



27 June 2024

Tēnā koe

Official Information Act request

Thank you for your request, which was transferred to the Ministry of Social Development (the Ministry) on 10 May 2024 from Oranga Tamariki.

Thank you for clarifying your request on 30 May 2024, to be for memoranda, advice, and other related documents relating to creating an independent monitoring and oversight agency for Oranga Tamariki.

I have considered your request under the Official Information Act 1982 (the Act). Please find the following documents **attached**:

3. REP/24/1/071: Options to enhance independence in the oversight of the Oranga Tamariki System
6. REP/24/4/297: Cabinet Item: Phased approach to strengthening the oversight of the Oranga Tamariki System
7. REP/24/4/332: Key milestones in strengthening the oversight of the Oranga Tamariki system
8. REP/24/4/362: Public announcement of your intended changes to strengthen the oversight of the Oranga Tamariki system
9. REP/24/4/372: Reviews of the Oversight of the Oranga Tamariki System Act 2022 and the Children and the Young People's Commission Act 2022

Some information is withheld under section 9(2)(f)(iv) of the Act to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials. The release of this information is likely to prejudice the ability of government to consider advice and the wider public interest of effective government would not be served.

Some information is withheld under section 9(2)(g)(i) of the Act to protect the effective conduct of public affairs through the free and frank expression of opinions. I believe the greater public interest is in the ability of individuals to express opinions in the course of their duty.

Please note that the following documents identified as within scope of your request are refused in full under section 9(2)(f)(iv) of the Act to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered

by Ministers of the Crown and officials. The release of this information is likely to prejudice the ability of government to consider advice and the wider public interest of effective government would not be served.

1. REP/24/1/051: Next steps on making the Monitor of the Oranga Tamariki system an Independent Crown Entity
2. 2024-0062: Options for the future governance of the Children and Young Peoples Commission
10. REP/24/5/422: Discussion Document for engaging on strengthening oversight of the Oranga Tamariki System

Please note that one further document is also withheld in full under section 9(2)(f)(iv) of the Act.

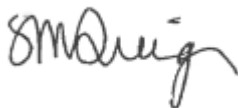
The Cabinet Paper titled 'Phased approach to strengthening the oversight of the Oranga Tamariki system' published on 14 May 2024 may also be helpful. It can be found at the following link: www.msd.govt.nz/about-msd-and-our-work/publications-resources/information-releases/cabinet-papers/2024/phased-approach-to-strengthening-the-oversight-of-the-oranga-tamariki-system.html.

I will be publishing this decision letter, with your personal details deleted, on the Ministry's website in due course.

If you wish to discuss this response with us, please feel free to contact OIA_Requests@msd.govt.nz.

If you are not satisfied with my decision on your request, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.nz or 0800 802 602.

Ngā mihi nui

pp. 

Magnus O'Neill
General Manager
Ministerial and Executive Services

Report



**MINISTRY OF SOCIAL
DEVELOPMENT**
TE MANATŪ WHAKAHIATO ORA

Date: 2 May 2024 **Security Level:** In Confidence
To: Hon Louise Upston, Minister for Social Development and
Employment
File Reference: REP/24/4/372

Reviews of the Oversight of Oranga Tamariki System Act 2022 and the Children and Young People's Commission Act 2022

Purpose of the report

- 1 This report provides you with:
 - our proposed approach to the statutory reviews of the Children and Young People's Commission Act 2022 (Commission Act) and Oversight of Oranga Tamariki System Act 2022 (Oversight Act), including a draft Terms of Reference (ToR) for undertaking the reviews,
 - an engagement plan to support targeted engagement with key stakeholders on the statutory reviews of the two Acts,
 - anticipated costings of the reviews of the two Acts and indicative procurement timelines.

Executive summary

- 2 On Thursday 2 May, have publicly announced your intention to strengthen the independence, monitoring, and oversight of the Oranga Tamariki system by amending the Commission Act and Oversight Act. The proposed reforms implement structural changes to the Independent Children's Monitor (the Monitor) and the Children and Young People's Commission (the Commission). s9(2)(f)(iv)

- 3 Alongside the Omnibus Bill, you intend to commence the statutory reviews of the Commission Act and Oversight Act this year, to align with the changes you want to make to the Monitor and Commission. The reviews provide an opportunity for organisations who regularly interact with the children's system to share their views on its current state and on what improvements could be made to the roles, functions, and duties of the Commission and Monitor.
- 4 We have developed a draft ToR based on the assumption that a single combined review will take place with specific considerations given to the functions, duties, and powers of the Commission and Monitor, as set out in their respective Acts. This includes any other matters which you, as the responsible Minister, consider appropriate after consulting with other relevant Ministers and entities.
- 5 The Ministry of Social Development (the Ministry) will undertake targeted engagement with key stakeholders to inform them of the structural changes to the Commission and Monitor and seek their input on the draft ToR. Results will inform the finalised ToR, which will form part of your paper going to Cabinet in s9(2)(f)(iv) [REDACTED]
- 6 Given this will be the first time the Commission Act and Oversight Act are independently reviewed, we are still working through the final costings to complete the review. s9(2)(j) [REDACTED]
- 7 With any procurement exceeding \$100,000, the Ministry's Procurement Board must approve the review proposal, in this case following Cabinet endorsement of the s9(2)(f)(iv) [REDACTED]. This may have an impact on the timing of the review. We will work with our Procurement Board to ensure the review is completed by the end of this year to align with any potential changes that may be included in your Omnibus Bill.

Recommended actions

It is recommended that you:

- 1 **note** this report complements previous advice provided to you regarding key milestones and the announcement of your intended changes to strengthen the oversight of the Oranga Tamariki system, following Cabinet endorsement on 15 April 2024
- 2 **note** the attached Engagement Plan, outlining who your officials will engage with on the changes to the Independent Children’s Monitor and Children and Young People’s Commission, as well as the review of the Oversight of Oranga Tamariki System Act 2022 (Oversight Act) and Children and Young People’s Commission Act 2022 (Commission Act), such as non-government agencies responsible for monitoring, advocacy, and the promotion of children’s rights
- 3 **indicate** if you would like to include anything further within the draft Terms of Reference
- 4 **approve** the draft Terms of Reference to be used as part of your officials’ engagement with targeted, external stakeholders

AGREE/DISAGREE

- 5 **note** that subject to your agreement on the draft Terms of Reference, a discussion document providing further context for this work will be drafted and shared with you, prior to sending it to targeted stakeholders

- 6 **note** the anticipated cost to procure an independent reviewer is between s9(2)(j) [redacted] and s9(2)(f)(iv) [redacted]

- 7 [redacted]

8

s9(2)(f)(iv)

[Redacted]

AGREE/DISAGREE

Christian Opeteia
Policy Manager
Child and Youth

Date

Hon Louise Upston
Minister for Social Development and
Employment

Date

Released under the Official Information Act 1982

The Oversight of Oranga Tamariki System Act 2022 and the Children and Young People's Commission Act 2022 set out the minimum requirements for the reviews

- 10 As part of your proposed changes to the oversight of the Oranga Tamariki system, including transforming the Monitor into an Independent Crown Entity and reverting the Commission into a corporation sole Crown entity, you agreed to bring forward the reviews of the two relevant Acts—the Oversight Act and the Commission Act.
- 11 The requirements to review the two Acts are set out in section 38 of the Commission Act and section 58 of the Oversight Act, and both Acts include a clause that an independent review must commence no later than three years after their commencement, which would be mid-2026. You have already indicated to Cabinet your intent to commence the reviews this year.
- 12 Each Act articulates the minimum requirements for the respective reviews, some of which are similar and a few which are specific to only the Monitor or Commission. The table below lists the similarities and differences.

Commission Act (Section 38)	Oversight Act 2022 (Section 58)
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.	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.
Review must consider whether the functions, duties, and powers set out in this Act are supporting the Commission to give effect to the purpose of this Act.	Review must consider whether the functions, duties, and powers set out in this Act give effect to the purpose of this Act.
Review must consider whether the Commission is working effectively with hapū, iwi, and Māori organisations.	Whether the Monitor is working effectively with the Ombudsmen, hapū, iwi, and Māori organisations.
	Whether the Monitor is 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.
	Whether the Monitor is appropriately resourced to efficiently and effectively discharged their functions, duties, or powers and to support the resilience of the Oranga Tamariki system.

Review must consider whether any amendments to both Acts are necessary or desirable.	Review must consider whether any amendments to both Acts are necessary or desirable.
Review must consider anything else the responsible Minister considers appropriate, after consulting with the Commission and other Ministers of the Crown with relevant portfolios, as necessary.	Review must consider anything else the responsible Minister considers appropriate, after consulting with the Monitor, the Chief Ombudsman, and other Ministers of the Crown with relevant portfolios, as necessary.

13 Furthermore, both Acts include a section that allows for supplementary issues to be included in the review. Specifically:

- the Commission Act provides for the Commission, and any Minister with a relevant portfolio that wants to amend the Commission Act to include additional areas of inquiry¹, and
- the Oversight Act enables the Monitor, Chief Ombudsman, or any Minister with a relevant portfolio that wants to amend the Oversight Act to propose other items to be examined².

14 The Acts also set out the reporting arrangements. Specifically:

- under the Commission Act, findings must be reported to you as the responsible Minister
- under the Oversight Act, findings must be reported to you as the responsible Minister, the Minister responsible for the administration of the Oranga Tamariki Act 1989 (the Minister for Children), and the House of Representatives as far as they relate to the Ombudsman, and
- as the responsible Minister, you must present the report to the House of Representatives as soon as practicable after receiving it.

While separate reviews are set out for each Act, you could consider pursuing one report with two components

15 To facilitate progress of the reviews of the two Acts and to ensure they can be completed by the end of the year, your independent reviewer could undertake a single report with two components (each pertaining to the individual Acts). This approach would allow them to look at the oversight system as a whole and make recommendations that take into consideration your proposed changes.

¹ Section 38(2)(d)- Children and Young People Commission Act 2022.

² Section 58(2)(d) - Oversight of Oranga Tamariki Act 2022.

16 To ensure consistency, the lines of inquiry in both components should be similar. This means applying the questions of resourcing and effectiveness indicated under the Oversight Act to the review of the Commission Act.

17 s9(2)(f)(iv)

18 Only you will initially receive the single report in its entirety. You may then choose to share the report with the Minister for Children and those involved in the oversight system prior to tabling it in the House of Representatives.

The draft Terms of Reference has been informed by key considerations outlined in both Acts

19 The draft ToR is attached as Appendix one and is based on the assumption, as noted in paragraphs 15 to 18, that the reviewer will produce a single report with two components. The draft ToR provides information on your proposed changes, objectives, and scope of the review of the two Acts.

20 The draft ToR can be further revised should you choose to include other issues and items of inquiry. s9(2)(f)(iv)

Engagement Plan

21 The draft ToR will form the basis of the targeted engagement with key stakeholders involved in the oversight of the Oranga Tamariki system and those with responsibilities for monitoring, advocacy, and promotion of children's and young people's rights.


22 More details on the engagement plan is outlined in Appendix two. This also includes a full list of organisations, (including Save the Children New Zealand, Child Rights Alliance Aotearoa New Zealand, Barnardos New Zealand, UNICEF, Open Home Foundation and VOYCE-Whakarongo Mai) we wish to engage with.



³ The Commission is a designated National Preventative Mechanism under OPCAT, which allows the Commission to monitor places where children and young people are detained. This designation is mandated under the Crimes of Torture Act 1989.


- 23 Letters have been sent via your office to the above organisations and we had contacted officials at the Monitor, Commission and Ombudsman to inform them prior to your announcement on 2 May 2024.
- 24 Should you agree to the draft ToR, we will provide your office with a discussion document which outlines the Government's plan to strengthen the oversight and monitoring of the Oranga Tamariki System, including the draft ToR and questions to frame engagement. The discussion document will be used as a driver to inform our engagement with key stakeholders.
- 25 We will work with other relevant government agencies through a time-limited working group at the General Manager level. This group will be used to ensure timely communication on the review as well as be an avenue to include their input into further development of the draft ToR.

Indicative costings, procurement process, and timelines


s9(2)(f)(iv)



- 27 We are working with our Procurement Team and other government agencies to determine the potential cost of completing the review of the Commission Act and Oversight Act, given this will be the first time these two Acts are reviewed. s9(2)(j)
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 scope of the review, and the need to consult organisations and the general public. We will advise you of the final costs when we formulate a more accurate estimate.

s9(2)(f)(iv)



s9(2)(f)(iv)

Next steps

s9(2)(f)(iv)

Appendices

s9(2)(f)(iv)

File ref: REP/24/4/372

Author: Vicky Lister, Senior Policy Analyst, Child and Youth

Responsible manager: Christian Opeteia, Policy Manager, Child and Youth

Report



MINISTRY OF SOCIAL
DEVELOPMENT
TE MANATŪ WHAKAHIATO ORA

Date: 24 April 2024 **Security Level:** In-Confidence
To: Hon Louise Upston, Minister for Social Development and
Employment
File Reference: REP/24/4/362

Public announcement of your intended changes to strengthen the oversight of the Oranga Tamariki system

Purpose of the report

- 1 This report provides you with supporting documents and a timeline to publicly announce your intended changes to strengthen the oversight of the Oranga Tamariki system in the coming weeks.
- 2 A draft press release for your public announcement is attached as **Appendix one**. Talking points to support your discussions with relevant stakeholders and Ministers prior to the public announcement are attached as **Appendix two**.

Recommended actions

It is recommended that you:

- 1 **note** we will provide you with a detailed engagement plan on 1 May 2024 to support targeted engagement with key stakeholders on the statutory reviews of the Children and Young People's Commission Act 2022 and Oversight of Oranga Tamariki System Act 2022
- 2 **agree** to send letters to key community stakeholders to inform them of your intended changes to the oversight of the Oranga Tamariki system in conjunction with your public announcement

AGREE/DISAGREE

- 3 **note** we will work with your office to draft these emails to key community stakeholders should you agree to recommendation 2.
- 4 **note** your office will set up meetings with relevant Ministers and entities over the coming weeks.

Christian Opetaiia
Policy Manager
Ministry of Social Development

Date

Hon Louise Upston
Minister for Social Development and
Employment

Date

Proposed timeline to inform stakeholders and the public of your intended changes to strengthen the oversight of the Oranga Tamariki system

- 3 We suggest the following timeline to inform stakeholders and the public of your intended changes to strengthen the oversight of the Oranga Tamariki system. We understand you want to announce these changes within the coming weeks.

	29 April-3 May	6-10 May	20 May onward
Ministerial meetings	Ministerial meetings with the Independent Children's Monitor, Ombudsman, Minister of Justice, Minister for the Public Service, and Minister for Children	8 May: You inform your colleagues at the Child and Youth Wellbeing Ministers meeting	
Officials' meetings	Officials will inform relevant agencies directly involved in the oversight of the Oranga Tamariki system		
Staff announcement		9 May: Staff at the Independent Children's Monitor and Children and Young People's Commission are informed prior to public announcement	
Public announcement		9 May: Public announcement with the Minister for Children	
Letters sent to stakeholders		9 May: Emails sent to stakeholders immediately following public announcement	
Engagement period			Targeted engagement

- 4 Please note that targeted engagement seeking feedback to inform the reviews of the Children and Young People’s Commission Act 2022 and the Oversight of Oranga Tamariki System Act 2022 will be developed on a slightly longer timeline. A full engagement plan will be provided to you on 1 May 2024, with engagement conducted from mid-May to June.
- 5 This targeted engagement will focus on seeking feedback from key stakeholders that interact with the Oranga Tamariki system through an advocacy or rights-based lens or monitoring lens, in alignment with the duties and functions of the Children and Young People’s Commission (the Commission) and Independent Children’s Monitor (the Monitor) set out in their respective Acts.

Details on who you could engage with on this work

- 6 We recommend you meet with the following Ministers and groups directly to inform them of your intended changes, seek their perspectives, and acknowledge their part in the oversight of the Oranga Tamariki system.

Relevant Ministers

- 7 We understand you want to make a joint announcement of your changes with the Minister for Children, and your approach should be coordinated.
- 8 We recommend you also meet with the Ministers for the Public Service, and Children, and Minister of Justice. The Minister for the Public Service will have an interest in this work given the changes you want to make to the Commission.

- 9 s9(2)(f)(iv)

Key entities in the oversight of the Oranga Tamariki system

- 10 In addition to your meeting with the Commission’s board on 18 April informing them of your intended changes, we recommend that you also meet with the Monitor and the Ombudsman.
- 11 Ministry of Social Development officials can conduct some meetings with other relevant government agencies for you. We will also engage with the Commission again, and have a meeting scheduled for the end of next week, to ensure the Chief Children’s Commissioner can update their staff prior to any public announcement on this work.

Emails to inform other stakeholders

- 12 We suggest sending emails to stakeholders to inform them of your intended changes to the oversight of the Oranga Tamariki system in conjunction with your public announcement. We will provide a full list on 1 May 2024 as part of our detailed engagement plan, but these organisations could include Save the Children New Zealand, Child Rights Alliance Aotearoa New Zealand, Barnardos NZ, and VOYCE – Whakarongo Mai.
- 13 We recommend that key priority stakeholders receive an email from your office. We suggest this approach to personally acknowledge their involvement or interest in the oversight of the Oranga Tamariki system. Our engagement plan will include draft emails for your consideration and approval which will be provided on 1 May 2024.

File ref: REP/24/4/362

Author: Sashika Hendry, Policy Analyst, Child and Youth

Responsible manager: Christian Opeteia, Policy Manager, Child and Youth

s9(2)(g)(i)

Released under the Official Information Act 1982

s9(2)(g)(i)

Released under the Official Information Act 1982

Appendix two: Talking points

You have requested talking points for meetings with the Monitor, Ombudsman, Ministers for the Public Service, and Children, and Minister of Justice, informing them of your intended changes to the oversight of the Oranga Tamariki system. These talking points are provided below, with additional talking points for the Minister of Justice and the Minister for the Public Service at the end.

Introducing your intended changes and timeline

- I have been considering making changes to the oversight of the Oranga Tamariki system to strengthen its function.
- Independent monitoring and advocacy are crucial parts of the oversight of the Oranga Tamariki system. They give the New Zealand public confidence that the organisations trusted to care for children and young people are keeping them safe.
- While preparing my intended changes, I had conversations with Ministers, sought advice from officials, and looked at feedback collated while the previous Government was establishing the oversight system in its current form, through the Children and Young People's Commission Act 2022 and the Oversight of Oranga Tamariki System Act 2022.
- I signalled my intended changes to Cabinet in a paper which was endorsed on the 15th of April. s9(2)(f)(iv) [REDACTED]
- My officials, or I, will continue to update you where relevant as this work progresses
- The New Zealand public and other stakeholders will also have a chance to give fresh feedback on my intended changes. This will be done partially through targeted engagement and also through the Select Committee process subject to Cabinet agreement to introduce the Bill.

Changes to the Independent Children's Monitor

- This work began when I was planning how to strengthen independence for the Independent Children's Monitor (Monitor), according to the National-Act Coalition Agreement.
- As you may know, the Monitor has been operating as a departmental agency within the Education Review Office since mid-2023, and while it is able to act independently in many ways, I view this structure as insufficient for true separation from government.
- I am planning to make the Monitor an independent Crown entity. This should strengthen its independence and make it crystal clear to children,

young people, and their families that the Monitor conducts independent monitoring without influence from government agencies.

- Cabinet has agreed in principle to this change.

Changes to the Children and Young People's Commission

- I have also decided to revert the Children and Young People's Commission (Commission) back to a corporation sole Crown entity rather than retaining their current board model.
- Feedback given in 2022, when changes were made to the oversight of the Oranga Tamariki system, emphasised the idea of having a single individual acting in the role of advocate—in other words, having a clear Children's Commissioner role. This was suggested both in the Select Committee process and through stakeholder engagement.
- Although the chair of the Commission's Board, Dr Claire Achmad, was given the Chief Children's Commissioner title to address these concerns, I think the arrangement could benefit from greater clarity. Streamlining the board and CE roles with a corporation sole—and a single, clear advocate—gives more visibility to the advocacy role.

- s9(2)(f)(iv) [Redacted]

- s9(2)(f)(iv) [Redacted]

A departmental agency was not viewed as sufficiently independent from government; but as the Monitor becomes an independent Crown entity, this will no longer be a concern.

Statutory reviews of the Acts

- I also intend to move up the timeline to begin the statutory reviews of the Children and Young People's Commission Act 2022 and the Oversight of the Oranga Tamariki System Act 2022, to help inform how we could strengthen the oversight system.

s9(2)(f)(iv) [Redacted]

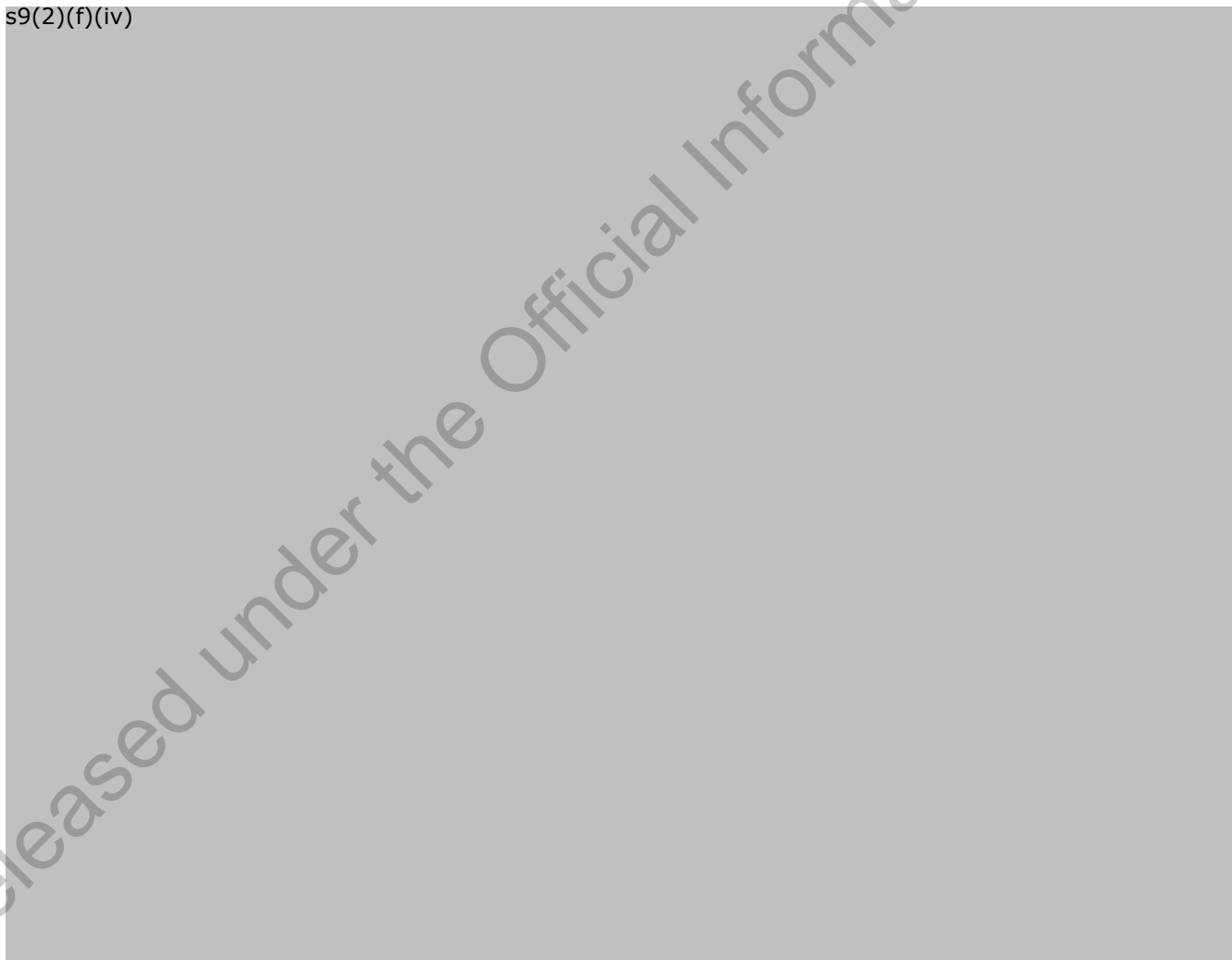
- I intend for the reviews to begin later this year and be completed by the end of the year. This means that I will have sufficient feedback to make adjustments as my intended changes are being progressed through the Bill process.
- I have directed my MSD officials to engage with you as we prepare for the independent reviews of the Acts, and they will be seeking your input as they begin to develop the Terms of Reference. I am interested to hear your opinions on anything you think the reviews should cover.

General queries

- I am interested in hearing whether you have any particular concerns about the changes I have mentioned.

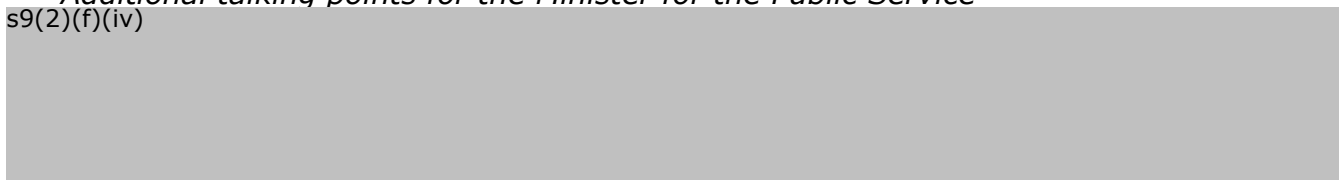
Additional talking points for the Minister of Justice

s9(2)(f)(iv)



Additional talking points for the Minister for the Public Service

s9(2)(f)(iv)



s9(2)(f)(iv)



Released under the Official Information Act 1982

Report



**MINISTRY OF SOCIAL
DEVELOPMENT**
TE MANATŪ WHAKAHIATO ORA

Date: 15 April 2024 **Security Level:** In-Confidence

To: Hon Louise Upston, Minister of Social Development and
Employment

File Reference: REP/24/4/332

Key milestones in strengthening the oversight of the Oranga Tamariki system

Purpose of the report

- 1 This report:
 - outlines the next steps in your phased approach to strengthening the oversight of the Oranga Tamariki system following your update to Cabinet on 15 April 2024
 - recommends an engagement strategy to support your changes, and
 - provides talking points for your upcoming meeting with the board of the Children and Young People's Commission (the Commission).

Executive summary

- 2 We have created a timeline to lay out the key milestones in your work to strengthen the oversight of the Oranga Tamariki system over the next ^{s9}
(2)
(f)
- 3 The first area of focus is changing the form of key entities in the oversight of the Oranga Tamariki system, specifically making the Commission a corporation sole Crown entity and making the Independent Children's Monitor (Monitor) an Independent Crown Entity, which could be pursued through an s9(2)(f)(iv)
- 4 The second focus is on the reviews of the Oversight of the Oranga Tamariki System Act 2022 (Oversight Act) and the Children and Young People's Commission Act 2022 (Commission Act), s9(2)(f)(iv)

- 5 We have prepared options for an engagement strategy and communications plan to inform the sector and the public of your intended changes to the oversight of the Oranga Tamariki system. Further detail on engagement will be provided in a report on 1 May 2024.
- 6 You are meeting with the Commission's board this week to discuss your intended changes and the progress of their Statement of Intent (SOI), as they consider how your changes will affect the Commission in the future. Talking points for this meeting are provided in Appendix 2.

Recommended actions

It is recommended that you:

- 1 **note** the attached timeline and next steps to progress your work to strengthen the oversight of the Oranga Tamariki system following your update to Cabinet on 15 April 2024
- 2 **agree** to engage in the coming weeks with the three key entities in the oversight of the Oranga Tamariki system: the Children and Young People's Commission (the Commission), the Independent Children's Monitor, and the Ombudsman, to inform them of your intended changes to strengthen the system

AGREE/DISAGREE

- 3 **agree** to one of the following approaches to informing and engaging:

- 3.1 inform stakeholders and the wider public of your changes by sending letters, without engagement on these changes beyond what will come through the Select Committee process

AGREE/DISAGREE

OR

- 3.2 **agree** to the wider engagement plan in this report which sets out the key stakeholders your officials will engage with from May to early-June, subject to your discussions with the Commission's board, the Monitor, and details provided in the report to you on 1 May 2024

AGREE/DISAGREE

- 4 **agree** to meet with the Minister for Children to discuss the review of the Oversight of the Oranga Tamariki System Act 2022, given the Minister for Children would receive the final report from this review as set out in the Act

AGREE/DISAGREE

- 5 **note** the talking points provided in Appendix 2 to support you in your meeting with the Commission’s board to inform them of your intended changes to the Commission following the Cabinet meeting on 15 April 2024.

Harry Fenton
General Manager
Ministry of Social Development and
Employment

Date

Hon Louise Upston
Minister of Social Development and
Employment

Date

Background

- 7 Cabinet has agreed in principle to your phased approach to strengthening the oversight of the Oranga Tamariki system, which you signalled in your paper considered at the Social Outcomes Cabinet Committee (SOU) meeting on 10 April 2024 and agreed at the Cabinet meeting on 15 April 2024.
- 8 You signalled the following intentions:
 - fulfilling the National-Act Coalition Agreement to make the Monitor an Independent Crown Entity
 - making the Commission a corporation sole Crown entity and disestablishing the board, and
 - commencing the reviews of the Oversight Act and Commission Act in 2024 rather than waiting until mid-2026.

We prepared a timeline of the key milestones in your work to strengthen the oversight of the Oranga Tamariki system

- 9 You have indicated you would like changes to the oversight of the Oranga Tamariki system to come into effect by s9(2)(f)(iv) . We have created a timeline with key milestones to guide this work over the s9(2)(f)(iv) , attached as Appendix 1.
- 10 You have informed us you would like to take a Cabinet paper to SOU on s9(2)(f)(iv) seeking agreement to commence changes to the oversight of the Oranga Tamariki system, specifically to seek agreement to start:
 - drafting instructions for an Omnibus bill to progress changes to the Monitor and the Commission going to LEG Committee in s9(2)(f)(iv) , and
 - the reviews of the Oversight Act and the Commission Act as soon as possible, with final reports completed by s9(2)(f)(iv) .

s9(2)(f)(iv)

s9(2)(f)(iv)

We are setting up the reviews of the Oversight Act and Commission Act

- 16 We are beginning to set up the statutory reviews of the Oversight Act and Commission Act, which you intend to have completed by s9(2)(f)(iv). Officials will develop a Terms of Reference (ToR) for the reviews, based on what is outlined in the two Acts and in consultation with the oversight bodies, children's agencies, and Cabinet at a minimum.
- 17 While developing the ToR, we have an opportunity to engage with key stakeholders, particularly care and custody providers, on what they would like to see the reviews cover. More detail is provided on the engagement approach in paragraphs 22-35.
- 18 s9(2)(f)(iv).
As the reviews must be independent, we will start a procurement process to find appropriate suppliers that can complete the work by the end of 2024. s9(2)(f)(iv).
- 19 The final reports of both reviews will be delivered to you and be tabled in Parliament as soon as practicable after you receive them. The final report on the Oversight Act must additionally be presented to the Minister responsible for the Oranga Tamariki Act 1989 (Minister for Children).
- 20 To meet your intended timeframe to implement changes to the oversight of the Oranga Tamariki system by s9(2)(f)(iv), minor changes to the Omnibus bill in response to the reviews' final reports can be incorporated through an Amendment Paper. Any significant changes to the Oversight and Commission Acts will require Cabinet decisions and we will work with your office to maintain the intended timing for passing the bill.
- 21 We expect to deliver a report to you on 1 May 2024 with further information on the approach to the reviews, as seen in the full timeline in Appendix 1.

We are preparing an engagement strategy and communications plan for your upcoming changes to the oversight of the Oranga Tamariki system

- 22 Communications and engagement plans will be prepared to meet the following objectives:
- create awareness of your intended changes and the benefit they will have on the oversight of the Oranga Tamariki system
 - build understanding with young people in care and their families, as well as the general public, of how the oversight of the Oranga Tamariki system works, and build their confidence in this system
 - support your announcements and respond to public and media queries
 - support discussions with key stakeholders, and
 - ensure co-ordination for all announcements and engagements.
- 23 Full plans will be based on your decisions on the following approaches. They will include stakeholders lists, collateral (e.g., printed materials), key messages, media releases, and talking points. Further details will be provided for your approval in the next report on 1 May 2024.

You could lead communication of your changes

- 24 We understand your office will set up a meeting with the Commission's Board as soon as possible to inform them of your intended changes to strengthen the oversight of the Oranga Tamariki system, and we have attached talking points to this paper in Appendix 2 to support you in this meeting. Further detail is provided in paragraphs 36-38.
- 25 We also recommend informing the Monitor and the Ombudsman of your intended changes, and officials will provide further advice and/or talking points to support you in any meetings with these entities.
- 26 You could consider leading public announcements, indicating the Government's intention to strengthen the oversight of the Oranga Tamariki system and marking key stages in the process. Concurrently, you could also consider sending letters to key stakeholders to inform them of the changes. We will work with your office on this should you choose to pursue leading public announcements.

Your officials will manage the wider engagement approach, subject to your decisions on the level of engagement

- 27 The Ministry of Social Development (MSD) will share your communications and engagement plans with the Commission, the Monitor, the Ombudsman, and Oranga Tamariki, to ensure consistency and sequencing with the other parties' communications and engagement.

- 28 Media queries about the changes will likely be handled by MSD's Media Team and be coordinated with your Office.
- 29 You could choose to mainly inform stakeholders and the wider public of your changes, without engagement on these changes beyond what will come through the Select Committee process. This option requires limited resource from MSD, but carries the risk that key stakeholders feel excluded from the process and have no opportunity to provide feedback at an early stage.
- 30 Alternatively, you could direct MSD to undertake tightly targeted engagement with key stakeholders, to inform them of the changes and seek their input on the ToR for the upcoming reviews of the Oversight Act and the Commission Act. This will inform the finalised ToR, which will be sent to you as a draft in the report on 1 May 2024, and included in the next Cabinet paper you will take to SOU on s9(2)(f)(iv)
- 31 These engagements would be led by MSD with support from the Monitor and the Commission. Engagement would provide the benefit of:
- allowing stakeholders to receive information early on the changes and feel involved in the process
 - providing early indications of feedback that will come through the Select Committee process, giving us time to prepare to respond to any significant issues which may arise
 - ensuring the public have the full and correct information on the rationale and scope of these changes and minimise the opportunities for misinformation to arise, and
 - providing an opportunity to engage early on what stakeholders would like the reviews to cover.

Key stakeholders

- 32 Should you choose to pursue engagement, we will engage with umbrella groups to hear views that represent the broad range of interest groups, as shortened timeframes constrain our ability to engage more widely.
- 33 As we are engaging on the ToR for the reviews we will differentiate between:
- Advocacy/Rights Groups, such as:
 - Save the Children (leading humanitarian organisation aiming for children to survive, have the chance to learn, and be protected from abuse, neglect, and exploitation)
 - Child Rights Alliance (an alliance working to advance, promote, and report on children's rights in New Zealand)
 - UNICEF (known as the United Nations Children's Fund, responsible for providing humanitarian and developmental aid to children worldwide)

- Monitoring Childrens' Systems
 - VOYCE – Whakarongo Mai (an independent NGO that amplifies the voices of children in care and ensures they are heard)
 - Barnardos (a leading children's charity which provides social support services to children and whānau across New Zealand)
 - Open Home Foundation NZ (a Christian community response service focused on children growing up in a secure, loving family/whānau and receiving depth of care)
 - Oranga Tamariki's contracted partners.

34 We will also look to engage with Māori organisations representing kids in state care. There could be reputational risk to engaging with MSD's Māori partners given they cannot shape or influence the changes planned for the oversight of the Oranga Tamariki system. We will ensure that when we do inform Māori of the changes, we incorporate analysis on the impact for tamariki and whānau. More detail on this approach, including people who might be best placed to lead this engagement, will be provided in the communication plan on 1 May 2024.

35 Given the constrained timeframes, there won't be the ability to engage with children and young people, which could risk criticism that changes have not taken their views into account. We will aim to mitigate these risks by reviewing recent engagement by the Monitor and Commission with children and young people, to glean relevant insights to inform our advice.

You are meeting with the Commission's board to discuss future changes to their form

36 We understand you are intending to inform the Commission's board of your intention to disestablish the board model and revert back to a corporation sole Crown entity.

37 Following this, we anticipate that the Commission's board may want to discuss with you their SOI. They provided you with their SOI on 29 February 2024 s9(2)(f)(iv) [REDACTED] as part of their requirement to receive their tagged contingency funding, putting the SOI in force under section 144 of the Crown Entities Act 2004 (the CEA).¹

¹ An SOI is in force from the later of:

- (i) the date on which the final statement of intent is provided to the responsible Minister; or
- (ii) the first day of the period to which the statement of intent relates.

38 You agreed to proceed with the presentation of the Commission's SOI and for MSD to provide you with further advice on next steps of the SOI in August 2024.

Next steps

39 You will receive a report on 1 May 2024 with details of the statutory reviews, including the draft ToR, and our engagement strategy, should you choose to undertake targeted engagement from May to June.

s9(2)(f)(iv)

41 On s9(2)(f)(iv) you will take the Cabinet paper to the SOU meeting and discuss your changes with your Ministerial colleagues.

File ref: REP/24/4/332

Author: Sashika Hendry, Policy Analyst, Child and Youth Policy

Responsible manager: Christian Opeteia, Policy Manager, Child and Youth Policy

Appendix 1: Timeline of next steps

Date	Milestone
15 April	Overview Report on next steps and suggested speaking points for meeting with Commission's board
	Meeting with the Commission's board, which your office is setting up as soon as possible
1 May	Report on statutory reviews of the Acts, which covers the possible Terms of Reference, and the detailed engagement strategy for your changes to the oversight of the Oranga Tamariki system (should you choose targeted engagement from May to June)
s9(2)(f)(iv)	
May - early June	Engagement period
s9(2)(f)(iv)	

Appendix 2: Talking points and back-pocket information for meeting with the Commission's Board

Key talking points:

Changes to the oversight system and timeline

- I want to first thank you for the work you do in advocating and promoting the rights of children through in the oversight of the Oranga Tamariki system. I appreciate the time and energy you give as board members to the Commission.
- As you know, I have been considering changes to how the oversight of the Oranga Tamariki system works. Following conversations with other Ministers and advice from officials, I have decided to revert the Commission back to a corporation sole Crown entity rather than retaining a board model.
- I have signalled this intent to Cabinet in a paper that was endorsed on 15 April.
- I intend to propose detailed changes to Cabinet by the middle of the year.
- Some of the changes will require amendments to the Children and Young People's Commission Act 2022, and I intend to introduce a Bill as soon as possible to make these changes. You will be consulted during this process.

Statutory reviews of the Acts

- I intend to move up the timeline to begin the statutory reviews of the Children and Young People's Commission Act 2022 and the Oversight of the Oranga Tamariki Act 2022 to help inform how we could strengthen the role of the Commission as soon as possible.
- I intend for the reviews to begin later this year and be completed by the end of the year, in order to make any additional changes through the Bill process
- You will be engaged through the independent reviews, and I would like to hear your views about what the reviews should cover as we begin to develop the Terms of Reference.
- I have directed my officials to engage with you more closely on this work.

Statement of Intent (SOI)


- Although I am seeking to make changes to the Commission, you can continue to operate under your current SOI until final decisions are made.
- I intend to present your SOI by the end of April 2024 as part of my obligations under the Crown Entities Act. I also encourage you to publish your SOI on your website as soon as possible to meet your obligations under the Act.

- I have agreed to receive further advice from MSD on the Commission's SOI once final decisions have been made by Cabinet.
- If you would like to make any amendments to the Commission's final SOI in the short term given my intentions for the Commission, I encourage you to discuss this further with MSD. You may make amendments to your SOI at any point before or after Cabinet decisions are made.
- I am aware that the original intention was to use the SOI to engage with stakeholders and communities and would be interested in hearing whether you have any short-term plans to promote the SOI.
- I encourage you to work with MSD should you have any further questions relating to your SOI or other accountability documents.

Statement of Performance Expectations (SoPE)²

- Your draft SoPE for the 2024/25 financial year is due to me by the end of April 2024.
- I acknowledge this SoPE will be challenging to create, given final decisions about funding for the Commission for 2024/25 are yet to be made.
- I encourage you to work with MSD to meet the statutory deadline for your SoPE, and they will assist you with any questions you may have related to your SoPE.
- Once finalised, you can make amendments to the SoPE at any time to account for subsequent decisions.

s9(2)(f)(iv)



² All Crown entities are required to publish an SoPE, which is intended to:

- enable the responsible Minister to participate in setting annual performance expectations for the Crown entity
- inform Parliament of those expectations, and
- provide a basis to assess performance.

- s9(2)(f)(iv) [redacted]

Questions and answers:

Where has the decision to revert back to a corporation sole crown entity come from?

- During the previous changes to the oversight system, most people supported the idea of a single Children’s Commissioner to best suit a strong advocacy role. This was seen throughout the Select Committee process and stakeholder engagement.
- I have made this decision with input from relevant portfolio Ministers.

Are you considering any further changes to the Commission’s role?

- s9(2)(f)(iv) [redacted]

What is the rationale behind removing the Commission’s board members s9(2)(f)(iv)

- s9(2)(f)(iv) [redacted]
- In alignment with this, I have decided to streamline the Commission’s advocacy role with a single Commissioner. This also gives more visibility to the advocacy role with a single, clear advocate.

What options do we have around our SOI process?

- Although I am seeking to make changes to the Commission, you should continue to operate under your current SOI until final decisions are made.
- If you would like to make any amendments to the Commission’s final SOI in the short term, or you have any further questions relating to your SOI, I encourage you to work further with MSD to progress this.

³ The Option Protocol for the Convention Against Torture.

Will part of the Commission's baseline still be funded from the tagged contingency?

- s9(2)(f)(iv) [REDACTED]
- I would like you to work with MSD on the implications for the future model and what this will mean for the funding required for the Commission.
- I have directed my officials to work with you in determining the amount required for the next financial year, and for the final model.

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Appendix 3: The Commission’s Bio Information

Dr Claire Achmad

Board Chair & Chief Children’s Commissioner

Dr Achmad is a recognised advocate for children in New Zealand and internationally, having worked in a wide range of areas relating to children’s rights, including from legal, policy and practice perspectives. Claire started as Chief Children’s Commissioner and Chair of the Board from 1 November 2023, having previously held the Deputy Chair role from 1 July 2023. Her appointment is for a total term of five years.



Claire holds a doctorate in international children’s rights law and has published internationally on a range of children’s rights issues. She also holds degrees in Arts and Law. Previously, Claire served as Chief Executive Officer of Social Service Providers Te Pai Ora o Aotearoa and has worked for children’s NGOs and international organisations in Aotearoa New Zealand, Australia, and Europe. She held a senior role within Te kāhui Tika Tangata – the Human Rights Commission and practised as in-house legal counsel in the Ministry of Social Development. Claire holds a Guest Lectureship in the Child Law Department of Leiden University and is a member of the Asia New Zealand Foundation Leadership Network.

Claire was born and grew up amongst kauri and kererū in the Waitākere Ranges and is of New Zealand and Indonesian heritage.

Donna Matahaere-Atariki

Deputy Chair

Donna Matahaere-Atariki has a background in education, health and social services, and governance experience with the Gambling Commission and the University of Otago. She is the Chair of Otākou Health Limited, and was previously Chair of Te Kāhui, the Māori Advisory Group to Aroturuki Tamariki, the Independent Children’s Monitor.



Donna has strong knowledge of child protection and hapū and hapori, and extensive relationships and networks with iwi, hapū, and community development organisations.

Dr Julie Wharewera-Mika

Dr Wharewera-Mika is a registered senior clinical psychologist and Kaupapa Māori researcher with a Doctorate in Clinical Psychology. An initial member of the Mental Health and Wellbeing Commission, she has extensive experience working in mental health/addictions, advocating for system-wide transformation that is responsive to the needs of children and whānau.



Julie has strong stakeholder relationships with Māori and Pacific communities and across the children's sector. She is a long-standing business consultant, Head of the Medical Assurance Society Foundation, and Chair of Whānau Oranga Pūmau, ACC's Māori Customer Advisory Panel.

Ronelle Baker

Ronelle Baker has extensive experience across the health, disability, NGO and government sectors, and is currently Principal Advisor Accessibility at Stats NZ and Chair of Spectrum Care Ltd.



Ronelle has skills/experience in brokering solutions that balance the needs and aspirations of stakeholder groups. Ronelle is a passionate advocate for improving wellbeing, equity and inclusion for whānau who experience disability. Ronelle has lived experience of the State care system as a Court-appointed whānau carer for two nieces.

Josiah Tualamali'I

Josiah Tualamali'I brings frontline youth advocacy experience to his role through a range of health, leadership, and young people's networks.



In his teens, Josiah helped create the Pacific Youth Leadership and Transformation Trust and helped establish Youth Voice Canterbury, to strengthen the youth voice sector after the Christchurch earthquakes. Josiah was a panel member of the Government Inquiry into Mental Health and Addiction and a member of the Advisory group for the Ministry for Education's Civics and Citizenship Education Teaching and Learning Guide (2020). Josiah co-led younger Pacific communities support of the call for Dawn Raids apology. He serves as co-chair of Pacific wellbeing organisation Le Va and is also a director of Te Pou and trustee of the Rātā Foundation.

Josiah is of Samoan descent. The villages of this aiga are Salelesi, Satuiatua, Lepa, Aufaga and Fagaloa.

Report



**MINISTRY OF SOCIAL
DEVELOPMENT**
TE MANATŪ WHAKAHIATO ORA

Date: 13 March 2024

Security Level: IN-CONFIDENCE

To: Hon Louise Upston, Minister for Social Development and
Employment

Options to enhance independence in the oversight of the Oranga Tamariki system

Purpose

1 This report seeks decisions on your preferred approach for enacting changes to the oversight of the Oranga Tamariki system, including:

- s9(2)(f)(iv) [REDACTED]
- progressing changes to the form of the Commission and the Independent Children's Monitor (the Monitor) with an Omnibus Bill introduced s9(2)(f)(iv) [REDACTED]
- s9(2)(f)(iv) [REDACTED]
- commencing the statutory reviews of the Oversight of the Oranga Tamariki System Act 2022 (Oversight Act) and the Children and Young People's Commission Act 2022 (Commission Act) s9(2)(f)(iv) [REDACTED].

Recommended actions

Decisions required for the 10 April 2024 Cabinet paper

It is recommended that you:

- 1 s9(2)(f)(iv) [redacted]
[redacted]
[redacted]
[redacted]
- 2 **agree** to seek Cabinet agreement to draft a Bill to make the Independent Children's Monitor (the Monitor) an Independent Crown Entity, should you not want to progress with any changes to the Children and Young People's Commission's board (provided below in recommendation 3)

AGREE / DISAGREE

AGREE / DISAGREE

Decisions required for the late July/early August 2024 Cabinet paper

3 **agree** to seek Cabinet agreement to:

- 3.1 make the Monitor an Independent Crown Entity s9(2)(f)(iv) [redacted]
[redacted]
[redacted]
[redacted]

AGREE / DISAGREE

- 3.2 make the Children and Young People's Commission a corporation sole Crown Entity

OR

AGREE / DISAGREE

- 3.3 reduce the number of board members for the Children and Young People's Commission to s9(2)(f)(iv) [redacted]
[redacted]

AGREE / DISAGREE

- 3.4 commence reviews of the Oversight of the Oranga Tamariki System Act 2022 (Oversight Act) and the Children and Young People's Commission Act 2022 (Commission Act) s9(2)(f)(iv) [redacted]
[redacted]

AGREE / DISAGREE

s9(2)(f)(iv) [redacted]
[redacted]

- 4 **note** you are the responsible Minister for the appropriation that enables the Children and Young People's Commission to deliver its monitoring function under the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)

5 **note** the Minister of Justice is responsible for setting the designations for the monitoring entities under the OPCAT system through the National Preventative Mechanism set out in the Crimes of Torture Act 1989, which domestically implements the OPCAT system

6 s9(2)(f)(iv) [Redacted]

7 s9(2)(f)(iv) [Redacted]

AGREE / DISAGREE

8 s9(2)(f)(iv) [Redacted]

Commencing the statutory reviews of the Oversight Act and Commission Act s 9(2)

9 **note** under section 58 of the Oversight Act and section 38 of the Commission Act, the responsible Minister must arrange for an independent review of the operation and effectiveness of the two Acts to commence no later than 3 years after the commencement of the Acts, which would be mid-2026

10 **note** the independent review of the Oversight Act and Commission Act must consider:

10.1 whether the functions, duties, and powers of the Monitor and Children and Young People's Commission set out in their respective Acts gives effect to their purposes set out in those Acts

10.2 whether the Monitor and the Children and Young People's Commission have been working effectively with hapu, iwi, and Māori organisations

10.3 whether any amendments to the two Acts are necessary or desirable, and

10.4 any other matters the responsible Minister considers appropriate, after consulting with the Monitor and Children and Young People's Commission, and other relevant Ministers

11 **note** the reviews of the two Acts listed above differ mainly in that the independent review of the Oversight Act must also consider whether the Monitor is appropriately resourced to deliver its functions

12 **note** you have indicated you want to commence the review of the two Acts earlier than 2026, which is reflected in recommendation 3.4

13 **note** you are required to present a copy of the final report(s) on the reviews of the two Acts to Parliament (as the responsible Minister for the Monitor and the Children and Young People's Commission) as soon as practical after receiving the report(s).

Simon MacPherson
Deputy Chief Executive
Policy

Date

Hon Louise Upston
Minister for Social Development and
Employment

Date

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Background

- 2 Following advice provided to you on how to enhance the independence of the Oranga Tamariki system [REP/24/1/051 and REP/23/12/924 refer], you have informed us of your intent to proceed with changes to the oversight of the Oranga Tamariki system.

s9(2)(f)(iv)

Timing and scope on potential changes to the Monitor and the Commission

- 6 We seek your direction on the timing for changes to the Monitor you have already agreed to and potential changes to the Commission you have requested further advice on. We suggest two possible approaches, with timelines provided in Appendix 1.
- 7 We understand that shifting the Monitor from a departmental agency to an ICE is a priority as part of the coalition agreement. This could happen quickly, as changes are focused on shifting its form while its duties, functions, and powers would be unchanged. s9(2)(f)(iv)

8 Changes to the Commission will take slightly longer due to the need to assess their impact and engage with relevant departments. We understand your two key considerations for the Commission are:

- returning the Commission to being a corporation sole Crown entity, explored further in paragraphs 19-22 of this report s9(2)(f)(iv) and
- s9(2)(f)(iv)

Introduce and pass a Bill in 2024 to make the Monitor an ICE

9 This approach begins with shifting the Monitor to an ICE, then bringing the reviews of the Oversight Act and Commission Act forward, leaving any other changes to the oversight of the Oranga Tamariki system to follow with direction from the reviews.

10 In the first stage of this approach, we would progress with the attached draft Cabinet paper intended to make the Monitor an ICE as soon as possible. A timeline for this Cabinet process is outlined in the following table:

s9(2)(f)(iv)

11 s9(2)(f)(iv)

- s9(2)(f)(iv)
- change the structure of the Monitor from a departmental agency to a standalone ICE
- s9(2)(f)(iv)
- s9(2)(f)(iv)

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s9(2)(f)(iv)

s9(2)(f)(iv)

Background

- 23 The Commission currently holds an OPCAT monitoring function. Under OPCAT, States Parties are required to create or designate National Preventive Mechanisms (NPMs) for the prevention of torture. New Zealand's Crimes of Torture Act 1989 created NPMs, which examine the conditions of detention and treatment of detainees, making recommendations for improvement.
- 24 The Minister of Justice is responsible for setting the NPM designations for monitoring entities under the OPCAT system and the Crimes of Torture Act 1989, which domestically implements the OPCAT system (see Appendix 2 for designations). You have responsibility for the Commission, including its appropriation for delivering its OPCAT function. s9(2)(f)(iv)

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Statutory reviews of the Oversight Act and Commission Act

33 The Oversight Act and Commission Act, which arranged the oversight of the Oranga Tamariki system in its current state, must commence a statutory review no later than three years after the Acts came into effect, which would be mid-2026. However, there is no fixed start date, and you can progress with the reviews sooner.

The legislation sets out requirements for the reviews

34 The reviews must be independent and must consider whether:

- the functions, duties, and powers set out in the Acts are supporting the entities to give effect to the purpose of the Acts
- the entities are effectively working with hapū, iwi, and Māori organisations,
- any amendments to the Acts are necessary or desirable, and
- any other matters that the responsible Minister considers appropriate.

35 The independent review for the Oversight Act also must consider whether the Monitor is appropriately resourced to deliver its functions.

36 The findings of the reviews must be reported to the responsible Minister, and for the Oversight Act, also the Minister for Children. The final reports on the reviews must be presented to the House of Representatives.

We will need a minimum of two months to prepare the reviews, including deciding who will undertake the reviews

s9(2)(f)(iv)

Next steps

- 40 We will amend the draft Cabinet paper scheduled to be considered on 10 April 2024 to reflect any changes you want to make in response to the issues outlined in this report.
- 41 We understand a meeting has been scheduled for you to meet the Chief Children's Commissioner on 20 March 2024 to discuss your intention to make changes to the Commission. We will provide you with an aide memoire to support this discussion based on the details provided in this paper and any other feedback we receive from you before the meeting.

File ref: REP/24/1/071

Author: Sashika Hendry, Policy Analyst, Child and Youth Policy

Responsible manager: Christian Opetaita, Policy Manager

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Appendix 2: OPCAT and NPMs

Optional Protocol to the Convention Against Torture

The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) seeks to prevent torture and other forms of ill-treatment through the establishment of a system of regular visits to places of detention carried out by independent international and national bodies.

National Preventive Mechanisms

Under OPCAT, States Parties must create or designate National Preventive Mechanisms (NPMs) for the prevention of torture. In New Zealand the Crimes of Torture Act created NPMs, that examine the conditions of detention and treatment of detainees, and make recommendations for improvement. They also must report annually about their OPCAT activities.

Their work is coordinated by the Human Rights Commission as the Central Preventive Mechanism, which also liaises with the United Nations.

New Zealand's designated NPMs are the:

- Ombudsman
- Children and Young People's Commission
- Independent Police Conduct Authority
- Inspector of Service Penal Establishments.

The Ombudsman is responsible for examining and monitoring the treatment and conditions of people detained in

- prisons
- court cells
- mental health facilities
- intellectual disability facilities
- aged care facilities
- COVID-19 managed isolation and quarantine facilities
- immigration detention centres.

The Children and Young People's Commission monitors secure facilities throughout the country where children and young people are detained. This covers:

- All five Oranga Tamariki Youth Justice Residences
- All four Oranga Tamariki Care and Protection Residences
- Five Youth Mental Health Facilities (three in-patient facilities and two youth forensic mental health and intellectual disability units)
- 14 Youth Justice Community Remand Homes
- One Special Purpose Facility (run by Barnardos on behalf of Oranga Tamariki, providing secure care and therapeutic treatment for a small number of children and young people with harmful sexual behaviours)

- Three Mothers with Babies Units in women's prisons managed by the Department of Corrections (focusing on the safety and wellbeing of babies under two years of age living in these units with their mothers).

The Independent Police Conduct Authority is responsible for examining and monitoring the treatment of people detained in police custody.

The Inspector of Service Penal Establishments is responsible for examining and monitoring the treatment of people detained in defence force penal establishments.

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Aide-mémoire



MINISTRY OF SOCIAL
DEVELOPMENT
TE MANATŪ WHAKAHIATO ORA

Cabinet paper

Date: 8 April 2024 **Security Level:** Cabinet Sensitive
For: Hon Louise Upston, Minister for Social Development and Employment
File Reference: REP/24/4/297

Cabinet Item: Phased approach to strengthening the oversight of the Oranga Tamariki system

Cabinet Committee	Social Outcomes Cabinet Committee
Date of meeting	Wednesday 10 April 2024
Minister	Hon Louise Upston, Minister for Social Development and Employment
Proposal	This aide mémoire provides you with suggested talking points to support your item on a phased approach to strengthen the oversight of the Oranga Tamariki system to the Social Outcomes Cabinet Committee.
Key Topics	<p>You are seeking Cabinet agreement to a phased approach to strengthen the oversight of the Oranga Tamariki system. Specifically, your proposal:</p> <ul style="list-style-type: none">• supports the fulfilment of the National-Act Coalition Agreement to make the Independent Children’s Monitor (the Monitor) truly independent• indicates potential changes to enhance the oversight of the Oranga Tamariki system, such as making the Children and Young People’s Commission (the Commission) a corporation sole Crown entity s9(2)(f)(iv) [REDACTED]• establishes your intent to commence the reviews of the Oversight of the Oranga Tamariki System Act 2022 and the Children and Young People’s Commission Act 2022 (the Acts) in 2024, and

-
- s9(2)(f)(iv)

Talking points**Overview**

- I am committed to enhancing the oversight of the Oranga Tamariki system, including fulfilling the National-Act Coalition Agreement to create more independent monitoring.
- I propose undertaking a phased approach, beginning with this Cabinet paper. Today, I am signalling changes to come.

s9(2)(f)(iv)

Independent Children's Monitor

- I intend to shift the Monitor to an Independent Crown Entity (ICE) rather than keeping its current form as a departmental agency in the Education Review Office.
 - This would strengthen independent monitoring by providing a degree of separation from government influence.
 - I am confident this change will be supported by key stakeholders. I have also discussed this with some of our Ministerial colleagues in February as part of my broader work
- s9(2)(f)(iv)
- During the Select Committee process that reviewed the previous changes to the oversight of the Oranga Tamariki system in 2022, many children's organisations recommended the Monitor should be an ICE.
 - s9(2)(f)(iv)
 - The Monitor is aware these changes are coming and was involved in forming the advice.

Children and Young People's Commission

- I intend to enhance the visibility of the Commission's advocacy role by making it a corporation sole entity with a single commissioner rather than allocating its responsibilities across several board members.
- During the past Select Committee processes, stakeholders favoured the idea of one Children's Commissioner over a Board structure. I view having a single Commissioner further enhances the visibility of the advocacy role of the Commission.

-
- I have spoken with the Chief Children’s Commissioner about these changes and sought her input, and intend to talk to the rest of the Board following Cabinet agreement.
 - I have requested further advice from officials on the practicality of making the Commission a corporation sole Crown entity, acknowledging that changing the form of the Commission would affect how they work and what they are able to achieve.

OPCAT

- s9(2)(f)(iv) [redacted]
[redacted]

Statutory reviews of the Acts

- To help further clarify the functions and responsibilities, I am currently considering bringing forward the statutory reviews of the Oversight of the Oranga Tamariki Act and the Children and Young People’s Commission Act.
- These two Acts set out a requirement that reviews occur within three years of commencement of the acts, which is currently set for mid-2026.
- I will return to Cabinet s9(2)(f)(iv) with details of the reviews and how it will inform the changes I propose to the oversight of the Oranga Tamariki system.

s9(2)(f)(iv) [redacted]

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-
- s9(2)(f)(iv)

Conclusion and next steps

- I will return to Cabinet later in the year to seek agreement to begin drafting instructions for a Bill to enact changes to the oversight of the Oranga Tamariki system, and with additional details related to the reviews of the two Acts.

If asked about the Commission's Statement of Intent (SOI)

- I have agreed to delay presentation of the SOI to the House until further decisions on the future of the Commission are made and until further conversations with the Board are had.
- My officials will be providing me with separate advice on next steps for the Commission's SOI by the end of the week.

Author: Sheree Bint, Policy Analyst, Child and Youth Policy

Responsible manager: Christian Opetai, Manager, Child and Youth Policy