not be used. The current Chief Children's Commissioner under section 12(1)(b) of the Commission Act will continue in office as the first Children's Commissioner for one year, so the appointment will finish on 30 June 2026. This will ensure a degree of continuity for the Commission and their staff during a period of change.
- 22 Other legalisation referring to the Commission is being consequentially amended to refer to 'the Children's Commissioner'.
- 23 The current employees of the Commission will continue service as employees of the Children's Commissioner on the same terms and conditions that applied to them immediately before they became employees of the new corporation sole Crown entity.
- 24 The Bill will transfer all assets, liabilities, information held, and any work underway from the Commission to the new Children's Commissioner.

¹ For example, the transfer of functions from Ministry of Business, Innovation and Employment (a government department) to Worksafe New Zealand (a Crown entity) under Schedule 2 of the Worksafe New Zealand Act 2013.

Independent Review of the two Acts

25 I propose to include in the Bill an independent review of the operation and effectiveness of the Oversight Act and the Commission Act commencing no later than five years from the commencement of the Bill.

26 An independent review of the Oversight Act and Commission Act is currently underway as set out in sections 58 and 38 of the two Acts. However, I recognise the importance of undertaking another review in five years' time as part of our regulatory stewardship to ensure the roles and functions of the Monitor and Commission continue to be fit-for-purpose and in alignment with any proposed changes that may come out of the current review.

27 s 9(2)(f)(iv)

Due consideration of the response to the Royal Commission of Inquiry into Abuse in State and Faith-based Care

28 I have read the Royal Commission of Inquiry's (RCOI) report into Abuse in Care and received extensive briefings from officials on the implications for my portfolio. Improving the quality, consistency, and independence of oversight arrangements for the various parts of the care system was one of the key themes of their report.

29 I believe the institutional changes to the Monitor and Commission provided in the Bill and the review of the Oversight Act and the Commission Act, which is due to be completed by late January 2025, will contribute to the improvements recommended in the RCOI's final report.

30 s 9(2)(f)(iv)

31 My intention to introduce the Bill in early November 2024 should be aligned with the Prime Minister's public apology for historical abuse and neglect in care of the state, which is intended to be made on 12 November 2024.

Impact analysis

Regulatory Impact Statement

32 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 impact on businesses, individuals, and not-for-profit entities.

Compliance

33 The Bill complies with:

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- 33.1 the principles of the Treaty of Waitangi;
- 33.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993 (I note that a NZBORA vet is currently in process);
- 33.3 the disclosure statement which has been prepared and attached to this paper;
- 33.4 the principles and guidelines set out in the Privacy Act 2020;
- 33.5 the relevant international standards and obligations; and
- 33.6 the Legislation Design and Advisory Committee's Legislation Guidelines.

Consultation

- 34 The Monitor, Commission, and Ombudsman have been consulted on the policy changes throughout agency consultation.
- 35 Other agencies consulted on this paper include Oranga Tamariki; Te Puni Kōkiri; the Treasury; the Public Service Commission; Education Review Office; Te Arawhiti; the Remuneration Authority; Mental Health and Wellbeing Commission; Ministries of Business, Innovation and Employment, Women, Health, Education, Justice, Housing and Urban Development, Social Development, and Youth Development; Ministry of Disabled People – Whaikaha, Ministries for Pacific Peoples, and Ethnic Communities; Departments of the Prime Minister and Cabinet, Corrections, and Internal Affairs; the Human Rights Commission; Office of the Privacy Commissioner; Accident Compensation Corporation; and the New Zealand Police.

Omnibus Bill

- 36 This is an omnibus Bill introduced under Standing Order 267(1)(a). Standing Order 267(1)(a) allows an omnibus Bill to be introduced to amend more than one Act if the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. The interrelated topic and single broad policy objective of this Bill is to improve outcomes for children and young people in New Zealand by strengthening:
 - 36.1 the independent monitoring and oversight of the Oranga Tamariki system; and
 - 36.2 advocacy for children and young people's issues generally.

Binding on the Crown

- 37 I propose that this Bill will be binding on the Crown.

Creating new agencies or amending law relating to existing agencies.

- 38 The Bill will establish two new independent Crown entities to carry out existing statutory functions.

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- 39 Consequential amendments will be made to Part 2 Schedule 1 of the Ombudsmen Act 1975, so that the Ombudsmen Act 1975 and the Official Information Act 1982 will apply to the Monitor.
- 40 Consequential amendments to the Bill will provide that the Ombudsmen Act 1975 and the Official Information Act 1982 will continue to apply to the Children's Commissioner.

Allocation of decision-making powers

- 41 The Bill does not involve the allocation of decision-making powers between the Executive, the Courts, and the Tribunals.

Associated regulations

- 42 There are no associated regulations required to bring the Bill into operation.

Commencement of legislation

- 43 The Bill will come into force on 1 July 2025 to coincide with the start of the financial year and to allow time for the transition of the Monitor, the appointment of board members to the Monitor, and the transition of the Commission.

Parliamentary stages

- 44 I intend to introduce the Bill in early November 2024 and for it to be enacted by 31 May 2025 with a commencement date of 1 July 2025.
- 45 I intend to refer the Bill to the Social Services and Community Committee for consideration for a period of four months.

Proactive Release

- 46 I intend to proactively release this paper within 30 working days as required by CO (23) 4. The Bill and Disclosure Statement will be available upon introduction to the House.

Recommendations

I recommend that the Cabinet Legislation Committee

- 1 **note** the Oversight of Oranga Tamariki System Legislation Amendment Bill holds a category 5 priority on the 2024 Legislation Programme because of the Government's commitment to establish a truly independent oversight and monitoring of the Oranga Tamariki system in the National-Act coalition agreement;

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- 2 **note** that the Bill will:
- 2.1 disestablish the Independent Children’s Monitor as a departmental agency and establish the Monitor as an independent Crown entity governed by a board that must consist of three members; and
 - 2.2 disestablish the current Children and Young People’s Commission and establish a new corporation sole Crown entity, which is governed by a Children’s Commissioner;
- 3 **note** three Ministers were delegated responsibility to make decisions on transitional arrangements and officials provided advice to these Ministers in August 2024, which has informed drafting of the Bill;
- 4 **agree** that the Independent Children’s Monitor will be governed by a board that must consist of three members (note this differs from SOU-24-MIN-0077, which agreed for the Monitor to be governed by a board of at least three members);
- 5 **agree** to include an independent review of the relevant legislation that sets out the functions and duties of the Independent Children’s Monitor and Children’s Commissioner commencing no later than five years from the commencement of this Bill;
- 6 **agree** that the Parliamentary Counsel Office can continue to make minor changes to the Bill to settle technical matters in line with Cabinet’s previous policy decisions and incorporate feedback from their quality assurance processes up until the Bill is introduced in November 2024;
- 7 **approve** the Oversight of Oranga Tamariki System Legislation Amendment Bill for introduction in November 2024, subject to the final approval of the Government caucus and sufficient support in the House of Representatives;
- 8 **agree** that the introduction of the Oversight of Oranga Tamariki System Legislation Amendment Bill should be aligned with the Prime Minister’s public apology, which is intended to be made on 12 November 2024;
- 9 **agree** that the Government propose that the Bill be:
- 9.1 referred to the Social Services and Community Committee for consideration for a period of four months; and
 - 9.2 enacted by 31 May 2025 with a commencement date of 1 July 2025.

Authorised for lodgement

Hon Louise Upston

Minister for Social Development and Employment

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