

Oversight of Oranga Tamariki System and Children and Young People’s Commission Bill

Government Bill

As reported from the Social Services and Community Committee

Commentary

Recommendation

The Social Services and Community Committee has examined the Oversight of Oranga Tamariki System and Children and Young People’s Commission Bill and recommends by majority that it be passed. We recommend all amendments unanimously.

Introduction

This bill aims to improve outcomes for children and young people in New Zealand. It would do so by improving three main components of oversight of the Oranga Tamariki system:

- independent monitoring
- complaints and investigation
- advocacy for children and young people generally.

The bill is an omnibus bill that would create two new Acts and amend several existing Acts. It is intended that the bill will be divided into two at the end of the committee of the whole House stage. Parts 1 to 4 and Schedule 1 would become the “Oversight of Oranga Tamariki System Bill”. These parts address independent monitoring and complaints oversight and investigation. Part 5 and Schedules 2 to 4 would become the “Children and Young People’s Commission Bill”. These parts address advocacy for children and young people generally.

Oversight of the Oranga Tamariki System

The bill proposes that the key responsibilities for oversight of the Oranga Tamariki system should sit with two separate organisations. First, the bill would create an “Independent Monitor”. The Monitor’s role would focus on tracking how the system

operates and how effectively the system provides support to those engaged with it. It would also focus on identifying areas for improvement to the system to provide better outcomes for children and young people. The Monitor would be appointed under the Public Service Act 2020 as the chief executive of the Independent Monitoring Agency of the Oranga Tamariki System. The agency would operate as a departmental agency hosted by the Education Review Office, but would operate independently.¹

Second, the bill would make the Office of the Ombudsman the sole body responsible for investigating and resolving complaints on matters regarding the application of the Oranga Tamariki Act 1989. This would include complaints about Oranga Tamariki and individual providers involved in the care or custody of children and young people. Although the Ombudsman can already investigate Oranga Tamariki—Ministry for Children and complaints involving the ministry, the bill would give the Ombudsman new duties and obligations, and strengthen their existing functions with additional powers.

Children and Young People's Commission

The bill proposes establishing a “Children and Young People's Commission”. The Commission would be responsible for system-level advocacy for children and young people. It would also focus on advocating for children and young people's rights, interests, and well-being, promoting the participation of children and young people in decisions that affect them, and raising understanding and awareness of the United Nations Convention on the Rights of the Child. The Commission would replace the existing role of the Children's Commissioner, currently supported by the Office of the Children's Commissioner. At present the Children's Commissioner has broad responsibilities regarding advocacy for children and young people, monitoring the system, and oversight of complaints. The bill would remove those responsibilities and make advocacy the primary function of the new Commission.

Making our process accessible for children and young people

Because this bill addresses important issues for children and young people, we experimented with several ways to improve the select committee process so that children and young people could get involved as easily as possible. They included:

- encouraging organisations submitting on the bill to include children and young people in their oral submissions where possible, and giving additional time to submit if they had children participating

¹ A departmental agency is an operationally autonomous agency hosted by a public service department. It is headed by its own chief executive who is directly responsible to a Minister for its clearly identified, ring-fenced activities and performance. You can read more information about departmental agencies on the Public Service Commission website.

- setting specific time aside in after-school hours (from 3:30pm to 6:00pm) for oral submissions from children and young people, or organisations submitting with them
- allowing children and young people, on request, to play a pre-recorded video for their oral submission
- ensuring, if requested, that oral submissions by children or young people would not be livestreamed or posted on Facebook
- providing extensive information, when booking oral submissions, about the process and the support available
- making a video with detailed information about the Social Services and Community Committee, what the bill aims to achieve, and how to make a submission on the bill, and posting it on the committee's Facebook page.

We believe that our work to facilitate engagement by children and young people added value to our scrutiny of the bill and allowed us to recommend the amendments below in the interests of children and young people. We encourage other committees to consider how they can improve the accessibility of the select committee process for bills generally, but also in instances where a bill may have a direct and significant effect on a particular group of people.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We believe that the issues raised in this process have been addressed in our consideration. We discuss some of them in this commentary.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Referencing te Tiriti o Waitangi/the Treaty of Waitangi

The Treaty of Waitangi (te Tiriti o Waitangi) is referred to many times throughout the bill. Some of us think it is important that the Treaty influence the operation and oversight of the Oranga Tamariki system. We want to ensure that the Crown's responsibility to give effect to the Treaty is respected and recognised. Clauses 6 and 85 specifically address how the bill is influenced by the Crown's responsibility to uphold the Treaty.

However, we suggest changing the way the Treaty is referred to in the bill as "the Treaty of Waitangi (te Tiriti o Waitangi)". We note that dual language referencing in both English and te reo Māori is common in New Zealand legislation. Practice has changed over time, however, and now the te reo Māori reference is often put first. We believe that this should be the case in this bill.

We therefore recommend amending the bill throughout to refer to the Treaty as "te Tiriti o Waitangi/the Treaty of Waitangi".

A number of submitters suggested using only the te reo Māori title, but we note that some reference in English is necessary in New Zealand legislation. Referring only to the English or te reo Māori title could create confusion regarding interpretation.

Definition of care or custody provider

Clause 8 of the bill defines a “care or custody provider” as “an organisation or a body approved under section 396 of the Oranga Tamariki Act”. Section 396 refers to bodies that have been approved as either an iwi social service, a cultural social service, or a child and family support service. The bill proposes broadening the Ombudsman’s jurisdiction for complaints investigation and resolution to include care or custody providers as determined under section 396 of the Act.

During our consideration we identified a gap regarding the broadening of the Ombudsman’s jurisdiction. Although it would extend to bodies under section 396 of the Act, the bill would not extend the Ombudsman’s jurisdiction to organisations or people that fall under sections 362 and 364 of the Act, who may also be approved as care or custody providers.² These providers would not be subject to the Ombudsman’s powers regarding complaints investigation and resolution, which is contrary to the intent of the bill.

Therefore, we recommend amending clause 8 to make it clear that providers under sections 362 and 364 of the Oranga Tamariki Act are included as “care or custody providers” in this bill, and would therefore be made subject to the Ombudsman’s jurisdiction, to the extent that they are providing care or custody.

Strengthening the independence of the Monitor

Clause 12 of the bill as introduced establishes the Independent Monitor of the Oranga Tamariki system. Although the Monitor’s independence is implied partly through the title of the role, we believe that it needs to be made explicitly clear in the bill that the Monitor is independent in undertaking its functions.

The intent of the bill is that the Monitor be an independent statutory role tasked with scrutinising the Oranga Tamariki system and identifying areas for improvement. Independence is crucial for the Monitor to carry out these functions effectively and for ensuring transparency of the role.

We believe it is not only important that the Monitor is independent but that the public fully understands and appreciates the Monitor’s independence. Making this as clear as possible in the proposed legislation would help to facilitate public trust and confidence in the role of the Monitor and their functions. This is an important factor in

² Section 362 refers to people who have been approved to provide care or custody by the chief executive of Oranga Tamariki or an organisation that falls under section 396. Section 364 refers to residences that have been established to provide care and control of children and young people.

implementing a new oversight system focused on improving outcomes for children and young people.

To make the independence of the Monitor explicit, we recommend inserting clause 12(3) to state the Monitor's independence from Oranga Tamariki. We also recommend inserting clause 16A which would reinforce the Monitor's duty to act independently. Clause 16A would state that the Monitor has a duty to act independently when carrying out their monitoring function under clause 14, and when developing tools and monitoring approaches under clause 16. We note that clause 15 would be incorporated into new clause 16A.

Amendments to reporting requirements

Clauses 27 to 31 all relate to the Monitor's obligations regarding final reports and responses to them. We discuss below various amendments we recommend to those clauses. We also refer to clauses 21 to 25 as contextual background about the types of reports the Monitor would need to prepare, and explain how these clauses relate to our recommended amendments.

Clause 27 specifies those to whom the Monitor must provide a copy of a final report prepared under clauses 21 to 24 of the bill. Each of those provisions proposes a different type of report:

- State of the Oranga Tamariki system report (clause 21)
- annual report on compliance with national care standards regulations (clause 22)
- annual report on outcomes for Māori children and young people and their whānau (clause 23)
- requests by the Minister for reviews (clause 24).

Clause 25 also allows the Monitor to carry out reviews on their own initiative, and requires them to prepare a final report of the results.

Final reports to the House of Representatives

Clause 28 specifies that the Minister responsible for the administration of the Oranga Tamariki Act must present a copy of a final report prepared under sections 21 to 24 to the House of Representatives. As introduced, this means that the Minister responsible would not have to present a copy of a report that the Monitor produced under clause 25. In fact, the bill does not specify any person or body that the Monitor must provide a copy of that report to. It only states that the report must be published on an internet site maintained by or on behalf of the Monitor (clause 30).

In our view, this is a significant gap in the bill. If the Monitor carried out a review on their own initiative, it is likely that this would be because they had identified issues with the Oranga Tamariki system, or were investigating areas for improvement. We think that the findings of such a review, in the form of a final report, should be presented to the House as for reports prepared under clauses 21 to 24.

Therefore, we recommend amending clause 28 to specify that reports prepared under clause 25 should also be presented to the House.

Responses to final reports

Clause 30 as introduced requires the publication of final reports and responses. Clause 29 describes the process for the chief executive of an agency that is the subject of a report to prepare a response. The chief executive must provide their response within “the time frame prescribed by regulations made under section 56”.

We were concerned about leaving this time frame to be determined in regulations. We would rather specify it in primary legislation so it is clear for all to whom this clause may apply if the bill is enacted. Therefore some of us recommend amending clause 29 to state that chief executives would have 60 working days from a final report being published to provide a response in writing. Some of us believe that this is a reasonable amount of time for a response to be prepared.

Publishing final reports and responses

Clause 30 as introduced states that the Monitor must publish a copy of a final report prepared under clause 21, 22, 23, or 25 on a website maintained by the Monitor. This does not include reports prepared as a result of a request by the Minister for a review (clause 24).

We do not see why these reports should be excluded from publication. For consistency in the reporting requirements, we recommend amending clause 30(1) to require reports prepared by the Monitor at the request of the Minister to be published on the website. This would mean that all reports prepared by the Monitor would be available on the website for anybody to access. We believe that making all reports available to the public would help in building public trust in the Monitor and their responsibilities.

Information that may identify an individual

Clause 30(2) provides for the redaction or withholding from publication of information that may identify an individual in a report or response. However, it also provides an exception to that requirement. The identifying information does not need to be withheld if the individual concerned consents to their information being in the report or response, or if the Monitor or chief executive (as applicable) considers that the public interest in including the personal information outweighs the individual's privacy interests.

We agree that information should be redacted in most cases, except in the cases described above. However, we had strong concerns about the effect of including information identifying an individual in a report if it could lead to identifying a child or young person who had received services or support through the Oranga Tamariki system from that individual. In our view, this could infringe on the privacy rights of the child or young person concerned. This would be contrary to the intent of this bill.

Therefore, we recommend inserting clause 30(3). This would prevent the exception being used if the release of information could lead to the identification of a child or

young person who had been receiving care or support from the individual identified in the report. We believe that inserting this clause adequately addresses concerns regarding the privacy rights of children or young people who may inadvertently be identified through the inclusion of particular identifying information about another individual.

Power of entry and notice of entry

The bill as introduced would enable an authorised staff member of the Monitor to enter premises if they reasonably believed it was necessary for the purpose of observing practice or monitoring the performance of the Oranga Tamariki system. Clause 35 provides for limits on that power of entry. Clause 35(1)(b) would prevent a staff member from entering if the person in charge of the premises denied entry in exceptional circumstances. Clause 35(2) defines exceptional circumstances as:

- people within the premises are experiencing serious health concerns
- a serious event or incident has occurred and a visit by an authorised staff member is likely to exacerbate tension or emotional harm.

We agree that there should be reasonable limits on the Monitor's power of entry as specified in clause 35. The role of the Monitor and their staff is to observe and gather information, rather than to intervene in serious instances. In instances where a serious event or incident has occurred, it is more appropriate for an enforcement agency such as the New Zealand Police to be present.

The wellbeing and safety of children and young people underpins this bill, and factors into the denial of entry in exceptional circumstances. We think that the definition of exceptional circumstances in clause 35(2)(b) could better reflect this intent. We therefore recommend amending this clause to specify that an exceptional circumstance exists if a visit is likely to cause emotional harm to a child or young person at the premises.

Reasons for denying entry to an authorised staff member

Clause 35(3) notes that if entry is denied to an authorised staff member the person in charge must provide a reason in writing to the Monitor. We agree that justification should be provided for denying entry by the Monitor's staff. We think that this clause could be improved by specifying that the reason must be provided in writing within a reasonable timeframe to the Monitor before the entry is to occur. We believe this would prevent people from denying entry upon the staff member's arrival, without giving adequate justification for the denial.

Disclosure of information by the Ombudsman

The Ombudsman has a broad and long-standing secrecy obligation under section 21 of the Ombudsmen Act 1975. This places an obligation on the Ombudsman and their staff to maintain secrecy in respect of all matters that come to their knowledge. Clause 51 sets out instances when the Monitor and the Ombudsman could share information with each other, and clause 51(5) allows the secrecy obligation of section 21

to be overridden in specific circumstances. Although the bill largely proposes separating the functions, duties, and powers of the Monitor and the Ombudsman, it is reasonable to assume that sharing of information between the two would be necessary and useful in certain instances.

During our submissions process, the Chief Ombudsman raised the point that there may be some instances where the Ombudsman might need to disclose information to a different agency or person, aside from the Monitor. This would be in situations where the Ombudsman discovered that there was a serious risk of harm to a child or young person if information were not disclosed to another appropriate body. We agree with the Chief Ombudsman.

The bill as introduced does not provide for the Ombudsman to share information with appropriate agencies or persons when necessary. The Ombudsman's secrecy obligation would also prevent this from occurring. We think that this is a flaw in the bill.

Therefore, we recommend inserting clause 51A allowing the Ombudsman to disclose information to an appropriate agency or person if the Ombudsman considers that there is a credible and serious risk of harm to a child or young person, and disclosure of the information is necessary to mitigate that risk. We also recommend stating that disclosure in this instance would override the Ombudsman's secrecy obligation in the Ombudsmen Act.

We think it is worth noting that in the instances envisaged, the Ombudsman is likely to be sharing the information with an organisation such as the New Zealand Police or Oranga Tamariki, or other similar bodies which can work swiftly to prevent a serious risk of harm to a child or young person.

Access to Family Court records and documents

Clause 79 would amend the Family Court Rules 2002. The amendment would allow the Ombudsman to access court records and documents under Rule 427. The normal rule for someone not involved in Family Court proceedings to access information on the court file is to make a request to the court which is then considered by a Registrar or judge. In the current system, there is a rule which allows the Children's Commissioner to access these documents without going through the standard process. Clause 79 was intended to effectively replace the Children's Commissioner with the Ombudsman, so the Ombudsman would not have to go through the standard process as part of their role in complaints investigation and resolution.

However, during our consideration of the bill we concluded that the exception provided by clause 79 is unnecessary. In most cases where the Ombudsman would be investigating complaints involving children and young people, Oranga Tamariki would be a party to any court proceedings. This means that Oranga Tamariki would already have access to relevant court information. Therefore, the Ombudsman would be able to access the necessary information through existing powers in the Ombudsmen Act 1975. If Oranga Tamariki was not a party to proceedings, the Ombudsman could still request any necessary or relevant information through Rule 429 of the Family Court Rules.³

We believe this means that there are already enough avenues for the Ombudsman to obtain information from the Family Court that might be relevant to carrying out an investigation. Therefore we recommend deleting clause 79 as introduced. Instead, we recommend replacing it with an amendment to the Family Court Rules to remove the Children's Commissioner (who would not exist if the bill is passed) from the list of persons with the exception.

Providing for a Chief Children's Commissioner

Clause 91 as introduced specifies that the board of the Children and Young People's Commission must consist of at least 3 members, but not more than 6. During the submissions process we heard concerns about the disestablishment of the Children's Commissioner and replacing that role with the Commission. The current Children's Commissioner, among other submitters, voiced concern that by implementing a board model for the Commission's governance there would no longer be a "face" that was known and recognised by the people who need it most. Without this, they argued, children and young people might not know who represents them and who is advocating for their rights and interests.

We support having a board structure as we believe it will enable the Commission to strengthen and deepen its advocacy role and provide long-term stability. At the same time, we appreciate concerns about the loss of a clear, public-facing identity that children and young people know and recognise. We do not want children and young people to feel that they do not know who represents and advocates for them. However, we are also wary of dictating the membership of the Commission in legislation by prescribing named Commissioner roles for each of the members of the board. We want the Commission to have flexibility to determine for itself the structure of governance that will allow it to achieve its strategic intentions.

Therefore, we recommend amending the bill to specify that the chairperson of the board of the Commission also be recognised as the Chief Children's Commissioner. We believe that this addresses the concerns regarding a clearly identifiable "face" for the Commission but still allows flexibility for the Commission to determine its own governing board make-up.

Reporting to the Prime Minister

Clause 99 of the bill sets out the Commission's functions relating to promoting the interests and well-being of children and young people. Reporting to the Prime Minister, with or without request, is one function in the Children's Commissioner Act 2003 that the bill has not carried over for the Children and Young People's Commission. Many submitters expressed concern that the bill as introduced would not include reporting to the Prime Minister. We share their concern.

³ Rule 429 provides a process for applying for permission to access court documents and files.

In our view, adding a general reporting function would be a useful addition to the bill. We expect that there will be matters affecting the rights of children that the Commission will consider worth reporting to the Prime Minister. We want to avoid confusion about whether the Commission should or should not be reporting to the Prime Minister as part of its role. Therefore we recommend amending the bill by inserting clause 99(ha) to make it clear that reporting to the Prime Minister is expected by the Commission. As with our amendment regarding a Chief Children's Commissioner, we do not want to prescribe in too much detail how the Commission must operate. We believe that our proposed clause 99(ha) is general enough to allow the Commission to determine how, when, and by whom reporting to the Prime Minister might occur, yet still make it clear that this is a key function of the Commission.

Other amendments

We recommend a number of other small amendments to improve the workability of the bill. They include:

- amending clauses 6 and 85 (and consequential clauses) to make it clear that the Crown's obligation to give effect to te Tiriti o Waitangi/the Treaty of Waitangi and to improve the well-being of children and young people is not limited only to the context of their whānau, hapū, iwi, and communities
- amending clauses 7(2) and 102(3) to show that the list of common duties of the Monitor, the Ombudsman, and the Commission is not an exhaustive list
- removing references to iwi in clause 14, as this is not appropriate, and hapū and iwi in clause 31, to ensure there is not an undue protection provided to individuals
- clarifying the number of members of the Monitor's Māori Advisory Group in clause 17
- removing clause 55 from the bill as civil immunity provisions are already provided for in the Public Service Act 2020
- amending clause 113 to clarify information sharing between the Commission, the Monitor, and the Ombudsman (with a consequential amendment to clause 48)
- amending clauses 85 and 92 to state that the Commission board members must collectively have "knowledge and understanding of te Tiriti o Waitangi/the Treaty of Waitangi"
- removing clause 99(f) as we believe it would be largely contrary to the bill's intent to strictly specify that the Commission could provide advice regarding oversight of complaints relating to the Oranga Tamariki system
- amending relevant clauses in the bill so that the importance of hapū is recognised and included alongside iwi and Māori organisations.

ACT Party differing view

The ACT Party expresses our concern with the Oversight of Oranga Tamariki System and Children and Young People's Commission Bill.

It is ACT's opinion that this bill should not proceed any further as this bill will not fix or even improve the issues that the Government was trying to address. In fact, this bill will make the situation worse.

Of the 403 written submissions and 96 oral submissions heard by the select committee, an overwhelming 311 submitters expressed strong opposition to this bill and only 8 expressed their support. This says a lot considering many of those submitters opposed to the bill were organisations and people that have had vast experience in the sector of children and young people; this level of concern should not be ignored by the Government.

There are many concerns around the separation of monitoring, advocacy within the oversight system. This fragmentation creates a fear that it will only make the complaints process even more complicated. People will not know who to go to with their concerns when they have a complaint.

Our children and young persons are considered at higher risk; there is a genuine concern that more children, young people, and vulnerable families will fall through the cracks because of this.

There were many concerns across the whole bill regarding independence but of most significance was that the bill was viewed as not being child-focused, the very thing it should be. It appears that there is more focus on the rights of the organisations, whānau, hapū, and iwi rather than the best interests of the children and young people that the system claims it is wanting to protect.

ACT will be opposing this bill and recommends that the Government dump it and start again. We encourage the Government to actively engage with the youth and the organisations that expressed concerns when doing so, as they have advised that this bill in its current form will have major negative effects on our children, young people, and vulnerable families.

ACT says it is time the Government produces legislation that will work for our communities and act in the best interests of children and young people. It is clear, in our opinion and that of the majority of submitters, that this bill will not achieve its objectives of improving outcomes for children and young people in New Zealand.

Green Party differing view

The Green Party opposes this bill.

We share the view of submitters that the Government should withdraw the bill and work on restoring relationships with children's advocates and Te Tiriti partners while they wait for the final report of the Royal Commission into Abuse in State Care. The Royal Commission into Abuse in State and Faith-Based Care offers Aotearoa an opportunity to acknowledge and provide redress for generations of harm.

It also, just as importantly, offers us the opportunity to learn lessons that will prevent the repetition of painful mistakes.

Introducing this legislation before the Commission releases its final report sends a message to survivors that the Government is carrying on regardless. It was described by the Royal Commission Forum as a deliberate attempt to pre-empt the Commission, and is a backwards step masquerading as progress. This is not what healing or reconciliation looks like.

It is rare to consider a bill that has so little community support, and it is particularly disturbing to see so much opposition to a proposal that purports to increase the monitoring of, and advocacy for, the wellbeing of children in care.

This bill has not been developed in partnership with Māori and does not reflect the Crown's obligations under Te Tiriti o Waitangi. The Waitangi Tribunal inquiry He Pāharakeke, he Rito Whakakīkinga Whāruarua found the significant disparity between the number of tamariki Māori and non-Māori being taken into care, acknowledged by the Crown, was a result of the Crown's intrusion into the rangatira of Māori over their kāinga. The Green Party believes this bill reinforces that intrusion and is therefore unlikely to help redress the harm to Māori.

Waikato Tainui in their submission told us clearly that the Independent Children's Monitor would further erode trust with whānau and said that this bill holds no place for the Tiriti partner and that it increases government monitoring of iwi. The Māori Women's Welfare league further added that a shopping list is not how you give effect to Te Tiriti, and that this bill does not give true recognition to Te Tiriti. The Hon Dame Tariana Turia, Dame Areta Koopu, Dame Iritana Tawhiwhirangi, Merepeka Raukawa-Tait and Lady Tueriti Moxon in their combined submission observed that this bill relegates Māori to provider level, and effectively maintains a system that is destructive.

Thirty-four agencies representing the children's sector including VOYCE Whakarongo Mai, representing the voices of care-experienced young people, have asked that this bill be paused. They expressed particular concern at the lack of engagement in the development of this bill, and the significant variation from previous proposals. They felt "this bill weakens the Children's Commissioner, undermines the independent oversight of Oranga Tamariki and fails to consider children and young people's perspectives ... In our view, the oversight framework established by the bill is unnecessarily complicated. It is not child-friendly and more focused on systems and monitoring than children's experiences and outcomes." The Green Party share these views.

While we are open to the idea of specialist Children's Commissioners adding focus to the work of the Commission, and welcome the restoration of the requirement for a named Children's Commissioner, we do not believe this compensates children for the removal of functions from the Commission. The Green Party shares the views of submitters who stated that this looks like a punishment for effective advocacy and creates a chilling effect on similar agencies with advocacy roles.

The stated rationale for removing monitoring functions from the Office of the Children's Commissioner (OCC) is a conflict between monitoring and advocacy and that the combined role would just be too large. Most submitters believed the opposite to be true. As evidence they noted OCC was set up with these functions and despite funding restraints has performed relatively well, raising the alarm over systemic failures and gaining the trust of child advocates and Māori. Further, several overseas jurisdictions combine monitoring and advocacy, as does the Parliamentary Commissioner for the Environment and Mental Health and Wellbeing Commission established by this Government in 2020. The Green Party agrees that the rationale does not appear to stand up to scrutiny and this in itself undermines trust.

We are told the "Independent Children's Monitor" will be independent of Oranga Tamariki and therefore concerns about interference are unfounded. This argument ignores the fact monitoring will be less independent than it is now. Jonathan Boston, Professor of Public Policy, described the Independent Children's Monitor as independent in name only and pointed out a departmental agency is the least independent model available. The Green Party agrees with VOYCE Whakarongo Mai that "this is a step backwards".

National Party differing view

"Take care of our children. Take care of what they hear, take care of what they see, take care of what they feel. For how the children grow, so will be the shape of Aotearoa." — Dame Whina Cooper

The National Party recognises that Oranga Tamariki—the Ministry for Children as a government department has some significant systems and practice issues to address in relation to its responsibility, accountability, transparency, and operation of New Zealand's state child welfare, care, and protection system.

The Oversight of the Oranga Tamariki Systems (OOTS) Bill purports to improve outcomes for children, young persons, and whānau in Aotearoa New Zealand by strengthening the independent monitoring and complaints oversight of the Oranga Tamariki system and advocacy for children's issues in general.

The Labour Government's Minister for Children considers that establishing a new Independent Children's Monitor (established in July 2018 long before the introduction of this bill); increasing and expanding the complaints investigation powers (and resources) of the Office of the Ombudsman; and disestablishing the very effective Office of the Children's Commission (depleting/diminishing the Children's Commissioner's function and powers from monitoring, investigation, and advocacy) to be replaced by a Children's Commission and Board.

Select Committee – submitters into submission

The OOTS Bill was referred to select committee on 16 November 2021. Initially, the bill had a truncated timeframe. Although the committee opened for submissions on

17 November, the press release that made the public aware of the opening of submissions was sent on 22 December 2021 and submissions closed on 26 January 2022.

A total of 403 submissions were received. Only 8 are in support of the bill and 311 expressly opposed to the bill. (Eighty-four did not expressly support or oppose.) Oral submissions from 96 submitters were heard again with the majority opposed to the bill. Despite the majority of submissions being in opposition to the bill, the submitters have been placed into submission by the Labour members' majority on the select committee dismissing opposition to the bill and voting in favour of the OOTS Bill.

The oversight and steer from the Government, and the Labour-led and dominated select committee members has evidenced a determined drive to deliver on this bill without hindrance or delay.

The National Party opposes the Oversight of Oranga Tamariki Systems.

The bill: its process and substantive oversights

The bill and its process has been flawed. It has lacked insight into, overlooked and side-lined the place and position, the relevance and substance of our New Zealand child's/young person's voice, visibility, and view in the bill. New Zealand children's and young person's opportunity to make representations (and recommendations to select committee) have been marginalised and minimised in process and form and finally with deliberations and determinations on the bill. The bill purports to improve outcomes for children, young people, and whānau, to strengthen independent monitoring and complaints oversight of the Oranga Tamariki system and advocacy for children's issues. Yet there is an absence of child-centric priorities placing their interests and considerations to the fore in the OOTS bill. Timeframes and systems remain focussed on bureaucratic and adult priorities whilst displacing child-centric interests and concepts.

Royal Commission of Inquiry into Abuse in Care pending

The National Party is also cognisant of the ongoing Royal Commission of Inquiry into Abuse in Care (RCI) which was announced in February 2018 and is ongoing. Its final report and recommendations are due in June 2023.

The Royal Commission's vision is "Transforming the way we, as a nation, care for children, young people and vulnerable adults in our communities." In August 2020 the RCI announced the Investigation of Children in State Residential Care (ICSRC) as 1 of its 8 investigations. The ICSRC is into (a) children's homes and institutions providing care and protection residential facilities for children and young people, including social welfare and family homes; (b) institutions that provided remand or secure facilities as well as care and protection residential and/or training facilities for children and young people; and (c) residential programmes or facilities provided by third parties.

The National Party anticipates and considers that the RCI full and final findings and recommendations will be directly relevant to any legislative and policy adjustments proposed for the improvement to New Zealand's child welfare, care, and protection

system. The RCI is to assess and make recommendations on any gaps in legislation, policy, rules, standards, and practices that require change to prevent and respond to abuse of children and young people in State residential care. The National Party disagrees with the select committee Labour Party members that an earlier interim (and incomplete) report of the RCI addresses the necessary and relevant concerns for improvement to Oranga Tamariki—the Ministry for Children.

National has called for and maintains that the Government halt its legislative and policy design, reforms, and progression on the Oversight of the Oranga Tamariki System Bill until the completion, conclusion, full and final findings and recommendations from the Royal Commission of Inquiry into Abuse in Care are given in June 2023. This is a prudent and responsible position to take. This position is not supported by the select committee Labour Party majority.

National Party—a child-centred position

The National Party advocates and continues to advocate for centring and positioning the placement of our New Zealand children and young people at the heart and “front of mind” in the legislative and policy design and framework of child welfare, care, and protection systems, organisations, and delivery. Our New Zealand children’s care and protection, safety, and security must be paramount. Therefore any legislative (and policy) change must be comprehensively constructed with robust rigour to give certainty that children in Oranga Tamariki state care must be, and are, safe and secure. This bill has faltered at the first footsteps in both process and content design of the OOTS bill. Floored by the flaws in this bill, the VOYCE (Voices of the Young Care Experienced) for children and young people were given limited to little ground and traction for their cases and concerns to be accommodated—a voice, view, and visibility expressing opposition to the OOTS bill and recommending the OOTS bill not progress until at least the conclusion of the Royal Commission of Inquiry into Abuse in Care and that the only reliable and reputable voice to advocate, investigate, and monitor state systems, as it impacts our New Zealand children and young people, is the Children’s Commissioner.

Concluding comments

The OOTS Bill is a major oversight of the children and young person’s voice, of the Children’s Commissioner submissions, the full and final report and recommendations of the Royal Commission of Inquiry into Abuse in Care, and of the National Party’s concerns challenging the inconsistencies of heeding child-centric concerns and issues with the fragmented and disconnected three tier (separate and separated) entities designed for monitoring (Independent Children’s Monitor, ICM), complaints investigation (Office of the Ombudsman) and advocacy (Office of the Children’s Commission to be replaced by a Commission and Board). The bill attempts to band-aid an internal dysfunctional, perplexing, and perplexed (flawed) child welfare system of culture and practices with the creation of an “external” monitor (ICM) which is not independent of government (positioned within the Education Review Office); additional legislating, empowering, and enhanced resourcing to an external complaint

investigation system (the Office of the Ombudsman) which already has legislative powers to investigate Oranga Tamariki; and dismantling the very functional and effective independent Office of the Children's Commission depriving it of the monitoring, investigative role, reducing the Office of the Children's Commission and Children's Commissioner role to 1 of 6 board members on a Commission. The increased bureaucratic external "oversight" institutions and mechanisms attempt to address "internal" Oranga Tamariki functions/dysfunctions (of practice, values, culture, accountabilities, and service delivery which have adversely impacted on children, young people, family/whānau, support systems, hapū, and iwi). The overlay of the proposed three entity bureaucracy oversight model is in effect an external band-aid to the "internal" management, public sector and professional sector (human resources, social work, legal professional associations) performance, auditing, and disciplinary accountabilities and standards which are all issues requiring experienced, robust, and reputable chief executive leadership and intervention. The National Party is not convinced, nor are the majority of submitters, that the OOTS Bill and its newly proposed functions, powers is the solution.

The bill's purpose and intent is to improve the Oranga Tamariki care and protection system. The bill is inherently flawed. It is anticipated that the bill will not improve Oranga Tamariki's efficacy of "internal" systems of practice, implementation, and delivery to be more child-centric, focussed, and timely that will place the child's interests before all other government and adult centred interests.

It was evidenced from the outset that the select committee Labour Government members have worked to progress this bill through irrespective of the strong and overwhelming public resistance and political opposition to it.

The Government's solution to its intent and "oversight" systems of detecting, responding to, and addressing flaws and faults in New Zealand's child welfare system and improving the Oranga Tamariki system with an oversight, review, and monitor system, is to increase and intensify bureaucratic institutions effectively band-aiding the internal dysfunctions of Oranga Tamariki management, social and legal practice, systems, procedures, cultures, and accountabilities.

In summary, the following are a few of the OOTS bill process, form and substance flaws:

- The select committee public consultation expedited truncated process has compromised quantitative and qualitative engagement for multiple sectors, especially young care-experienced people from having input.
- The timing of submissions over the Christmas holiday break meant that many organisations and individuals would not have known that this process was underway and therefore did not participate.
- The OOTS Bill is not child-centric and is not designed from what children want and need to be heard, listened to, acknowledged, and feel safe (emotionally, psychologically, physically, and as children).

- The fragmentation of the monitoring, investigation, and advocacy role held by the Office of the Children's Commissioner into three separate entities and functions will compromise efficacies and efficiencies of cost, coordination, competencies, capabilities, capacities, compliance, consistencies and continuity and increase risk to the welfare, care and protection of children/young people. Complexities of three different and disconnected agencies/entities and functions will not facilitate public accessibility, efficiency, efficacy, and confidence.
- The "oversight" system is intended to care for and protect vulnerable children; therefore, there is a greater need to manage and mitigate the risks, and to ensure greater scrutiny and transparency.
- The Independent Children's Monitor's lack of independence (positioned within the Education Review Office) and lack of enforcement powers as an "external" monitor to Oranga Tamariki and will remain as an external oversight to what are internal and internalised process complexities within Oranga Tamariki.
- Independent Children's Monitor does not yet have the public's trust and confidence.
- The Office of the Children's Commissioner is a well-known, established and proven role that has the trust and confidence of the public for monitoring, and investigation of complaints and advocacy.
- Systems design remedies and flaws will not be supplemented and improved singularly by additional resourcing.
- The Office of the Children's Commissioner's role and office would be better placed to undertake the "oversight" (monitoring, investigation and advocacy as it has always done) and simply needs additional resourcing.
- The Office of the Children's Commissioner is child-centric, is experienced, is trusted, is respected. Yet the Office of the Children's Commissioner is being disestablished and, with a replacement Commission, the Children's Commissioner is being disempowered.
- Submitters are predominantly and by majority opposed to the OOTS bill.
- Insert a review clause to ensure Oranga Tamariki has expedited the changes and those changes are effective.
- Measure effectiveness of changes.

The National Party acknowledges the review work and recommendations of the Beattie Report (Sandi Beattie QSO) August 2018 to strengthen current systems of independent oversight particularly in relation to the Oranga Tamariki system. Notably the Beattie Report recommendations, in relation to the configuration of the OCC role, have been ignored in the design of the OOTS legislation.

The National Party opposes the OOTS Bill. The bill is unlikely to better serve and improve "best interests" outcomes for the welfare, care, and protection of New Zealand children and young people in state care.

Appendix

Committee process

The Oversight of Oranga Tamariki System and Children and Young People's Commission Bill was referred to the committee on 16 November 2021.

The closing date for submissions on the bill was 26 January 2022. We received and considered 403 submissions from interested groups and individuals. Of these submitters, eight expressly supported the bill, 311 expressly opposed the bill, and the remainder did not expressly support or oppose the bill. We heard oral evidence from 96 submitters at hearings in Wellington and via videoconference.

We received advice on the bill from the Ministry of Social Development. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

Angie Warren-Clark (Chairperson)

Glen Bennett

Karen Chhour

Dr Emily Henderson

Anahila Kanongata'a-Suisuiki

Ricardo Menéndez March

Terisa Ngobi

Maureen Pugh

Hon Louise Upston

Harete Hipango and Jan Logie also participated in our consideration of this bill.

**Oversight of Oranga Tamariki System and Children
and Young People's Commission Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Carmel Sepuloni

Oversight of Oranga Tamariki System and Children and Young People’s Commission Bill

Government Bill

Contents

	Page
1 Title	6
2 Commencement	7
Part 1	
Preliminary provisions	
3 Overview	7
4 Purpose of this Act	8
5 Principles	9
6 Treaty of Waitangi (Tiriti o Waitangi) <u>Tiriti o Waitangi/Treaty of Waitangi</u>	9
7 Common duties	10
8 Interpretation	11
9 Meaning of Oranga Tamariki system	13
10 Transitional, savings, and related provisions	14
11 Act binds the Crown	14
Part 2	
Oversight of Oranga Tamariki system	
Subpart 1—Monitoring of Oranga Tamariki system	
<i>Independent Monitor of Oranga Tamariki System</i>	
12 Independent Monitor of Oranga Tamariki System <u>established</u>	14
<i>Monitor’s objectives, monitoring function, duties, and powers</i>	
13 Monitor’s objectives	14
14 Monitoring function	15
15 Limit on Ministers’ powers in relation to Monitor	16

**Oversight of Oranga Tamariki System and Children
and Young People’s Commission Bill**

16	Tools and monitoring approaches	16
16A	<u>Duty to act independently</u>	<u>16</u>
	<i>Māori Advisory Group</i>	
17	Māori Advisory Group	17
18	Collaboration with Māori Advisory Group	17
	<i>Arrangements with iwi hapū, iwi, and Māori organisations</i>	
19	Arrangements with iwi hapū, iwi, and Māori organisations	17
	<i>Code of ethics</i>	
20	Monitor must have code of ethics relating to engagement	17
	<i>Reports and reviews</i>	
21	State of Oranga Tamariki System report	18
22	Annual report on compliance with national care standards regulations	18
23	Annual report on outcomes for Māori children and young people and their whānau	18
24	Requests for reviews	18
25	Reviews on Monitor’s own initiative	19
26	Comments on Monitor’s draft findings or draft report	19
27	Final reports	19
28	Final reports to be presented to House of Representatives	19
29	Responses to final reports	20
30	Publication of final reports and responses	20
31	Duty to protect individuals’ privacy in relation to reports	21
	<i>Power of entry for monitoring purposes</i>	
32	Authorisation of staff	21
33	Power to enter premises	22
34	Notice of entry	22
35	Limits on power of entry	22
	Subpart 2—Complaints oversight by Ombudsmen	
36	Purpose of this subpart	23
37	Application of Act to Ombudsmen	23
38	Duties of Ombudsman in relation to complaints and investigations	23
39	Guidance relating to complaints and systems improvement	24
40	Preliminary inquiries	24
41	Information to be proactively provided to Ombudsman	24
	<i>Arrangements with iwi hapū, iwi, and Māori organisations</i>	
42	Arrangements with iwi hapū, iwi, and Māori organisations	25

Part 3

Information provisions and other matters

Subpart 1—Information provisions

43	Purpose for which information to be collected, used, or disclosed	26
	<i>Collection of information</i>	
44	Engagement by Monitor	26
45	Monitor's power to require information	26
46	Consent required to collect information from child or young person	27
47	Duty of caregiver to facilitate access to child or young person without undue delay	27
	<i>Disclosure of information</i>	
48	Disclosure of information	27
	<i>Monitor's information rules</i>	
49	Monitor's information rules	28
50	Content of information rules	29
	<i>Sharing of information</i>	
51	Sharing of information between Monitor and Ombudsman	29
<u>51A</u>	<u>Disclosure of information by Ombudsman to appropriate agency or person</u>	<u>30</u>
	Subpart 2—Other matters	
	<i>Reports of interference or non-compliance</i>	
52	Monitor may report interference or non-compliance	30
	<i>No power for Monitor to review courts or tribunals</i>	
53	No power for Monitor to review courts or tribunals	31
	<i>Referrals</i>	
54	Referrals of matters	31
	<i>Miscellaneous</i>	
55	Protection from personal liability	32
56	Regulations	32
57	Review of Act	34

Part 4

Amendments to other legislation

Subpart 1—Amendments to Acts

Amendments to Official Information Act 1982

58	Principal Act	34
59	Section 2 amended (Interpretation)	35

**Oversight of Oranga Tamariki System and Children
and Young People’s Commission Bill**

Amendments to Ombudsmen Act 1975

60	Principal Act	35
61	Section 15 amended (House of Representatives may make rules for guidance of Ombudsmen)	35
62	Schedule 1 amended	36

Amendments to Oranga Tamariki Act 1989

63	Principal Act	36
64	Section 2 amended (Interpretation)	36
65	Section 7 amended (Duties of chief executive)	36
66	Section 47 amended (Report to be furnished to Commissioner where child or young person released before required to be brought before court)	36
67	Section 445E amended (Limit on proceedings)	37
68	Section 447 amended (Regulations)	37
69	Section 447A repealed (Minister to appoint independent persons to monitor compliance with prescribed standard of care)	37
70	Schedule 1AA amended	37

Subpart 2—Amendments to secondary legislation

Amendments to Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018

71	Principal regulations	37
72	Regulation 5 amended (Interpretation)	37
73	Regulations 77 to 85 and cross-heading revoked	38
74	Regulation 86 amended (Self-monitoring)	38
75	Regulation 87 amended (Reporting to the Minister and independent monitor on results of self-monitoring)	38

Amendment to Oranga Tamariki (Residential Care) Regulations 1996

76	Principal regulations	38
77	Regulation 31 amended (Functions and duties of grievance panels)	38

Amendments to Family Court Rules 2002

78	Principal rules	38
79	Rule 427 amended (Access to documents and court files during first access period)	38
<u>79</u>	<u>Rule 427 amended (Access to documents and court files during first access period)</u>	<u>39</u>

Amendment to Ombudsmen Rules 1989

80	Principal rules	39
81	Rule 2 amended (Power to publish reports)	39

Part 5
Children and Young People's Commission

Subpart 1—Preliminary provisions

82	Overview	39
83	Purpose of this Part	39
84	Principles	40
85	<u>Treaty of Waitangi (Tiriti o Waitangi)</u> <u>Tiriti o Waitangi/Treaty of Waitangi</u>	40
86	Interpretation	41
87	Children's Convention	42
88	Transitional, savings, and related provisions	42
89	Part binds the Crown	42

Subpart 2—Children and Young People's Commission

90	Children and Young People's Commission established	43
91	Commission's board	43
92	Experience and knowledge of board members	43
93	Recommendation and endorsement of board members	43
94	Nominations panel	44
95	Appointment of Judge to Commission	44
96	Duties of board	44
97	Independence of Commission	45
98	Exemption from income tax	45

Commission's functions, duties, and powers

99	Promoting <u>Function relating to promoting</u> interests and well-being of children and young people	45
100	Promoting <u>Function relating to promoting</u> and advancing rights of children and young people	46
101	Encouraging <u>Function relating to encouraging</u> children's and young people's participation and voices	46
102	Common duties	47
103	Additional functions, duties, or powers	48
104	Commission must have regard to rights or interests and welfare of children	48
105	Commission must not make adverse comment unless opportunity to be heard is given	48

Code of ethics

106	Commission's code of ethics	48
-----	-----------------------------	----

Subpart 3—Inquiries and other matters

Provisions relating to inquiries by Commission

107	Special powers to call for information or documents	49
108	Compliance with section 107	49

Oversight of Oranga Tamariki System and Children and Young People’s Commission Bill		
cl 1		
109	Commission and staff must maintain secrecy	50
110	Procedure for inquiries	50
	<i>Information rules</i>	
111	Information rules	51
112	Content of information rules	51
	<i>Sharing of information</i>	
113	Sharing of information with Monitor and Ombudsman	51
	<i>Reports of interference or non-compliance</i>	
114	Commission may report interference or non-compliance	52
	<i>Referrals</i>	
115	Referral of matters	53
	<i>Miscellaneous</i>	
116	Proceedings privileged	54
117	Regulations	55
118	Review of Part	55
	Subpart 4—Amendments to other legislation and repeal	
	<i>Amendment to Oranga Tamariki (Residential Care) Regulations 1996</i>	
119	Principal regulations	56
120	Schedule amended	56
	<i>Consequential amendments and repeal</i>	
121	Consequential amendments	56
122	Repeal of Children’s Commissioner Act 2003	56
	Schedule 1	57
	Transitional, savings, and related provisions	
	Schedule 2	58
	Transitional, savings, and related provisions	
	Schedule 3	62
	United Nations Convention on the Rights of the Child	
	Schedule 4	82
	Consequential amendments	

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Oversight of Oranga Tamariki System and Children and Young People’s Commission Act **2021**.

2 Commencement

~~This Act comes into force on the day after the date on which it receives the Royal assent.~~

- (1) This Act comes into force on the earlier of the following:
 - (a) a date appointed by the Governor-General by Order in Council: 5
 - (b) **1 July 2023.**
- (2) An order made under **subsection (1)(a)** is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Part 1 Preliminary provisions 10

3 Overview

- (1) **Part 1** states the purpose of this Act and sets out other preliminary provisions.
- (2) **Part 2** provides for oversight of the Oranga Tamariki system by the Independent Monitor of the Oranga Tamariki System (the **Monitor**) and for complaints and investigation oversight by Ombudsmen, and contains provisions,— 15
 - (a) in **subpart 1**,—
 - (i) establishing the Monitor:
 - (ii) stating the objectives of the Monitor and setting out their monitoring function:
 - (iii) requiring the Monitor to appoint a Māori Advisory Group: 20
 - (iv) requiring the Monitor to make reasonable efforts to enter into arrangements with iwi hapū, iwi, and Māori organisations:
 - (v) requiring the Monitor to have a code of ethics relating to its engagement with other people:
 - (vi) requiring the Monitor to prepare reports on the state of the Oranga Tamariki system, compliance with national care standards regulations, and outcomes for Māori children and young people and their whānau: 25
 - (vii) providing a power of entry to authorised employees and staff of the Monitor for the purpose of observing practice and carrying out monitoring of the Oranga Tamariki system: 30
 - (b) in **subpart 2**, providing an Ombudsman with additional duties and powers when dealing with matters that fall under the Ombudsmen Act 1975 and relate to services or support delivered by Oranga Tamariki and care or custody providers. 35
- (3) **Part 3** deals with information and other miscellaneous matters and contains provisions,—

- (a) in **subpart 1**,—
- (i) relating to collection, use, and disclosure of information by the Monitor under this Act:
 - (ii) requiring the Monitor to make information rules relating to the collection, use, and disclosure of information by the Monitor: 5
 - (iii) providing for the sharing of information under this Act between the Monitor and Ombudsmen:
 - (iv) providing for the disclosure of information by Ombudsmen to appropriate agencies or persons:
- (b) in **subpart 2**,— 10
- (i) allowing the Monitor to report non-compliance or interference with the performance of their monitoring function to chief executives of departments or agencies and the Minister:
 - (ii) providing that the Monitor may not review any decision or recommendation, or any act or omission, of a court or tribunal when performing their monitoring function: 15
 - (iii) allowing the Monitor to refer matters to specified persons:
 - (iv) protecting the Monitor and the Monitor's staff from personal liability:
 - (v) providing for the making of regulations under the Act: 20
 - (vi) providing for a review of this Act no later than 5 years after its commencement.
- (4) **Part 4** makes related amendments to other legislation.
- (5) This section is only a guide to the general scheme and effect of this Act.
- 4 Purpose of this Act** 25
- The purpose of this Act is to uphold the rights and interests and improve the well-being of children and young people who are receiving, or have previously received, services or support through the Oranga Tamariki system and promote the effectiveness of that system by—
- (a) setting out the functions, duties, and powers of the Monitor; and 30
 - (b) giving Ombudsmen additional duties and powers when dealing with matters that may fall under the Ombudsmen Act 1975 that relate to services or support delivered by—
 - (i) Oranga Tamariki:
 - (ii) care or custody providers; and 35
 - (c) creating a framework for the Monitor and Ombudsmen to work together in a comprehensive, cohesive, and efficient way and to consult one another and share information, as appropriate.

5 Principles

A person who performs a function or duty or exercises a power under this Act must have regard to—

- (a) the well-being, interests, and voices of children, young people, and their families and whānau: 5
- (b) the need to respect and uphold the rights of children and young people in New Zealand law (including their rights in New Zealand law that are derived from the United Nations Convention on the Rights of the Child or the United Nations Convention on the Rights of Persons with Disabilities): 10
- (c) the importance of relationships and connections of children and young people with their families, whānau, hapū, iwi, and communities.

6 ~~Treaty of Waitangi (Tiriti o Waitangi)~~ Tiriti o Waitangi/Treaty of Waitangi

In order to recognise and respect the Crown's responsibility to give effect to ~~the Treaty of Waitangi (te Tiriti o Waitangi) te Tiriti o Waitangi/the Treaty of Waitangi~~, and to improve the well-being of children and young people ~~in~~ within (without limitation) the context of their whānau, hapū, iwi, and communities,— 15

- (a) **section 13(2)** requires the Monitor when developing monitoring priorities, work programmes, and monitoring approaches to ensure that they have as a key priority the need to support improved outcomes for Māori children and young people: 20
- (b) **section 14(2)(c)** requires the Monitor to assess the outcomes for children, young people, families, and whānau who receive services or support through the Oranga Tamariki system, and the change in outcomes over time, with particular regard to Māori children and young people and their whānau: 25
- (c) **section 16(2)(b) and (c)** requires the Monitor to ensure that their tools and monitoring approaches operate in a way that recognises the importance of children's and young people's families, whānau, hapū, iwi, and communities and incorporate a tikanga Māori approach: 30
- (d) **section 17** requires the Monitor to appoint a Māori Advisory Group:
- (e) **section 18** provides that the Monitor must collaborate with, and have regard to the views of, the Māori Advisory Group when the Monitor is developing their priorities, work programmes, and monitoring approaches: 35
- (f) **section 19** requires the Monitor to make reasonable efforts to develop arrangements with ~~iwi~~ hapū, iwi, and Māori organisations for the purposes of providing opportunities to, and inviting proposals on how to, improve oversight of the Oranga Tamariki system and sharing information under this Act: 40

- (g) **section 23** requires the Monitor to prepare an annual report on the performance of the Oranga Tamariki system in respect of outcomes being achieved for Māori children and young people and their whānau:
- (h) **section 38** provides that when dealing with a complaint or an investigation involving Oranga Tamariki, or a care or custody provider, an Ombudsman must— 5
- (i) operate in a way that recognises the importance of a child's or young person's whānau, hapū, iwi, and culture, including providing for whānau, hapū, and iwi to participate in the complaints or investigations processes, as appropriate; and 10
- (ii) ensure that their complaints and investigations processes are visible and accessible to children and young people and their whānau, hapū, or iwi, or an individual or organisation supporting them, and to incorporate a tikanga Māori approach:
- (i) **section 42** provides that the Chief Ombudsman must make reasonable efforts to develop arrangements with ~~iwi~~ hapū, iwi, and Māori organisations for the purposes of supporting Ombudsmen in carrying out their duties and providing for the sharing of information under this Act: 15
- (j) **section 49(4)(b)(i)** requires the Monitor to consult ~~iwi~~ hapū, iwi, and Māori organisations with whom the Monitor has entered into arrangements under **section 19** when making information rules relating to the collection, use, and disclosure of information by the Monitor: 20
- (k) **section 57(2)(b)(i)** requires an independent review of the operation of the Monitor under this Act to consider whether they are working efficiently and effectively with ~~iwi~~ hapū, iwi, and Māori organisations. 25
- 7 Common duties**
- (1) This section applies to the Monitor and ~~an Ombudsman~~ Ombudsmen when they are carrying out work relating to children or young people who are receiving, or have previously received, services or support through the Oranga Tamariki system. 30
- (2) The common duties of the Monitor and Ombudsmen ~~are~~ include—
- (a) to work together in a comprehensive, cohesive, and efficient way with each other, including by consulting and co-ordinating with each other and sharing information, as appropriate:
- (b) to minimise the burden and potential risk of harm to individuals when the Monitor or an Ombudsman is performing or exercising a function, duty, or power under this Act: 35
- (c) to minimise the burden on agencies when they are gathering information under this Act and carrying out preliminary inquiries, investigations, or reviews: 40

- (d) to co-ordinate communications to individuals, agencies, Ministers of the Crown, and the public, as appropriate.

8 Interpretation

- (1) In this Act, unless the context otherwise requires,—

- agency**— 5
- (a) means any person or body of persons, whether corporate or unincorporate, and whether in the public sector or the private sector; and
- (b) includes an individual delivering services or support to children and young people through the Oranga Tamariki system independently of any other agency; and 10
- (c) to avoid doubt, includes a department; but
- (d) does not include—
- (i) the Sovereign; or
- (ii) the Governor-General or the Administrator of the Government; or
- (iii) the House of Representatives; or 15
- (iv) a member of Parliament in their official capacity; or
- (v) the Parliamentary Service Commission; or
- (vi) the Parliamentary Service, except in relation to personal information about any employee or former employee of that agency in their capacity as an employee; or 20
- (vii) in relation to its judicial functions, a court; or
- (viii) in relation to its judicial functions, a tribunal; or
- (ix) an Ombudsman; or
- (x) a commission of inquiry, board of inquiry, court of inquiry, or committee of inquiry appointed, pursuant to, and not by, any provision of an Act, to inquire into a specified matter; or 25
- (xi) in relation to its news activities, any news entity; or
- (xii) an inquiry to which section 6 of the Inquiries Act 2013 applies; or
- (xiii) an individual (except an individual referred to in **paragraph (b)**)
- approved provider** means an organisation or a body approved under section 396 or 403 of the Oranga Tamariki Act 1989 30
- ~~**care or custody provider** means an organisation or a body approved under section 396 of the Oranga Tamariki Act 1989~~
- care or custody provider** means any of the following, in their role as such an organisation or body under the Oranga Tamariki Act 1989: 35
- (a) an organisation into whose care any child or young person is placed under section 362 of that Act:

- (b) an organisation that operates a residence established under section 364 of that Act:
- (c) an organisation or body approved under section 396 of that Act
- caregiver**—
- (a) means a person in whose care a child or young person is placed under section 362 of the Oranga Tamariki Act 1989; and 5
- (b) includes a whānau caregiver; but
- (c) does not include a parent or guardian of a child or young person
- chief executive of Oranga Tamariki** means the chief executive of Oranga Tamariki—Ministry for Children 10
- Children and Young People's Commission** means the Children and Young People's Commission established by **section 90** of the **Oversight of Oranga Tamariki System and Children and Young People's Commission Act 2021**
- code of ethics** means the code of ethics required by **section 20** 15
- coercive powers** means powers under the Oranga Tamariki Act 1989 that can be exercised without the consent of the individual concerned
- department** means a department within the meaning of section 5 of the Public Service Act 2020
- harm** includes physical, psychological, emotional, or sexual harm 20
- in care or custody**, in relation to a child or young person, means being subject to an order for custody or sole guardianship or to a care agreement, in favour of (or naming as the carer) the chief executive of Oranga Tamariki, an iwi social service, a cultural social service, or the director of a child and family support service 25
- Independent Monitor of the Oranga Tamariki System** or **Monitor** means the person referred to in **section 12(2)**
- Independent Monitoring Agency of the Oranga Tamariki System** or **Monitoring Agency** means the public service agency named in Schedule 2 of the Public Service Act 2020 that supports the Monitor in the performance or exercise of their functions, duties, and powers under this Act 30
- individual** means a natural person
- information rules** means rules made by the Monitor under **section 49**
- Māori Advisory Group** means the Māori Advisory Group appointed under **section 17** 35
- Minister** means the Minister or Ministers of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, are for the time being responsible for the administration of this Act

- Minister responsible for the Monitor** means the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of the Monitor
- monitoring function or functions** means all the functions of the Monitor set out in **section 14** 5
- national care standards regulations** means regulations made under the Oranga Tamariki Act 1989 that set out national care standards for children and young persons in care or custody
- news activity** has the same meaning as in section 7(1) of the Privacy Act 2020
- news entity** has the same meaning as in section 7(1) of the Privacy Act 2020 10
- Ombudsman** means an Ombudsman appointed under the Ombudsmen Act 1975
- Oranga Tamariki—Ministry for Children or Oranga Tamariki** means the department that, with the authority of the Prime Minister, is for the time being responsible for the administration of the Oranga Tamariki Act 1989 15
- Oranga Tamariki system** has the meaning given in **section 9**
- other systems** has the meaning given in **section 13(3)**
- personal information** has the same meaning as in section 7(1) of the Privacy Act 2020
- preliminary inquiry** means a preliminary inquiry made by an Ombudsman under **section 40** 20
- premises** has the meaning given in **section 32(3)**
- State of the Oranga Tamariki system report** means the report prepared under **section 21**
- tikanga Māori** means Māori customary law and practices 25
- whānau caregiver**, in relation to a child or young person, means a person (other than a parent or guardian)—
- (a) who is a member of the child's or young person's family, whānau, hapū, iwi, or family group; and
 - (b) with whom the child or young person has been placed under section 362 of the Oranga Tamariki Act 1989; and 30
 - (c) who has primary responsibility for the care of the child or young person.
- (2) In this Act, unless the context otherwise requires, a term or expression that is used but not defined, but that is defined in the Oranga Tamariki Act 1989, has the same meaning as in that Act. 35
- 9 Meaning of Oranga Tamariki system**
- (1) In this Act, unless the context otherwise requires, **Oranga Tamariki system** means the system that is responsible for—

- (a) providing services and support to children, young people, and their families and whānau under, or in connection with, the Oranga Tamariki Act 1989; and
 - (b) responding under that Act to offending (or alleged offending) by children and young people. 5
- (2) For the purposes of this Act, the Oranga Tamariki system—
- (a) applies to the delivery of services or support by agencies, or their contracted partners within the system; and
 - (b) includes (without limitation) the delivery of health, education, disability, and other services by those agencies, or contracted partners within the system. 10
- 10 Transitional, savings, and related provisions**
- The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms.
- 11 Act binds the Crown** 15
- This Act binds the Crown.

Part 2 Oversight of Oranga Tamariki system

Subpart 1—Monitoring of Oranga Tamariki system

Independent Monitor of Oranga Tamariki System 20

- 12 Independent Monitor of Oranga Tamariki System established**
- (1) This section establishes the Independent Monitor of the Oranga Tamariki System (the **Monitor**).
 - (2) The Monitor is the person appointed under the Public Service Act 2020 as the chief executive of the Independent Monitoring Agency of the Oranga Tamariki System. 25
 - (3) The Monitor must be independent of Oranga Tamariki—Ministry for Children.

Monitor's objectives, monitoring function, duties, and powers

- 13 Monitor's objectives**
- (1) The objectives of the Monitor are to carry out objective, impartial, and evidence-based monitoring, and provide advice in order to— 30
 - (a) assess the extent to which the Oranga Tamariki system and its interface with other systems support the rights, interests, and well-being of children, young people, and their families and whānau who are receiving, or

- have previously received, services or support through the Oranga Tamariki system:
- (b) assess whether the coercive powers exercised under the Oranga Tamariki Act 1989 are being exercised appropriately and consistently:
 - (c) support public trust and confidence in the Oranga Tamariki system: 5
 - (d) identify areas of high performance and areas for improvement in relation to the chief executive of Oranga Tamariki and approved providers to encourage them to work towards continuous improvement:
 - (e) support an understanding of specific aspects of the Oranga Tamariki system and its interface with other systems: 10
 - (f) support informed decision making.
- (2) When developing their monitoring priorities, work programme, and monitoring approaches, the Monitor must ensure that they have as a key priority the need to support improved outcomes for children and young people, with particular attention to the need to support improved outcomes for Māori children and young people. 15
- (3) In this section and **section 14(1)**, **other systems** means the services or support provided by agencies or their contracted partners, or the performance or exercise of statutory functions or powers,—
- (a) in relation to children or young people who— 20
 - (i) are or were the subject of a report made under section 15 of the Oranga Tamariki Act 1989; or
 - (ii) are subject to any process under Part 4 or 5 or sections 351 to 360 of the Oranga Tamariki Act 1989; and
 - (b) that aim to address the risk factors that increase the likelihood of a person's involvement in the statutory care and protection system or youth justice jurisdiction under that Act. 25
- 14 Monitoring function**
- (1) The function of the Monitor is to monitor the performance of the Oranga Tamariki system in the context of its interface with other systems. 30
- (2) For the purposes of **subsection (1)**, the function includes (without limitation)—
- (a) assessing compliance with the Oranga Tamariki Act 1989, national care standards regulations, and other regulations and standards made under that Act by the chief executive of Oranga Tamariki and approved providers: 35
 - (b) assessing the quality and impacts of service delivery, service mix, service resourcing, and ~~practise~~ practices on the experiences of children, young people, families, and whānau:

- (c) assessing outcomes for children, young people, families, and whānau, and iwi who receive services or support through the Oranga Tamariki system, and changes in outcomes over time, with particular regard to Māori children and young people and their whānau.
- 15 ~~Limit on Ministers' powers in relation to Monitor~~** 5
- ~~A Minister of the Crown must not direct the Monitor to stop carrying out an activity, or prevent the Monitor from carrying out an activity, that the Monitor considers is necessary to enable them to perform or exercise their functions, duties, or powers under this Act.~~
- 16 Tools and monitoring approaches** 10
- (1) The Monitor must develop tools and monitoring approaches to support their monitoring and reporting under this Act.
- (2) The Monitor must ensure that their tools and monitoring approaches—
- (a) include the sources of information and key indicators of performance that will be used to assess compliance, quality of care, and changes over time; and 15
- (b) operate in a way that recognises the importance of children's and young people's families, whānau, hapū, iwi, and communities and their culture; and
- (c) incorporate a tikanga Māori approach. 20
- (3) The tools and monitoring approaches must have regard to systems for continuous improvement, self-monitoring, and assurance.
- (4) In developing their tools and monitoring approaches, the Monitor must consult—
- (a) the chief executive of Oranga Tamariki: 25
- (b) ~~persons~~ the chief executive of services approved under section 396 of the Oranga Tamariki Act 1989, who ~~have~~ has custody of children or young people:
- (c) the Commissioner of Police.
- 16A Duty to act independently** 30
- (1) The Monitor must act independently when—
- (a) carrying out their monitoring function under **section 14**; and
- (b) developing tools and monitoring approaches under **section 16**.
- (2) A Minister of the Crown must not direct the Monitor to stop carrying out an activity, or prevent the Monitor from carrying out an activity, that the Monitor considers is necessary to enable them to perform or exercise their functions, duties, or powers under this Act. 35

Māori Advisory Group

17 Māori Advisory Group

- (1) The Monitor must appoint a Māori Advisory Group in order to support meaningful and effective engagement with Māori.
- (1A) The Māori Advisory Group consists of not fewer than 3, and not more than 6, members. 5
- (2) A person must not be appointed as a member of the ~~group~~ Māori Advisory Group unless, in the opinion of the Monitor, the person is qualified for appointment, having regard to the person's—
- (a) experience and knowledge of children's and young people's rights and issues in the context of the Oranga Tamariki system; and 10
- (b) experience and knowledge of tikanga Māori.

18 Collaboration with Māori Advisory Group

- (1) The Monitor must collaborate with, and have regard to the views of, the Māori Advisory Group when the Monitor is developing their priorities, work programmes, and monitoring approaches. 15
- (2) The Monitor must demonstrate annually on an Internet site maintained by or on behalf of the Monitor how they have had regard to the views of the Māori Advisory Group.

Arrangements with ~~iwi~~ hapū, iwi, and Māori organisations 20

19 Arrangements with ~~iwi~~ hapū, iwi, and Māori organisations

- (1) The Monitor must make reasonable efforts to develop arrangements with ~~iwi~~ hapū, iwi, and Māori organisations for the purposes of—
- (a) providing opportunities to, and inviting proposals on how to, improve oversight of the Oranga Tamariki system: 25
- (b) sharing information under this Act.
- (2) Nothing in **subsection (1)** limits or affects any other ~~enactment~~ legislation that applies to the sharing of information.

Code of ethics

20 Monitor must have code of ethics relating to engagement 30

- (1) The Monitor must have a code of ethics relating to engagement with other persons carried out by the Monitor and the Monitor's staff in performance of the monitoring function under this Act.
- (2) The purposes of the code of ethics are to—
- (a) ensure safe (including culturally safe) and ethical engagement: 35

- (b) provide assurance that the voices of individuals, particularly children and young people, are heard:
 - (c) provide certainty in engagement:
 - (d) minimise the burden of engagement.
 - (3) The code of ethics must— 5
 - (a) include the information prescribed by regulations made under **section 56**; and
 - (b) be reviewed by the Monitor at intervals not exceeding 5 years or any shorter intervals prescribed by regulations made under **section 56**.
 - (4) When developing the code of ethics, or any amendments to the code of ethics, the Monitor must consult the persons prescribed by regulations made under **section 56**. 10
 - (5) The Monitor must publish the code of ethics on an Internet site maintained by or on behalf of the Monitor.
- Reports and reviews* 15
- 21 State of Oranga Tamariki System report**
- The Monitor must, at least once every 3 years, prepare a State of the Oranga Tamariki System report.
- 22 Annual report on compliance with national care standards regulations**
- (1) The Monitor must prepare an annual report on compliance with national care standards regulations. 20
 - (2) When preparing the report, the Monitor must consider and be informed by—
 - (a) self-monitoring done under the national care standards; and
 - (b) any other information obtained in accordance with this Act.
- 23 Annual report on outcomes for Māori children and young people and their whānau** 25
- (1) The Monitor must prepare an annual report on the performance of the Oranga Tamariki system in respect of outcomes being achieved for Māori children and young people and their whānau.
 - (2) When preparing the report, the Monitor must consider and be informed by— 30
 - (a) reports published under section 7AA(5) of the Oranga Tamariki Act 1989; and
 - (b) any other information obtained in accordance with this Act.
- 24 Requests for reviews**
- (1) The Monitor must carry out a review on any topic within their monitoring function at the request of the Minister responsible for the Monitor. 35

- (2) However, a request under **subsection (1)** must not require the Monitor to stop carrying out any 1 or more of their monitoring activities currently underway or scheduled to begin in order to prioritise a review of the matter to which the request relates.
- (3) The Monitor may carry out a review on any topic within their monitoring function at the request of the chief executive of Oranga Tamariki. 5
- (4) The Monitor must prepare a final report of the results of a review carried out under this section.
- 25 Reviews on Monitor's own initiative**
- (1) The Monitor may, on their own initiative, carry out reviews of issues, themes, concerns, or areas of identified practice relating to the delivery of services or support through the Oranga Tamariki system. 10
- (2) The Monitor must prepare a final report of the results of a review carried out under this section.
- 26 Comments on Monitor's draft findings or draft report** 15
- (1) Before finalising any report prepared under this **subpart**, the Monitor must—
- (a) provide their draft findings or draft report to the chief executive of the agency that is the subject of the report; and
- (b) give the chief executive a reasonable opportunity to comment on the draft findings or draft report. 20
- (2) Despite anything in this **subpart**, the Monitor must not, in any report prepared under this **subpart**, make any comment that is adverse to an individual or agency if the Monitor has not given that individual or agency a reasonable opportunity to be heard.
- 27 Final reports** 25
- The Monitor must provide a copy of a final report prepared under **section 21, 22, 23, or 24** to—
- (a) the Minister responsible for the Monitor; and
- (b) the Minister responsible for the administration of the Oranga Tamariki Act 1989; and 30
- (c) the chief executive of an agency that is the subject of the report; and
- (d) Ombudsmen; and
- (e) the Children and Young People's Commission.
- 28 Final reports to be presented to House of Representatives**
- The Minister responsible for the administration of the Oranga Tamariki Act 1989 must present a copy of a final report prepared under **section 21, 22, 23,** 35

~~or 24 24, or 25~~ to the House of Representatives as soon as is reasonably practicable after receiving the report.

29 Responses to final reports

- (1) The chief executive of an agency that is the subject of any final report of the Monitor must prepare a response in writing to that report. 5
- (2) In the response, the chief executive must—
 - (a) state what the agency intends to do in response to the Monitor's findings; and
 - (b) specify the time frame in which the agency intends to make any necessary changes; and 10
 - (c) state how the agency intends to monitor the impact of those changes.
- (3) The chief executive must provide their response, ~~within the time frame prescribed by regulations made under section 56,~~ 60 working days of a final report being published under section 30, to the following:
 - (a) the Monitor: 15
 - (b) the Minister responsible for the Monitor:
 - (c) the Minister responsible for the administration of the Oranga Tamariki Act 1989.
- (4) The Minister responsible for the Monitor may, in accordance with regulations made under **section 56**, extend the time frame for providing a response if— 20
 - (a) a final report of the Monitor makes findings relevant to multiple agencies; and
 - (b) the Minister responsible for the Monitor considers that a multi-agency response is desirable.

30 Publication of final reports and responses 25

- (1) The Monitor must publish a copy of a final report prepared under **section 21, 22, 23, 24, or 25** and any response to a final report prepared under **section 29**—
 - (a) on an Internet site maintained by or on behalf of the Monitor; and
 - (b) within the time frame specified in regulations made under **section 56**. 30
- (2) If a final report or response contains information that may identify an individual, the information must be redacted or withheld from publication, unless—
 - (a) the information is of a kind referred to in **section 31(4)(a) or (b)**; and
 - (b) **section 31(5)** applies. 35
- (3) However, the exception in subsection (2) may not be relied on if release of the information may identify any child or young person who has received ser-

vices or support through the Oranga Tamariki system from an individual referred to in **section 31(4)(a) or (b)**.

31 Duty to protect individuals' privacy in relation to reports

- (1) This section applies to a report prepared by the Monitor under **section 21, 22, 23, 24(4), 25(2), or 27**. 5
- (2) The report must not contain any personal information about a child or young person or any member of their ~~family, whānau, hapū, or iwi~~ family or whānau unless the Monitor has obtained informed consent (in accordance with its code of ethics) from the relevant individual (or individuals) to include their personal information in the response with full knowledge of who will receive the response. 10
- (3) The chief executive of an agency that prepares a response to a report referred to in **subsection (1)** must not include any personal information that relates to an individual referred to in **subsection (2)**.
- (4) Unless either or both of the circumstances in **subsection (5)** apply, a report listed in **subsection (1)** and a response referred to in **subsection (3)** may not include any personal information about— 15
 - (a) an individual caregiver:
 - (b) any other individual delivering services or support to children and young people through the Oranga Tamariki system. 20
- (5) The circumstances are—
 - (a) the individual concerned consents to their personal information being in the report or response:
 - (b) the Monitor or the chief executive of the agency (as applicable) considers that the public interest in including the personal information in the report or response outweighs the individual's privacy interests. 25

Power of entry for monitoring purposes

32 Authorisation of staff

- (1) The Monitor may authorise their employees or contracted staff (an **authorised staff member**) to enter premises in accordance with this Act. 30
- (2) An authorised staff member must carry and produce when asked to do so—
 - (a) evidence of their authorisation to enter the premises; and
 - (b) evidence of their identity.
- (3) In this section and **sections 33 to 35**, **premises** means a residence or an office that is owned, managed, or contracted by Oranga Tamariki or an approved provider. 35

33 Power to enter premises

- (1) An authorised staff member may enter premises if they reasonably believe it is necessary for the purpose of—
- (a) observing practice; or
 - (b) monitoring the performance of the Oranga Tamariki system under **section 14.** 5
- (2) This section is subject to **sections 34 and 35.**

34 Notice of entry

- (1) Before entering premises under **section 33**, an authorised staff member must give written notice of the proposed entry to the person in charge of the premises. 10
- (2) The notice must—
- (a) state that the power of entry is being exercised under **section 33**; and
 - (b) state whether the authorised staff member will be entering the premises for the purpose described in **section 33(a) or (b)**, or both; and 15
 - (c) be given within a reasonable time before entry is to occur.
- (3) However, the notice need not explain—
- (a) why the authorised staff member reasonably believes entry is necessary for a purpose or purposes described in **section 33**; or
 - (b) which particular aspect of the monitoring function of the Monitor will be performed. 20

35 Limits on power of entry

- (1) An authorised staff member must not enter premises under **section 33** if—
- (a) the authorised staff member has reason to believe that entering the premises may result in a child being at risk of being harmed; or 25
 - (b) a person in charge of the premises denies entry to the premises in exceptional circumstances.
- (2) In **subsection (1)(b)**, **exceptional circumstances** means—
- (a) people within the premises are experiencing serious health concerns (for example, an outbreak of gastroenteritis); or 30
 - (b) a serious event or incident has occurred and a visit by an authorised staff member is likely to exacerbate tension or cause emotional harm to a child or young person at the premises.
- (3) A person in charge who denies entry to an authorised staff member under **subsection (1)(b)** must provide a reason in writing to the Monitor within a reasonable time before the entry is to occur. 35

Subpart 2—Complaints oversight by Ombudsmen

36 Purpose of this subpart

The purpose of this **subpart** is to provide Ombudsmen with additional duties and powers when dealing with matters that fall under the Ombudsmen Act 1975 and relate to services or support delivered by—

5

- (a) Oranga Tamariki; or
- (b) care or custody providers.

37 Application of Act to Ombudsmen

(1) The provisions specified in **subsection (2)** apply to Ombudsmen when they are dealing with matters that fall under the Ombudsmen Act 1975 and relate to services or support delivered by—

10

- (a) Oranga Tamariki; or
- (b) care or custody providers.

(2) The provisions are—

- (a) **Part 1** (preliminary provisions):
- (b) **section 38** (duties of Ombudsman in relation to complaints and investigations):
- (c) **section 51** (sharing of information between Monitor and Ombudsman):
- (ca) **section 51A** (disclosure of information by Ombudsman to appropriate agency or person):
- (d) **section 54** (referrals of matters).

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(3) Nothing in this Act limits or affects the functions, duties, and powers of Ombudsmen under the Ombudsmen Act 1975.

38 Duties of Ombudsman in relation to complaints and investigations

When dealing with a complaint or an investigation involving Oranga Tamariki or a care or custody provider, an Ombudsman must—

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- (a) operate in a way that recognises the importance of a child's or young person's family, whānau, hapū, iwi, and culture; and
- (b) ensure that the Ombudsman's complaints and investigations processes—
 - (i) are visible and accessible to children and young people and their family, whānau, hapū, and iwi, or an individual or organisation supporting them; and
 - (ii) incorporate a tikanga Māori approach; and
- (c) involve the child or young person, and their family, whānau, hapū, and iwi in their complaints or investigations processes, as appropriate.

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- 39 Guidance relating to complaints and systems improvement**
- (1) An Ombudsman may provide guidance to Oranga Tamariki and care or custody providers—
- (a) on the design of their complaints processes; and
 - (b) to support the learning and continuous improvement of those processes. 5
- (2) The Ombudsmen Act 1975 applies, with all necessary modifications, to the matters specified in **subsection (1)**.
- 40 Preliminary inquiries**
- (1) An Ombudsman may require Oranga Tamariki or a care or custody provider to provide the Ombudsman with any information they consider necessary for the purposes of carrying out preliminary inquiries. 10
- (2) The Ombudsmen Act 1975 applies, with all necessary modifications, to the power in **subsection (1)** as if it were a requirement under section 19 of that Act.
- 41 Information to be proactively provided to Ombudsman** 15
- (1) The purpose of this section is to provide an Ombudsman with access to classes of information to assist the Ombudsman when they are considering matters that fall under the Ombudsmen Act 1975 and relate to services or support delivered by—
- (a) Oranga Tamariki; or 20
 - (b) care or custody providers.
- (2) The chief executive of Oranga Tamariki or the care or custody provider must provide an Ombudsman with access to all information that is available to them in the following categories:
- (a) information relating to ~~a~~ every critical or serious incident: 25
 - (b) information on complaints made to Oranga Tamariki or the care or custody provider:
 - (c) information on trends and data that identify patterns of those complaints:
 - (d) any other class of information that the Ombudsman specifies in writing will inform their consideration of matters that relate to an agency delivering services in the Oranga Tamariki system and that may fall under the Ombudsmen Act 1975 or to assist in carrying out preliminary inquiries under **section 40**. 30
- (3) The Ombudsman may, after consulting the chief executive of Oranga Tamariki and care or custody providers, specify in writing the manner and reasonable time frame within which any information referred to in **subsection (2)(a) to (d)** must be provided. 35

- (4) For the purposes of **subsection (2)(a), critical or serious incident** includes (without limitation)—
- (a) the death of a child or young person with current or recent involvement under the Oranga Tamariki Act 1989:
 - (b) the death of an adult in recent contact with Oranga Tamariki or where the person was the victim of youth offending: 5
 - (c) the suicide or attempted suicide of a child or young person in care or custody:
 - (d) self-harm resulting in significant injury to a child or young person in care or custody or a sustained pattern of self-harm by the child or young person: 10
 - (e) allegations and substantiated findings of abuse (being actions or omissions that cause emotional, physical, or sexual harm, or constitute sexual harassment) or neglect by a staff member against a child or young person in care or custody: 15
 - (f) allegations and substantiated findings of abuse (being actions or omissions that cause emotional, physical, or sexual harm) or neglect by a caregiver against a child or young person in care or custody:
 - (g) allegations and substantiated findings of abuse (being actions or omissions that cause emotional, physical, or sexual harm) or neglect by any other person against a child or young person in care or custody: 20
 - (h) use of force against a child or young person in care or custody by a staff member of a residence ~~(as defined in section 2 of established under section 364 of the Oranga Tamariki Act 1989):~~
 - (i) an event or a situation in which imminent serious injury to or death of a child or young person in care or custody was averted: 25
 - (j) an event or a situation in a youth justice residence or facility, or involving staff of the residence or facility, in which imminent serious injury to or death of a child or young person was averted:
 - (k) a report that a child or young person is missing from their placement or has absconded from a youth justice residence or other secure care. 30

Arrangements with iwi hapū, iwi, and Māori organisations

42 Arrangements with iwi hapū, iwi, and Māori organisations

- (1) The Chief Ombudsman must make reasonable efforts to develop arrangements with iwi hapū, iwi, and Māori organisations for the purposes of— 35
- (a) supporting Ombudsmen in carrying out their duties in relation to complaints and investigations under **section 38(a) and (b)**:
 - (b) sharing information under this Act.

- (2) Nothing in **subsection (1)** limits or affects any other ~~enactment~~ legislation that applies to the sharing of information.

Part 3

Information provisions and other matters

Subpart 1—Information provisions 5

43 Purpose for which information to be collected, used, or disclosed

The Monitor may only collect, use, or disclose information under this Act—

- (a) to enable the Monitor to fulfil their objectives and (as applicable) perform or exercise their functions, duties, or powers; or
(b) as otherwise provided under this Act. 10

Collection of information

44 Engagement by Monitor

For the purpose of performing their monitoring function under this Act, the Monitor may engage directly with—

- (a) children and young people who receive services or support through the Oranga Tamariki system and the families, whānau, hapū, iwi, and communities associated with those children and young people: 15
(b) the chief executive of Oranga Tamariki, approved providers, and care-givers:
(c) relevant stakeholders, including advocacy services: 20
(d) any other individual or agency that the Monitor considers appropriate.

45 Monitor's power to require information

- (1) The Monitor may require an agency that delivers services or support to children, young people, and their family and whānau through the Oranga Tamariki system to provide them with information the Monitor considers relevant to fulfil their objectives and perform or exercise their functions, duties, or powers under this Act. 25
- (2) A requirement must—
(a) be in writing; and
(b) be made in accordance with the Monitor's code of ethics and information rules; and 30
(c) specify the date by which, and the manner in which, the information is to be provided.
- (3) An agency that is required to provide information under this section must comply with the requirement. 35

- (4) Nothing in this section limits or affects legal professional privilege.
- 46 Consent required to collect information from child or young person**
- (1) Before collecting information directly from a child or young person, the Monitor must—
- (a) comply with the requirements in the Monitor's code of ethics in respect of engaging with children and young people; and 5
 - (b) obtain informed consent from—
 - (i) the child or young person; or
 - (ii) the child or young person's caregiver, if the child or young person does not have the capacity to consent. 10
- (2) A child or young person, or (as applicable) their caregiver, may withdraw their consent to the collection of information at any time.

47 Duty of caregiver to facilitate access to child or young person without undue delay

- (1) The Monitor may, in accordance with their code of ethics, require a child's or young person's caregiver to facilitate the Monitor's access to a child or young person in their care when monitoring the performance of the Oranga Tamariki system under **section 14**. 15
- (2) A caregiver to whom **subsection (1)** applies must not unduly delay access to the child or young person if required to facilitate access under this section. 20

Disclosure of information

48 Disclosure of information

- (1) The Monitor must not disclose any information collected by the Monitor under this Act, unless 1 or more the following apply:
- (a) the information is shared for the purposes of **section 7(2)(a)**: 25
 - (b) the information is shared with *iwi hapū, iwi*, or Māori organisations in accordance with arrangements developed under **section 19(1)(b)**:
 - (c) the information is shared with an Ombudsman in accordance with **section 51**:
 - (d) the information is for a referral under **section 54**: 30
 - (e) the information is—
 - (i) available to the public under this Act; or
 - (ii) publicly available and, in the case of any personal information, it would not be unfair or unreasonable in the circumstances to disclose the information: 35
 - (f) the disclosure of the information—

- (i) is made under this Act or regulations made under **section 56**; or
- (ii) is otherwise required by or under law:
- (fa) the disclosure is permitted by **section 113** of the **Oversight of Oranga Tamariki System and Children and Young People's Commission Act 2021**: 5
- (g) the disclosure of the information is with the consent of the person—
- (i) to whom the information relates; or
- (ii) to whom the information is confidential:
- (h) the Monitor believes on reasonable grounds that the disclosure is reasonably necessary— 10
- (i) to protect a person from harm; or
- (ii) to prevent or lessen a serious threat to public health or safety or to the life or health of any person.
- (2) In **subsection (1)(h)(ii), serious threat** means a threat that an agency reasonably believes to be a serious threat having regard to all of the following: 15
- (a) the likelihood of the threat being realised; and
- (b) the severity of the consequences if the threat is realised; and
- (c) the time at which the threat may be realised.
- (3) Nothing in this section limits or affects section 15 of the Oranga Tamariki Act 1989 (which provides for reporting concerns to the chief executive of Oranga Tamariki or a constable). 20

Monitor's information rules

49 Monitor's information rules

- (1) The Monitor must make rules (**information rules**) relating to the collection, use, and disclosure of information by the Monitor to ensure protection of the privacy of persons to whom personal information relates, and the confidentiality of other information. 25
- (2) The information rules must support the performance of the Monitor's monitoring function and protect the privacy of children, young people, their families and whānau. 30
- (3) The power of the Monitor to make information rules must not be delegated to another person.
- (4) When making information rules, the Monitor must—
- (a) make reasonable efforts to consult interested or affected agencies; and
- (b) consult the following: 35
- (i) iwi-hapū, iwi, and Māori organisations with whom the Monitor has entered into arrangements under **section 19**:

- (ii) the chief executive of Oranga Tamariki:
- (iii) approved providers:
- (iv) the Privacy Commissioner.
- (5) Information rules made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 5
- 50 Content of information rules**
- Information rules made under **section 49** must contain rules relating to—
- (a) the collection of information under **section 45**:
- (b) the methods of collecting information:
- (c) the use of information (for example, that information may only be used by approved staff): 10
- (d) the storage and disposal of information (for example, how information is to be kept separate from other information held by the Monitor):
- (e) the accuracy and completeness of information (for example, procedures for confirming or validating information): 15
- (f) the disclosure of information under this Act:
- (g) the operational procedures to support the sharing of information between *iwi hapū, iwi*, and Māori organisations and the Monitor under **section 19**.
- Sharing of information* 20
- 51 Sharing of information between Monitor and Ombudsman**
- (1) The Monitor and an Ombudsman may share information with each other, if the provider of the information believes either or both of the following apply:
- (a) the sharing of the information would minimise the burden on individuals and agencies: 25
- (b) the sharing of the information would assist the Monitor or an Ombudsman in the performance of each of their functions, duties, and powers.
- (2) Any information received by the Monitor or an Ombudsman under this Act may only be used in connection with,—
- (a) in the case of the Monitor, the performance or exercise of the Monitor's functions, duties, and power under this Act: 30
- (b) in the case of an Ombudsman, the performance or exercise of an Ombudsman's functions, duties, or powers under this Act or the Ombudsmen Act 1975.
- (3) Information may be provided whether or not a request has been made. 35
- (4) The Monitor or an Ombudsman may decline a request for the sharing of information under this section.

(5) This section overrides section 21 of the Ombudsmen Act 1975.

51A Disclosure of information by Ombudsman to appropriate agency or person

- (1) An Ombudsman may disclose information obtained in the course of performing or exercising their functions, duties, or powers under this Act or the Ombudsmen Act 1975 to an appropriate agency or person if the Ombudsman considers that— 5
- (a) there is a credible and serious risk of harm to a child or young person; and
- (b) the disclosure is necessary to mitigate that risk. 10
- (2) This section overrides section 21 of the Ombudsmen Act 1975.

Subpart 2—Other matters

Reports of interference or non-compliance

52 Monitor may report interference or non-compliance

- (1) The Monitor may report to the chief executive of a department or an agency, or to any Minister responsible for the department or an agency, if— 15
- (a) the Monitor considers there has been interference with the performance of their monitoring function under this Act:
- (b) a chief executive of an agency has not provided a response to a final report of the Monitor within the ~~prescribed time frame, as required by~~ **section 29** time frame specified in **section 29(3)**, or as extended under **section 29(4)**: 20
- (c) any authorised staff member of the Monitor has been denied entry to premises under **section 35** (other than in exceptional circumstances within the meaning of **section 35(2)**): 25
- (d) an agency has not complied with a requirement to provide information under **section 45**:
- (e) a child or young person's caregiver has unduly delayed or denied access to the child or young person after being required to facilitate access under **section 47**. 30
- (2) The Monitor must give a copy of any report prepared under **subsection (1)** to the Minister responsible for the Monitor and the Minister responsible for the administration of the Oranga Tamariki Act 1989.
- (3) The Minister responsible for the Monitor may report to the House of Representatives on the matter. 35
- (4) The Monitor may publicly notify the matter on an Internet site maintained by or on behalf of the Monitor.

- (5) The Monitor must not, in any report under this section, make any comment that is adverse to any individual unless the individual has first been given a reasonable opportunity to be heard.
- (6) If a report prepared under this section contains information that may identify an individual caregiver or other individual delivering services or support through the Oranga Tamariki system, that information must be redacted or withheld from publication unless— 5
- (a) the individual concerned consents to the information being included in the report; or
- (b) the Monitor or the chief executive of the agency (as applicable) considers that the public interest in including the information in the report outweighs the individual's privacy interests. 10

No power for Monitor to review courts or tribunals

53 No power for Monitor to review courts or tribunals

- (1) Despite anything in this Act, the Monitor may not review any decision or recommendation, or any act or omission, of a court or a tribunal when the Monitor is performing the monitoring function under this Act. 15
- (2) If a matter is the subject of proceedings before a court or tribunal, the Monitor must not commence or continue a review into the matter until the proceedings are finally determined. 20

Compare: 2003 No 121 s 18

Referrals

54 Referrals of matters

- (1) If, when performing their functions under this Act, the Monitor or an Ombudsman considers that the subject matter of an inquiry, review, investigation, complaint, or other function relates (whether in whole or in part) to a matter that is more properly within the scope of the functions of a person or body specified in **subsection (4)**, the Monitor or Ombudsman must, without delay, consult that person or body to determine the appropriate means of dealing with the subject matter. 25 30
- (2) As soon as practicable after consulting the person or body, the Monitor or Ombudsman must determine whether the subject matter should be dealt with, in whole or in part, under this Act.
- (3) If the Monitor or Ombudsman determines that the subject matter should be dealt with, in whole or in part, by one of the persons or bodies specified in **subsection (4)**, the Monitor or Ombudsman must— 35
- (a) refer the subject matter, or the appropriate part of the subject matter, to that person or body without delay; and

- (b) give written notice of the referral to the individual who initiated the inquiry, review, investigation, or complaint.
- (4) The persons and bodies are—
- (a) the chief executive of Oranga Tamariki:
 - (b) the Children and Young People's Commission: 5
 - (c) the Monitor:
 - (d) the Ombudsmen exercising jurisdiction under the Ombudsmen Act 1975 or this Act:
 - (e) the Chief Commissioner under the Human Rights Act 1993:
 - (f) the Director-General of Health: 10
 - (g) the chief executives of district health boards:
 - (h) the Health and Disability Commissioner:
 - (i) the Secretary for Education:
 - (j) a board constituted under subpart 5 of Part 3 of the Education and Training Act 2020: 15
 - (k) the Commissioner of Police:
 - (l) the Independent Police Conduct Authority:
 - (m) the Privacy Commissioner:
 - (n) any other person or body that the Monitor or Ombudsman considers appropriate. 20

Compare: 2003 No 121 s 19

Miscellaneous

55 Protection from personal liability

~~No civil or criminal proceedings may be brought against the Monitor or any employees of the Monitor (including any former employees of the Monitor) for anything done or omitted in the performance or exercise or intended performance or exercise of any functions, duties, or powers under this Act, unless it is shown the person acted in bad faith.~~ 25

56 Regulations

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes: 30

Notifications

- (a) prescribing who the Monitor must notify and the subject of the notification where the Monitor becomes aware of any non-compliance with national care standards regulations or any other matter that places a child or young person in care or custody at immediate risk of suffering, or being likely to suffer, serious harm: 35

Monitor's code of ethics

- (b) prescribing the information that must be contained in the Monitor's code of ethics:
- (c) prescribing, for the purposes of **section 20(3)(b)**, intervals at which the Monitor must review their code of ethics: 5
- (d) prescribing any 1 or more persons that must be consulted when the Monitor is developing their code of ethics or any amendments to the code of ethics:

Monitor's reports

- (e) prescribing the minimum matters to be contained in the 3-yearly State of the Oranga Tamariki system report to be prepared by the Monitor under **section 21**, as those matters pertain generally, and with a specific focus on,— 10
 - (i) the application of section 7AA of the Oranga Tamariki Act 1989; and 15
 - (ii) Māori children and young people and their whānau; and
 - (iii) disabled children and young people:
- (f) prescribing the minimum matters to be contained in a report prepared by the Monitor under **section 22** (annual report on compliance with national care standards regulations) or **section 23** (annual report on outcomes for Māori children and young people and their whānau): 20
- ~~(g) prescribing procedures, including (without limitation) the time frame for a response by the chief executive of an agency that is the subject of a final report by the Monitor:~~
- (h) prescribing the time frame within which reports and responses to reports must be published on an Internet site maintained by or on behalf of the Monitor: 25
- (i) prescribing the grounds upon which the Minister responsible for the Monitor may extend the time frame for responses to a final report:

General 30

- ~~(j) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.~~
 - ~~(j) providing for anything this Act says may or must be provided for by regulations:~~
 - ~~(k) providing for anything incidental that is necessary for carrying out, or giving full effect to, this Act.~~ 35
- (2) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

57 Review of Act

- (1) The Minister must arrange for an independent review of the operation and effectiveness of this Act and the operation of the Monitor under this Act.
- (2) The review must consider—
- (a) whether the functions, duties, and powers set out in this Act adequately give effect to the purpose of this Act; and 5
 - (b) whether the Monitor is—
 - (i) working efficiently and effectively with Ombudsmen and ~~iwi~~, hapū, iwi, and Māori organisations; and
 - (ii) being effectively supported by agencies and their contracted partners in the Oranga Tamariki system, and whether there is any evidence that the Monitor is being obstructed in performing their functions, duties, or powers under this Act; and 10
 - (iii) appropriately resourced to efficiently and effectively discharge their functions, duties, or powers under this Act and to support the resilience of the Oranga Tamariki system; and 15
 - (c) whether any amendments to this Act are necessary or desirable.
- (3) The review must commence no later than 5 years after the commencement of this Act.
- (4) The findings of the review must be reported to— 20
- (a) the Minister; and
 - (b) the Minister responsible for the Monitor; and
 - (c) the Minister responsible for administration of the Oranga Tamariki Act 1989; and
 - (d) as far as they relate to Ombudsmen, the House of Representatives. 25
- (5) The Minister must present a copy of the report on the review to the House of Representatives no later than the 12th sitting day after receiving the report.

Part 4**Amendments to other legislation**

Subpart 1—Amendments to Acts 30

*Amendments to Official Information Act 1982***58 Principal Act**

Section 59 amends the Official Information Act 1982.

59 Section 2 amended (Interpretation)

- (1) In section 2(1), definition of **official information**, paragraph (i), before “does not include”, insert “subject to **paragraph (ia)**”.
- (2) In section 2(1), definition of **official information**, after paragraph (i), insert:

- (ia) does not include information contained in any correspondence or communication that has taken place between an Ombudsman and any public service agency, Minister of the Crown, or organisation and that relates to—
- (i) an agency delivering services or support to children and young people through the Oranga Tamariki system and the performance or potential performance of functions under the Ombudsmen Act 1975, whether or not an investigation is or was notified by an Ombudsman under that Act:
- (ii) the provision of guidance by an Ombudsman under **section 39** of the **Oversight of Oranga Tamariki System and Children and Young People's Commission Act 2021**, other than information that came into existence before the commencement of the process to give such guidance; and
- (ib) does not include information provided by an Ombudsman to the Independent Monitor of the Oranga Tamariki System under **section 51** of the **Oversight of Oranga Tamariki System and Children and Young People's Commission Act 2021**; and

- (3) In section 2(1), insert in their appropriate alphabetical order:

Independent Monitor of the Oranga Tamariki System has the same meaning as in **section 8(1)** of the **Oversight of Oranga Tamariki System and Children and Young People's Commission Act 2021**

Oranga Tamariki system has the meaning given in **section 9** of the **Oversight of Oranga Tamariki System and Children and Young People's Commission Act 2021**

Amendments to Ombudsmen Act 1975 30

60 Principal Act

Sections 61 and 62 amend the Ombudsmen Act 1975.

61 Section 15 amended (House of Representatives may make rules for guidance of Ombudsmen)

- (1) In section 15(1), after “2000”, insert “or under **Parts 1 to 4 of the Oversight of Oranga Tamariki System and Children and Young People's Commission Act 2021**”.

- (2) In section 15(2), after “2000”, insert “or under **Parts 1 to 4 of the Oversight of Oranga Tamariki System and Children and Young People's Commission Act 2021**”.

62 Schedule 1 amended

In Schedule 1, Part 2, insert in its appropriate alphabetical order: 5

~~Approved providers under section 396 of the Oranga Tamariki Act 1989, to the extent that they are providing services under that Act~~

Care or custody providers within the meaning of **section 8(1) of the Oversight of Oranga Tamariki System and Children and Young People's Commission Act 2021**

10

Amendments to Oranga Tamariki Act 1989

63 Principal Act

Sections 64 to 70 amend the Oranga Tamariki Act 1989.

64 Section 2 amended (Interpretation)

In section 2(1), insert in its appropriate alphabetical order: 15

Independent Monitor of the Oranga Tamariki System has the same meaning as in **section 8(1)** of the **Oversight of Oranga Tamariki System and Children and Young People's Commission Act 2021**

65 Section 7 amended (Duties of chief executive)

Replace section 7(2)(bae) with: 20

(bae) ensure that the policies and services provided by the department are informed by the outcomes of cases considered by the complaints process and any reviews of those outcomes:

66 Section 47 amended (Report to be furnished to Commissioner where child or young person released before required to be brought before court) 25

- (1) In the heading to section 47, replace “furnished to Commissioner where” with “sent to Ombudsman if”.

- (2) Replace section 47(1) with:

- (1) This section applies if— 30

(a) a child or young person is placed in the custody of the chief executive under section 39, 40, or 42; and

(b) the child or young person is released from that custody before the child or young person is required by section 45(a) to be brought before the court.

- (1A) If this section applies, the person who released the child or young person from that custody must, as soon as practicable after the release,— 35

- (a) write a report containing the details required by subsection (2); and
- (b) send a copy of the report to the Ombudsman to enable the Ombudsman to consider whether to exercise any functions or powers under the Ombudsmen Act 1975 in relation to any matter arising from the release of the child or young person from custody. 5
- (3) Replace section 47(2)(f) with:
- (f) the details of any follow up action, where needed, in relation to the child or young person and the proposed plan for undertaking the action, including who is responsible for undertaking the action and the time frame within which the action must be undertaken. 10
- 67 Section 445E amended (Limit on proceedings)**
- (1) In section 445E(1)(a), delete “and a review of the outcome of that complaint under the review mechanism provided for in regulations made under section 447(1)(fb)”.
- (2) Repeal section 445E(1)(a)(ii). 15
- 68 Section 447 amended (Regulations)**
- Replace section 447(1)(fa)(v) with:
- (v) the manner in which care standards are monitored or reported on, within the department and by the organisations approved under section 396: 20
- 69 Section 447A repealed (Minister to appoint independent persons to monitor compliance with prescribed standard of care)**
- Repeal section 447A.
- 70 Schedule 1AA amended**
- In Schedule 1AA, clause 6, replace “1 January 2008” with “1 April 2017”. 25
- Subpart 2—Amendments to secondary legislation
- Amendments to Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018*
- 71 Principal regulations**
- Sections 72 to 75** amend the Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018. 30
- 72 Regulation 5 amended (Interpretation)**
- In regulation 5(1), insert in its appropriate alphabetical order:

	Independent Monitor of the Oranga Tamariki System has same meaning as in section 8(1) of the Oversight of Oranga Tamariki System and Children and Young People's Commission Act 2021 .	
73	Regulations 77 to 85 and cross-heading revoked Revoke regulations 77 to 85 and the cross-heading above regulation 77.	5
74	Regulation 86 amended (Self-monitoring) In regulation 86(2), after “The Minister”, insert “or the Independent Monitor of the Oranga Tamariki System”.	
75	Regulation 87 amended (Reporting to the Minister and independent monitor on results of self-monitoring)	10
(1)	In the heading to regulation 87, replace “ the Minister and independent monitor ” with “ Minister and Independent Monitor of Oranga Tamariki System ”.	
(2)	In regulation 87(2), replace “every 3 years following a report of the independent monitor under regulation 80, concerning the chief executive’s or approved organisation’s compliance with these regulations” with “every year before a report by the Independent Monitor of the Oranga Tamariki System under sections 22 or 23 of the Oversight of Oranga Tamariki System and Children and Young People's Commission Act 2021 ”.	15
	<i>Amendment to Oranga Tamariki (Residential Care) Regulations 1996</i>	20
76	Principal regulations Section 77 amends the Oranga Tamariki (Residential Care) Regulations 1996.	
77	Regulation 31 amended (Functions and duties of grievance panels) After regulation 31(5)(d), insert: (e) the Chief Ombudsman; and (f) the Independent Monitor of the Oranga Tamariki System.	25
	<i>Amendments to Family Court Rules 2002</i>	
78	Principal rules Section 79 amends the Family Court Rules 2002.	
79	Rule 427 amended (Access to documents and court files during first access period)	30
(1)	After rule 427(2)(e)(vi), insert: (vii) an Ombudsman:	
(2)	After rule 427(3), insert:	

(4) ~~In this rule, **Ombudsman** means an Ombudsman appointed under the Ombudsmen Act 1975.~~

79 Rule 427 amended (Access to documents and court files during first access period)

Revoke rule 427(2)(c)(vi).

5

Amendment to Ombudsmen Rules 1989

80 Principal rules

Section 81 amends the Ombudsmen Rules 1989.

81 Rule 2 amended (Power to publish reports)

After rule 2(1)(a)(iii), insert:

10

(iv) the **Parts 1 to 4 of the Oversight of Oranga Tamariki System and Children and Young People's Commission Act 2021**; or

Part 5

Children and Young People's Commission

15

Subpart 1—Preliminary provisions

82 Overview

(1) This **Part** replaces the Children's Commissioner Act 2003.

(2) This **subpart** states the purpose of this **Part**, defines terms used in this **Part**, and contains other preliminary provisions.

20

(3) **Subpart 2** establishes the Children and Young People's Commission (the **Commission**) and contains provisions relating to its governance and its functions, duties, and powers.

(4) **Subpart 3** deals with the collection, use, and disclosure of information by the Commission, referrals by the Commission, and various other matters, including providing for a review of this **Part**, the repeal of the Children's Commissioner Act 2003, and consequential amendments to other ~~enactments~~ legislation.

25

(5) This section is only a guide to the general scheme and effect of this **Part**.

83 Purpose of this Part

The purpose of this **Part** is to establish the Children and Young People's Commission to promote and advance the rights, interests, and participation of children and young people and to improve their well-being within (without limitation) the context of their families, whānau, hapū, iwi, and communities.

30

84 Principles

The Commission must have regard to the following matters when performing or exercising its functions, duties, or powers under this **Part**:

- (a) the Children's Convention:
- (b) the child or young person within (without limitation) the context of their family, whānau, hapū, iwi, and communities: 5
- (c) the diversity of children and young people in all its forms:
- (d) the need for high aspirations for the well-being of all children and young people, including responsive systems and structures that support them:
- (e) the need to give priority to the children and young people who are disadvantaged, and the issues affecting them: 10
- (f) the need to hear from, and be informed by, children and young people:
- (g) other international instruments relevant to, and that affect, children and young people.

85 ~~Treaty of Waitangi (Tiriti o Waitangi)~~ Tiriti o Waitangi/Treaty of Waitangi 15

In order to recognise and respect the Crown's responsibility to give effect to ~~the Treaty of Waitangi (te Tiriti o Waitangi)~~ te Tiriti o Waitangi/the Treaty of Waitangi, and to improve the well-being of children and young people ~~in~~ within (without limitation) the context of their whānau, hapū, iwi, and communities,—

- (aaa) section 92(1)(aa) requires the Commission to have, on a collective basis, among its board members knowledge and understanding of te Tiriti o Waitangi/the Treaty of Waitangi; and 20
- (a) **section 92(2)** requires that at least half of the board members have Māori knowledge and experience in, and knowledge of, tikanga Māori; and 25
- (b) **section 94** provides that a nominations panel convened for a vacancy on the board must include people with expertise and experience in Māori leadership; and
- (c) **section 96(1)(a)** provides that the duties of the board include building and maintaining relationships with ~~iwi~~ hapū, iwi, and Māori organisations, including by— 30
 - (i) having a strong focus on the rights, interests, and well-being of Māori children and young people within the context of their whānau, hapū, and iwi:
 - (ii) setting strategic priorities and work programmes that support improved outcomes for Māori children and young people within the context of their whānau, hapū, and iwi: 35
 - (iii) promoting Māori participation and leadership and te ao Māori approaches in the performance of its functions, as appropriate; and

- (d) **section 99(g)** provides that it is a function of the Commission to undertake and promote research into any matter that relates to the rights, interests, or well-being of children and young people, while giving special attention to te ao Māori; and
- (e) **section 111(3)(a)** requires the chief executive of the Commission to make reasonable efforts to consult ~~iwi~~ hapū, iwi, and Māori organisations when making information rules relating to the collection, use, and disclosure of information by the Commission; and 5
- (f) **section 118(2)(b)** requires a review of this **Part** to consider whether the Commission is working effectively with ~~iwi~~ hapū, iwi, and Māori organisations. 10

86 Interpretation

In this **Part**, unless the context otherwise requires,—

agency has the same meaning as in **section 8(1)** of the **Oversight of Oranga Tamariki System and Children and Young People's Commission Act 2021** 15

board means the board of the Commission

board member means a member of the board

chief executive of Oranga Tamariki means the Chief Executive of Oranga Tamariki—Ministry for Children 20

child means a person under the age of 14 years

Children and Young People's Commission or **Commission** means the Children and Young People's Commission established by **section 90**

Children's Convention means the United Nations Convention on the Rights of the Child, a copy of the English text of which is set out in **Schedule 3** 25

code of ethics means the code of ethics required by **section 106**

department means a department within the meaning of section 5 of the Public Service Act 2020

former Act means the Children's Commissioner Act 2003

harm includes physical, psychological, emotional, or sexual harm 30

in care or custody, in relation to a child or young person, means being subject to an order for custody or sole guardianship or to a care agreement, in favour of (or naming as the carer) the chief executive of Oranga Tamariki, an iwi social service, a cultural social service, or the director of a child and family support service 35

Independent Monitor of the Oranga Tamariki System or **Monitor** means the person referred to in **section 12(2)** of the **Oversight of Oranga Tamariki System and Children and Young People's Commission Act 2021**

inquiry means an inquiry conducted under **section 99(i)**

	Minister means the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of this Part	
	news activity has the same meaning as in section 7(1) of the Privacy Act 2020	
	news entity has the same meaning as in section 7(1) of the Privacy Act 2020	5
	Ombudsman means an Ombudsman appointed under the Ombudsmen Act 1975	
	Oranga Tamariki—Ministry for Children means the department that is, with the authority of the Prime Minister, for the time being responsible for the administration of the Oranga Tamariki Act 1989	10
	Oranga Tamariki system has the meaning given in section 9 of the Oversight of Oranga Tamariki System and Children and Young People's Commission Act 2021	
	personal information has the same meaning as in section 7(1) of the Privacy Act 2020	15
	responsible department means the department, departmental agency, or inter-departmental venture (as named in Part 1, 2, or 4 of Schedule 2 of the Public Service Act 2020) that, with the authority of the Prime Minister, is responsible for the administration of this Act	
	te ao Māori means Māori world view	20
	tikanga Māori means Māori customary law and practices	
	young person means—	
	(a) a person aged 14 years or over but under 18 years; and	
	(b) a person aged 18 years or over but under 25 years if they are, or have been, in care or custody.	25
87	Children's Convention	
	(1) The Children's Convention is set out in Schedule 3 for information and reference purposes only.	
	(2) To avoid doubt, the inclusion of the text of the Children's Convention in this Part does not affect the legal status of the Convention.	30
	Compare: 2003 No 121 s 36	
88	Transitional, savings, and related provisions	
	The transitional, savings, and related provisions set out in Schedule 2 have effect according to their terms.	
89	Part binds the Crown	35
	This Part binds the Crown.	

Subpart 2—Children and Young People's Commission

90 Children and Young People's Commission established

- (1) This section establishes the Children and Young People's Commission.
- (2) The Commission is a Crown entity for the purposes of the Crown Entities Act 2004. 5
- (3) The Crown Entities Act 2004 applies to the Commission except to the extent that this **Part** expressly provides otherwise.

Compare: 2003 No 121 s 6

91 Commission's board

- (1) ~~The board must consist of at least 3, but not more than 6, board members.~~ 10
- (1) The board consists of the following:
 - (a) the chairperson, to be known as the Chief Children's Commissioner; and
 - (b) at least 2, but not more than 5, other board members.
- (2) Board members are the board for the purposes of the Crown Entities Act 2004.

92 Experience and knowledge of board members

- (1) The Commission must have, on a collective basis, among its board members—
 - (a) experience and knowledge of children's and young people's rights and issues; and
 - (aa) knowledge and understanding of te Tiriti o Waitangi/the Treaty of Waitangi; and 20
 - (b) the required skills and leadership expertise to reflect the needs of children and young people of interest to the Commission.
- (2) At least half of the board members must—
 - (a) have Māori knowledge; and
 - (b) have experience in, and knowledge of, tikanga Māori. 25
- (3) This section does not limit sections 29 and 30 of the Crown Entities Act 2004.

93 Recommendation and endorsement of board members

- (1) The Minister must have regard to recommendations from a nominations panel when recommending—
 - (a) the appointment of a board member under section 28(1)(b) of the Crown Entities Act 2004: 30
 - (b) the reappointment of a board member who has had continuous service of 6 years or more.
- (2) Candidates applying to be a board member must have the endorsement of a relevant agency specified in regulations made under **section 117(1)(a)**. 35

- 94 Nominations panel**
- (1) The chief executive of the responsible department must convene a nominations panel for the purposes of assessing candidates and making recommendations to the Minister relating to appointments under **section 93(1)(a)** and reappointments under **section 93(1)(b)**. 5
- (2) A nominations panel may only recommend a candidate for appointment under **section 93(1)(a)** who has been endorsed by a relevant agency under **section 93(2)**.
- (3) A nominations panel must consist of persons who have, on a collective basis, the following expertise and experience: 10
- (a) Māori leadership:
 - (b) working with children and young people:
 - (c) governance experience at a board level:
 - (d) appointment and recruitment experience.
- 95 Appointment of Judge to Commission** 15
- (1) The appointment of a Judge as a board member does not affect the tenure of their judicial office or the Judge's rank, title, status, precedence, salary, annual or other allowances, or other rights or privileges as a Judge (including those in relation to superannuation).
- (2) For all purposes, the Judge's service as a board member is taken to be service as a Judge. 20
- Compare: 1985 No 151 s 10; 2003 No 121 s 7(5)
- 96 Duties of board**
- (1) The duties of the board are to—
- (a) build and maintain relationships with ~~iwi~~, hapū, iwi, Māori organisations, organisations representing children's and young people's issues, youth-led organisations, community organisations, departments, and other agencies, including by— 25
 - (i) having a strong focus on the rights, interests, and well-being of Māori children and young people within the context of their whānau, hapū, and iwi: 30
 - (ii) promoting Māori participation and leadership, and te ao Māori approaches, in the performance of its functions, as appropriate:
 - (b) set strategic priorities and work programmes that support improved outcomes for Māori children and young people within the context of their whānau, hapū, and iwi: 35
 - (c) have regard to the Children's Convention as required by **section 84(a)**.
- (2) The duties set out in **subsection (1)**—

- (a) apply in addition to the collective duties of the board set out in sections 49 to 52 of the Crown Entities Act 2004; and
- (b) are collective duties owed to the Minister for the purposes of section 58 of the Crown Entities Act 2004.

97 Independence of Commission 5

Except as expressly provided otherwise in this or another Act, the Commission must act independently in performing its functions and duties and exercising powers under—

- (a) this **Part**; and
- (b) any other ~~enactment~~ legislation that provides for the functions of the Commission (other than the Crown Entities Act 2004). 10

Compare: 2003 No 121 s 12(2)

98 Exemption from income tax 15

The income of the Commission is exempt from income tax.

Compare: 2003 No 121 Schedule 1 cl 23

Commission's functions, duties, and powers

99 ~~Promoting Function relating to promoting interests and well-being of children and young people~~ 20

A function of the Commission is to promote the interests and well-being of children and young people by—

- (a) developing and publishing reports and submissions on issues through a child and young person-centred lens and, when appropriate, making those reports publicly available: 20
- (b) advocating for children's and young people's well-being, and their interests collectively: 25
- (c) supporting a child or young person to engage with agencies to facilitate the resolution of issues:
- (d) providing information to members of the public who have questions about matters relating to children's and young people's rights, interests, or well-being: 30
- (e) raising public awareness and understanding of matters that relate to children's and young people's rights, interests, or well-being, including (without limitation) by contributing to public debate:
- (f) ~~providing advice to organisations that interact with children and young people to support them to develop child-centred complaints mechanisms:~~ 35
- (g) undertaking and promoting research into any matter that relates to the rights, interests, or well-being of children and young people, while giving special attention to te ao Māori:

- (h) receiving and inviting representations from members of the public on any matter that relates to the rights, interests, or well-being of children and young people:
- (ha) reporting, with or without request, to the Prime Minister on matters affecting the rights of children: 5
- (i) inquiring generally into, and reporting on, any systemic matter, including (without limitation) any legislation or policy, or any practice or procedure, that relates to or affects the rights, interests, or well-being of children and young people:
- (j) presenting reports to proceedings before any court or tribunal that relate to the Children's Convention or to the rights, interests, or well-being of children generally and presenting reports on such issues to the court or tribunal, at the request of— 10
- (i) the court or tribunal; or
- (ii) counsel representing any party to the proceedings; or 15
- (iii) counsel representing any child who is the subject of the proceedings; or
- (iv) counsel assisting the court or tribunal.
- Compare: 2003 No 121 s 12(1)(g), (k), (l)
- 100 ~~Promoting Function relating to promoting and advancing rights of children and young people~~** 20
- A function of the Commission is to promote and advance the rights of children and young people by—
- (a) raising awareness and understanding of children's and young people's rights, including the rights set out in the Children's Convention, and advocating for the advancement of the application of the Children's Convention by the public: 25
- (b) monitoring the application of the Children's Convention by departments and other instruments of the Crown and making reports to the United Nations: 30
- (c) raising awareness and understanding of children's rights and the Children's Convention and advocating for the advancement of the application of the Children's Convention, including (without limitation) by departments and other instruments of the Crown.
- Compare: 2003 No 121 s 12(1)(d), (f) 35
- 101 ~~Encouraging Function relating to encouraging children's and young people's participation and voices~~**
- A function of the Commission is to encourage children's and young people's participation and voice by—

- (a) promoting, in relation to decisions that affect the lives of children and young people,—
 - (i) the participation of children and young people in those decisions; and
 - (ii) best practice approaches to listening to the views of children and young people and taking those views into account: 5
- (b) developing mechanisms and means to ensure that the Commission engages and supports children and young people to participate and express their views and be informed by those views in the performance of the Commission's functions: 10
- (c) modelling and promoting best practice in children's and young people's participation through the Commission's engagements with children and young people:
- (d) publishing and sharing the views and voices of children and young people with the general public and relevant groups: 15
- (e) providing support and advice to any person, body, or organisation carrying out engagement with children and young people to better hear their views and uphold their rights.

Compare: 2003 No 121 s 12(1)(j)

- 102 Common duties** 20
- (1) This section applies when the Commission is carrying out work relating to children and young people who are receiving, or have previously received, services or support through the Oranga Tamariki system.
 - (2) The Commission, the Independent Monitor of the Oranga Tamariki System, and Ombudsmen must participate in a comprehensive, cohesive, and efficient system with each other when their work relates to children and young people who are receiving, or have previously received, services or support through the Oranga Tamariki system. 25
 - (3) The common duties of the Commission, the Independent Monitor of the Oranga Tamariki System, and Ombudsmen ~~are to include~~— 30
 - (a) to minimise the burden and potential risk of harm to individuals when they are performing or exercising a function, duty, or power under this **Part**:
 - (b) to minimise the burden on agencies, where possible, when gathering information from agencies: 35
 - (c) to co-ordinate communications to individuals, agencies, Ministers of the Crown, and the public, as appropriate:
 - (d) to work together and consult and co-ordinate with each other, and share information, as appropriate.

103 Additional functions, duties, or powers

The Commission must perform any other function or duty and may exercise any other power conferred on it by or under another enactment legislation.

104 Commission must have regard to rights or interests and welfare of children

5

When performing its functions under **sections 99, 100, and 101**, the Commission must have regard to the question of whether the rights, interests, and well-being of 1 or more children or young people have been prejudiced.

Compare: 2003 No 121 s 17

105 Commission must not make adverse comment unless opportunity to be heard is given

10

Despite anything in this **Part** or the Crown Entities Act 2004, the Commission must not, in any report or statement made under this **Part**, make any comment that is adverse to an individual or agency if the Commission has not given the individual or agency a reasonable opportunity to be heard.

15

Compare: 2003 No 121 s 25

Code of ethics

106 Commission's code of ethics

- (1) The Commission must have a code of ethics relating to engagement with other persons carried out by board members and staff of the Commission in the performance or exercise of the Commission's functions, duties, or powers under this **Part**. 20
- (2) The purposes of the code of ethics are to—
 - (a) ensure safe (including culturally safe) and ethical engagement:
 - (b) provide assurance that the voices of individuals, particularly children and young people, are heard: 25
 - (c) provide certainty in engagement:
 - (d) minimise the burden of engagement.
- (3) The code of ethics must—
 - (a) include the information prescribed in regulations made under **section 117**; and 30
 - (b) be reviewed by the Commission at intervals not exceeding 5 years or any shorter intervals prescribed by regulations made under **section 117**.
- (4) When developing the code of ethics, or any amendments to the code of ethics, the Commission must consult the persons prescribed by regulations made under **section 117**. 35

- (5) The Commission must publish the code of ethics on an Internet site maintained by or behalf of the Commission.

Subpart 3—Inquiries and other matters

Provisions relating to inquiries by Commission

- 107 Special powers to call for information or documents** 5
- (1) If the conditions stated in **subsection (2)** are satisfied, the Commission may, by notice in writing, require any person—
- (a) to provide the Commission, or a specified employee of the Commission, with any information that the Commission requires; or
 - (b) to produce to the Commission, or to a specified employee of the Commission, any document in the custody or under the control of that person, and to allow copies of, or extracts from, the document to be made or taken; or 10
 - (c) to provide the Commission, or a specified employee of the Commission, with copies or extracts from documents in the custody or under the control of that person. 15
- (2) The conditions are that—
- (a) the Commission believes, on reasonable grounds, that the exercise of the powers conferred by **subsection (1)** is necessary to enable it to carry out an inquiry; and 20
 - (b) the Commission believes, on reasonable grounds, that—
 - (i) it is not reasonably practicable to obtain the information or document from another source; or
 - (ii) for the purposes of the inquiry, it is necessary to obtain the information or document to verify or refute information obtained from another source. 25
- (3) However, the Commission must not require any personal information to be provided under this section unless that information can be provided in a form in which—
- (a) personal identifiers (for example, name or address) have been removed; and 30
 - (b) the individual concerned cannot otherwise reasonably be identified.

Compare: 2003 No 121 s 20

108 Compliance with section 107

- (1) A person to whom a notice under **section 107** is given must, without charge, comply with the requirement stated in the notice in the manner and within a 35

period (being not less than 20 working days after the notice is given to the person) specified in the notice.

- (2) **Subsection (1)** does not require a person to provide any information or produce any document that would be privileged in a court of law.

Compare: 2003 No 121 s 21(1), (2)

5

109 Commission and staff must maintain secrecy

- (1) The Commission and every employee of the Commission must maintain secrecy in respect of all matters that come to the knowledge of the Commission or the employee in the course of any inquiry.

- (2) Despite anything in **subsection (1)**, the Commission or any employee of the Commission acting with the authority of the Commission may disclose any matter that, in the Commission's opinion, ought to be disclosed for the purposes of giving effect to—

- (a) this **Part**; or
- (b) the Commission's obligations under any other ~~enactment~~ legislation; or
- (c) information privacy principle 6 set out in section 22 of the Privacy Act 2020 (which relates to access to personal information).

- (3) The power conferred by **subsection (2)(a)** does not extend to—

- (a) any matter that might prejudice—
 - (i) the security, defence, or international relations of New Zealand (including New Zealand's relations with the Government of any other country or with any international organisation); or
 - (ii) any interest protected by section 7 of the Official Information Act 1982; or
 - (iii) the maintenance of the law, including the prevention, investigation, or detection of offences; or

- (b) any matter that might involve the disclosure of the deliberations of Cabinet; or

- (c) any information, answer, document, paper, or thing obtained by the Commission by reason only of compliance with a requirement specified in **section 107(1)**.

- (4) The power conferred by **subsection (2)(c)** is subject to sections 49 to 53 of the Privacy Act 2020.

Compare: 2003 No 121 s 22

110 Procedure for inquiries 35

The Commission may regulate the procedure for any inquiry under this **Part** in any manner, not inconsistent with this **Part**, that the Commission thinks fit.

Compare: 2003 No 121 s 26

Information rules

111 Information rules

- (1) The Commission must make rules (**information rules**) relating to the collection, use, and disclosure of information by the Commission to ensure protection of the privacy of persons to whom personal information relates, and the confidentiality of other information. 5
- (2) The information rules must support the performance of the Commission's inquiry function under **section 99(i)** and protect the privacy of children, young people, their families, and whānau.
- (3) When making information rules, the Commission must— 10
 - (a) make reasonable efforts to consult interested or affected agencies, including *iwi hapū, iwi*, and Māori organisations; and
 - (b) consult the Privacy Commissioner.
- (4) Information rules made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 15

112 Content of information rules

Information rules made under **section 111** must contain rules relating to—

- (a) the collection of information under **section 107**:
- (b) the methods of collecting information:
- (c) the use of information (for example, that information may only be used by approved staff): 20
- (d) the storage and disposal of information (for example, how information is to be kept separate from other information held by the Commission):
- (e) the accuracy and completeness of information (for example, procedures for confirming or validating information): 25
- (f) the disclosure of information by the Commission:
- (g) the operational procedures to support the exchange of information between *iwi hapū, iwi*, and Māori organisations and the Commission.

Sharing of information

113 Sharing of information with Monitor and Ombudsman 30

- (1) The Commission, the Monitor, and an Ombudsman may share information with each other if the provider of the information believes either or both of the following apply:
 - (a) the sharing of the information would minimise the burden on individuals and agencies: 35

- (b) the sharing of the information would assist the Commission, the Monitor, or an Ombudsman in the performance of each of their functions, duties, and powers.
- (2) Any information received by the Commission, the Monitor, or an Ombudsman under this **Part** may only be used in connection with,— 5
- (aaa) in the case of the Commission, the performance or exercise of its functions, duties, or powers under this **Part**:
- (a) in the case of the Monitor, the performance or exercise of the Monitor's functions, duties, and powers under the **Parts 1 to 4 of the Oversight of the Oranga Tamariki System and Children and Young People's Commission Act 2021**: 10
- (b) in the case of an Ombudsman, the performance or exercise of an Ombudsman's functions, duties, or powers under this **Part** or the Ombudsmen Act 1975;
- ~~(e) in the case of the Commission, the performance or exercise of the Commission's functions, duties, and powers under this **Part**.~~ 15
- (3) Information may be provided under this section whether or not a request has been made.
- (4) The Commission, the Monitor, or an Ombudsman may decline a request for the sharing of information under this section. 20
- (5) This section overrides section 21 of the Ombudsmen Act 1975.

Reports of interference or non-compliance

114 Commission may report interference or non-compliance

- (1) The Commission may report to the chief executive of a department or an agency, or to any Minister responsible for the department or agency, if— 25
- (a) the Commission considers there has been interference with the performance of the Commission's functions under this **Part**; or
- (b) an individual or an agency has not complied with a requirement from the Commission to provide information under **section 107**, and there are no grounds on which the information could be withheld. 30
- (2) The Commission may publicly notify the matter on an Internet site maintained by or on behalf of the Commission.
- (3) However, the Commission must not, in any report under this section or any published report, make any comment that is adverse to any individual or agency unless the individual or agency has first been given a reasonable opportunity to be heard. 35
- (4) If a report prepared under this section contains information that may identify an individual, the information must be redacted or withheld from publication unless—

- (a) the information is about—
 - (i) an individual caregiver; or
 - (ii) any other individual delivering services or support to children and young people through the Oranga Tamariki system; and
- (b) either— 5
 - (i) the individual concerned consents to their personal information being included in the report; or
 - (ii) the Commission or the chief executive of the agency (as applicable) considers that the public interest in including the personal information in the report outweighs the individual's privacy interests. 10

Referrals

115 Referral of matters

- (1) If, when performing functions under this **Part**, the Commission considers that the subject matter relates (whether in whole or in part) to a matter that is more properly within the scope of the functions of a person or body specified in **subsection (4)**, the Commission must, without delay, consult that person or body to determine the appropriate means of dealing with the subject matter. 15
- (2) As soon as practicable after consulting the person or body, the Commission must determine whether the subject matter should be dealt with, in whole or in part, under this **Part**. 20
- (3) If the Commission determines that the subject matter should be dealt with, in whole or in part, by one of the persons or bodies specified in **subsection (4)**, the Commission must—
 - (a) refer the subject matter, or the appropriate part of the subject matter, to that person or body without delay; and 25
 - (b) give written notice of the referral to the individual who brought the matter to the Commission's attention.
- (4) The persons and bodies are—
 - (a) the chief executive of Oranga Tamariki: 30
 - (b) the Independent Monitor of the Oranga Tamariki System:
 - (c) the Ombudsmen exercising jurisdiction under the Ombudsmen Act 1975 or this **Part**:
 - (d) the Chief Commissioner under the Human Rights Act 1993:
 - (e) the Director-General of Health: 35
 - (f) the chief executives of district health boards:
 - (g) the Health and Disability Commissioner:

- (h) the Secretary for Education:
- (i) a board constituted under subpart 5 of Part 3 of the Education and Training Act 2020:
- (j) the Commissioner of Police:
- (k) the Independent Police Conduct Authority: 5
- (l) the Privacy Commissioner:
- (m) any other person or body that the Independent Monitor of the Oranga Tamariki System or Ombudsman considers appropriate.

Compare: 2003 No 121 s 19

Miscellaneous 10

116 Proceedings privileged

- (1) No civil or criminal proceedings may be brought against an employee or officeholder for anything done or omitted in the performance or intended performance or exercise of any functions, duties, or powers under this **Part**, unless it is shown that the person acted in bad faith. 15
- (2) No employee or officeholder may be called to give evidence in court, or in any proceedings of a judicial nature, in respect of anything that comes to their knowledge in the performance or exercise of functions or powers under this **Part**.
- (3) Nothing in **subsection (1) or (2)** applies in respect of proceedings for— 20
 - (a) an offence against section 78, 78AA(1), 78A(1), 105, 105A, or 105B of the Crimes Act 1961; or
 - (b) the offence of conspiring to commit or attempting to commit an offence against any of the provisions specified in **paragraph (a)**.
- (4) Nothing in **subsection (3)** applies to a report made by the Commission under **section 99(j)**. 25
- (5) Sections 122 to 126 of the Crown Entities Act 2004 apply as if the conduct for which a person may be indemnified or insured under those sections were conduct that is covered by the protection from liability in this section.
- (6) This section contains an exception to section 121 of the Crown Entities Act 2004. 30
- (7) Anything said or any information supplied by an individual or agency in the course of an inquiry by the Commission under this **Part** is privileged in the same manner as if the inquiry were a proceeding in a court.
- (8) For the purposes of clause 3 of Part 2 of Schedule 1 of the Defamation Act 1992, any report made by the Commission under this **Part** is to be taken to be an official report. 35
- (9) In this section,—

employee means an employee or a former employee of the Commission

officeholder means a person currently holding office as a board member under this **Part**.

Compare: 2003 No 121 s 27

- 117 Regulations** 5
- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
- Relevant agencies*
- (a) specifying, for the purposes of **section 93(2)**, the relevant agencies that may endorse a candidate applying to be a board member: 10
- Code of ethics*
- (b) prescribing the information that must be contained in the Commission's code of ethics:
- (c) prescribing, for the purposes of **section 106(3)(b)**, the intervals at which the Commission must review its code of ethics: 15
- (d) prescribing any 1 or more persons that must be consulted when the Commission is developing its code of ethics or any amendments to the code of ethics:
- Other General*
- (e) ~~providing for any other matters contemplated by this **Part**, necessary for its administration, or necessary for giving it full effect.~~ 20
- (e) providing for anything this Act says may or must be provided for by regulations:
- (f) providing for anything incidental that is necessary for carrying out, or giving full effect to, this Act. 25
- (2) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- 118 Review of Part**
- (1) The Minister must arrange for an independent review of the operation and effectiveness of this **Part** and the operation of the Commission under this **Part**. 30
- (2) The review must consider—
- (a) whether the functions, duties, and powers set out in this **Part** are supporting the Commission to give effect to the purpose of this **Part**; and
- (b) whether the Commission is working effectively with ~~iwi~~ hapū, iwi, and Māori organisations; and 35
- (c) whether any amendments to this **Part** are necessary or desirable; and

- (d) any other matters that the Minister considers appropriate, after consulting the Commission and other Ministers of the Crown with relevant portfolios, as necessary.
- (3) The review must commence no later than 5 years after the commencement of this **Part**. 5
- (4) The findings of the review must be reported to the Minister.
- (5) The Minister must present a copy of the report on the review to the House of Representatives no later than the 12th sitting day after receiving the report.

Subpart 4—Amendments to other legislation and repeal

Amendment to Oranga Tamariki (Residential Care) Regulations 1996 10

119 Principal regulations

Section 120 amends the Oranga Tamariki (Residential Care) Regulations 1996.

120 Schedule amended

In the Schedule, clause 10(4), delete “the Children’s Commissioner or”. 15

Consequential amendments and repeal

121 Consequential amendments

Amend the ~~enactments~~ legislation specified in **Schedule 4** as set out in that schedule.

122 Repeal of Children’s Commissioner Act 2003 20

The Children’s Commissioner Act 2003 (2003 No 121) is repealed.

Schedule 1
Transitional, savings, and related provisions

s 10

Part 1
Provisions relating to this Act as enacted

5

1 Interpretation

In this **Part**, unless the context otherwise requires,—

commencement means the ~~date on which commencement of~~ **Parts 1 to 4 of the Oversight of Oranga Tamariki System and Children and Young People's Commission Act 2021** ~~comes into force~~

10

MSD means the Ministry of Social Development.

Transfer of contracts and information

2 Transfer of contracts to Monitoring Agency

(1) This clause applies to a contract (other than an employment agreement) that—

- (a) was made between MSD and another person; and
- (b) is identified by MSD and the Monitoring Agency and relates solely to a function, duty, or power of MSD before commencement that becomes a function, duty, or power of the Monitor on and after commencement.

15

(2) On and after commencement,—

- (a) the contract must be treated as if the Monitoring Agency were the party to the contract instead of MSD; and
- (b) unless the context otherwise requires, every reference in the contract to the MSD must be read as a reference to the Monitoring Agency.

20

3 Transfer of information to Monitoring Agency

(1) Despite anything in any other Act, MSD may transfer to the Monitoring Agency any information held by MSD that is necessary to enable the Monitor to perform their functions or duties or exercise powers under this Act that correspond to functions, duties, or powers that were formerly performed or exercised by MSD.

25

(2) Information privacy principle 11 set out in section 22 of the Privacy Act 2020 does not apply to the transfer of information from MSD to the Monitoring Agency under **subclause (1)**.

30

Schedule 2

Transitional, savings, and related provisions

s 88

Part 1

Provisions relating to this Act as enacted

5

1 Interpretation

In this **Part**, unless the context otherwise requires,—

assets includes real or personal property, money, rights, or interests

board means the board of the Commission

commencement means the ~~date on which~~ commencement of **Part 5 of the Oversight of Oranga Tamariki System and Children and Young People's Commission Act 2021** ~~comes into force~~ 10

Commission means the Children and Young People's Commission established by **section 90**

investigation means an investigation that has been requested in accordance with clause 10(4) of the Schedule of the Oranga Tamariki (Residential Care) Regulations 1996 15

liabilities includes debts, charges, duties, and other obligations, whether present, future, actual, contingent, payable, or to be observed or performed in New Zealand or elsewhere. 20

2 Appointment of first board members

(1) This clause applies to the appointment of the first board members of the Commission.

(2) The Minister may recommend to the Governor-General that a person be appointed as a board member if the Minister has, either before or after commencement, had regard to the matters in **section 92**. 25

(3) This clause—

(a) is subject to **clause 3**:

(b) overrides **sections 93 and 94** (which require a candidate for appointment as a board member to have been endorsed by a relevant agency and a nomination panel to be convened). 30

Provisions relating to Children's Commissioner under former Act

3 Continuation of Children's Commissioner appointed under former Act

The person holding office as Children's Commissioner under the former Act immediately before commencement continues in office as a first board member of the Commission.

5

4 Superannuation or retiring allowance of Children's Commissioner

Sums by way of subsidy or contribution may be paid into any retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013) for the purpose of providing a superannuation fund or retiring allowance for the person—

10

- (a) who held office as the Children's Commissioner under the former Act immediately before commencement; and
- (b) who is taken to be a board member under this Act on and after commencement.

Compare: 2003 No 121 Schedule 1 cl 6

15

Transfer of employees

5 Transfer of employees

(1) On commencement, every employee of the Children's Commissioner becomes an employee (a **transferred employee**) of the Commission on the same terms and conditions that applied to the person immediately before they became an employee of the Commission.

20

(2) For the purposes of ~~every enactment~~, all legislation and every law, determination, contract, and agreement relating to the employment of a transferred employee,—

(a) the employment agreement of that employee is to be treated as unbroken; and

25

(b) the employee's period of service with the Office of the Children's Commissioner, and every other period of service of that employee that is recognised by that office as continuous service, is to be treated as a period of service with the Commission.

30

(3) To avoid doubt, the employment of a transferred employee by the Commission does not constitute new employment for the purposes of any service-related benefits, whether legislative or otherwise.

(4) A transferred employee is not entitled to receive any payment or benefit from the Office of the Children's Commissioner on the grounds that the person's position in that office has ceased to exist or the person has ceased to be an employee of that office as a result of the transfer to the Commission.

35

(5) This clause overrides—

- (a) Part 6A of the Employment Relations Act 2000; and
- (b) any employment protection provision in any relevant employment agreement.

6 Government Superannuation Fund

- (1) This clause applies to a person who, immediately before becoming a board member or an employee of the Commission, was a contributor to the Government Superannuation Fund under Part 2 or 2A of the Government Superannuation Fund Act 1956. 5
 - (2) Despite anything in this Act, the person is to be treated, for the purposes of the Government Superannuation Fund Act 1956, as being employed in the Government service as long as the person continues to be a board member or employee of the Commission. 10
 - (3) The Government Superannuation Fund Act 1956 applies to the person in all respects as if the person's service as a board member or employee of the Commission were Government service. 15
 - (4) **Subclause (1)** does not entitle a person to become a contributor to the Government Superannuation Fund if the person has ceased to be a contributor.
 - (5) For the purpose of applying the Government Superannuation Fund Act 1956, the chief executive of the Commission is the controlling authority. 20
- Compare: 2003 No 121 Schedule 1 cl 6 20

Assets and liabilities

7 Transfer of Children's Commissioner's assets and liabilities to Commission

- (1) All residual assets, liabilities, agreements, leases, and licence arrangements of the Children's Commissioner in existence immediately before commencement vests in the Crown as assets or liabilities of the Commission on and after commencement. 25
- (2) All information held by the Children's Commissioner immediately before commencement is transferred to the Commission on commencement.
- (3) All money payable to or by the Children's Commissioner immediately before commencement becomes payable to or by the Commission on and after commencement. 30
- (4) Unless the context otherwise requires, anything done, omitted to be done, or to be done by, or in relation to, the Children's Commissioner is to be treated as having been done, having been omitted to be done, or having to be done by, or in relation to, the Commission. 35

Inquiries, reviews, and investigations under former Act

8 Continuation or completion of inquiries, reviews, and investigations under former Act

- (1) This clause applies to any inquiry, review, or investigation commenced by the Children's Commissioner under the former Act before commencement but not completed by the close of day immediately before commencement. 5
- (2) The complaint, inquiry, review, or investigation may be continued or completed on and after commencement by the Commission under the corresponding provisions of this Act.

9 Investigations by Children's Commissioner under Oranga Tamariki (Residential Care) Regulations 1996 10

- (1) This clause applies to an investigation commenced by the Children's Commissioner under the Oranga Tamariki (Residential Care) Regulations 1996 before commencement date but not completed by the close of day immediately before commencement. 15
- (2) The Children and Young People's Commission may continue and complete the investigation as if this Act had not been enacted.

References to Children's Commissioner

10 References to Children's Commissioner in enactments or documents

A reference to the Children's Commissioner in any ~~enactment~~ legislation enacted or made or document created or issued before commencement must, on and after commencement, be read as a reference to the Commission. 20

Compare: 2003 No 121 s 31(1)

Schedule 3

United Nations Convention on the Rights of the Child

ss 86, 87

Convention on the Rights of the Child

Preamble	5
The States Parties to the present Convention,	
<i>Considering</i> that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,	10
<i>Bearing in mind</i> that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,	
<i>Recognizing</i> that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,	15
<i>Recalling that</i> , in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,	20
<i>Convinced</i> that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,	25
<i>Recognizing that</i> the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,	
<i>Considering</i> that the child should be fully prepared to live an individual life in society and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,	30
<i>Bearing in mind</i> that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in Articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in Article	35

10) and in the statutes and relevant instruments of specialized agencies and international organisations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth”, 5

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, 10

Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries, 15

Have agreed as follows:

Part I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier. 20

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. 25

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members. 30

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. 35

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures. 5
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation. 15

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention. 20

Article 6

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child. 25

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents. 30
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity. 5

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence. 10 15
2. In any proceedings pursuant to paragraph 1 of the present Article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests. 20
4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned. 25 30

Article 10

1. In accordance with the obligation of States Parties under Article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family. 35

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under Article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention. 5

Article 11 10

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12 15

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law. 20

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice. 25
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: 30
- (a) For respect of the rights or reputations of others; or
 - (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion. 35

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others. 5

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. 10

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation. 15
2. The child has the right to the protection of the law against such interference or attacks. 20

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall: 25

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of Article 29;
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources; 30
- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of Articles 13 and 18. 35

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern. 5
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children. 10
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. 15
20
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement. 25

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State. 30
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, *inter alia*, foster placement, *kafalah* of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background. 35

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary; 5
- (b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin; 10
- (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption; 15
- (d) Take all appropriate measures to ensure that, in inter-country adoption the placement does not result in improper financial gain for those involved in it;
- (e) Promote, where appropriate, the objectives of the present Article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs. 20

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties. 25
2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention. 30
35

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.
2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child. 5
3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present Article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development. 10 15
4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries. 20 25

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services. 30
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
 - (a) To diminish infant and child mortality;
 - (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care; 35
 - (c) To combat disease and malnutrition, including within the framework of primary health care, through, *inter alia*, the application of readily available technology and through the provision of adequate nutritious foods

- and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
- (d) To ensure appropriate pre-natal and post-natal health care for mothers;
 - (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents; 5
 - (f) To develop preventive health care, guidance for parents and family planning education and services. 10
3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realisation of the right recognized in the present Article. In this regard, particular account shall be taken of the needs of developing countries. 15

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement. 20

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realisation of this right in accordance with their national law. 25
2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. 30
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development. 35
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the

child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements. 5
10

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
- (a) Make primary education compulsory and available free to all; 15
 - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need; 20
 - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - (d) Make educational and vocational information and guidance available and accessible to all children;
 - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates. 25
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries. 30

Article 29 35

1. States Parties agree that the education of the child shall be directed to:
- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
 - (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own; 5
 - (d) The preparation of the child for responsible life in a free society in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin; 10
 - (e) The development of respect for the natural environment.
2. No part of the present Article or Article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present Article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State. 15

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, or profess and practise his or her own religion, or to use his or her own language. 20

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts. 25
2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity. 30

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. 35
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present Article. To this end, and

having regard to the relevant provisions of other international instruments, States Parties shall in particular:

- (a) Provide for a minimum age or minimum ages for admission to employment;
- (b) Provide for appropriate regulation of the hours and conditions of employment; 5
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present Article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances. 10

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity; 20
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form. 25

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare. 30

Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment

without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time; 5
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances; 10
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action. 15

Article 38

- 1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child. 20
- 2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
- 3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest. 25
- 4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict. 30

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child. 35

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society. 5
2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
 - (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed; 10
 - (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
 - (i) To be presumed innocent until proven guilty according to law; 15
 - (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence; 20
 - (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular taking into account his or her age or situation, his or her parents or legal guardians; 25
 - (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality; 30
 - (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law; 35
 - (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used; 35
 - (vii) To have his or her privacy fully respected at all stages of the proceedings. 40
3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular: 40

-
- (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
- (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings providing that human rights and legal safeguards are fully respected. 5
4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence. 10

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

- (a) The law of a State party; or
- (b) International law in force for that State. 15

Part II

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

- 20
1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.
2. The Committee shall consist of ten experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems. 25
3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals. 30
4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary- 35

- General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.
5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting. 5
 6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting. 10
 7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee. 15
 8. The Committee shall establish its own rules of procedure. 20
 9. The Committee shall elect its officers for a period of two years.
 10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly. 25
 11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention. 30
 12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.
- Article 44** 35
1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights

- (a) Within two years of the entry into force of the Convention for the State Party concerned;
 - (b) Thereafter every five years.
2. Reports made under the present Article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned. 5
3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present Article, repeat basic information previously provided. 10
4. The Committee may request from States Parties further information relevant to the implementation of the Convention.
5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities. 15
6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

- In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention: 20
- (a) The specialized agencies, the United Nations Children's Fund and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities; 25 30
 - (b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications; 35
 - (c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

- (d) The Committee may make suggestions and general recommendations based on information received pursuant to Articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties. 5

Part III

Article 46

The present Convention shall be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations. 10

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations. 15

Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession. 20

Article 50

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval. 25 30

2. An amendment adopted in accordance with paragraph 1 of the present Article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.
3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted. 5

Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession. 10
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General. 15

Article 52

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General. 20

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations. 25

IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective governments, have signed the present Convention. 30

Schedule 4

Consequential amendments

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Part 1

Amendments to Acts

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Children's Act 2014 (2014 No 40)

In section 5(1), repeal the definition of **Children's Commissioner**.

In section 5(1), insert in its appropriate alphabetical order:

Children and Young People's Commission means the Children and Young People's Commission established by **section 90** of the **Oversight of Oranga Tamariki System and Children and Young People's Commission Act 2021**

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In section 5(1), definition of **UNCROC**, replace "Schedule 2 of the Children's Commissioner Act 2003" with "**Schedule 3** of the **Oversight of Oranga Tamariki System and Children and Young People's Commission Act 2021**".

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In section 6D(1)(b), replace "Children's Commissioner" with "Children and Young People's Commission".

Coroners Act 2006 (2006 No 38)

In section 9, definition of **other investigating authority**, repeal paragraph (a).

Corrections Act 2004 (2004 No 50)

20

In section 114(2)(c)(vii), replace "the Children's Commissioner" with "a board member of the Children and Young People's Commission".

Crimes of Torture Act 1989 (1989 No 106)

In section 16, definition of **National Preventive Mechanism**, paragraph (c), replace "Children's Commissioner" with "Children and Young People's Commission".

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Crown Entities Act 2004 (2004 No 115)

In Schedule 1, Part 3, replace "Children's Commissioner" with "Children and Young People's Commission".

Health and Disability Commissioner Act 1994 (1994 No 88)

In section 14(2)(b), replace "Children's Commissioner" with "Children and Young People's Commission".

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In section 23(b), replace "Children's Commissioner" with "Children and Young People's Commission".

Human Assisted Reproductive Technology Act 2004 (2004 No 92)

In section 34(5), replace “hold the office of Children’s Commissioner or be a representative or employee of the person who holds that office” with “be a board member, representative, or employee of the Children and Young People’s Commission”.

Ombudsmen Act 1975 (1975 No 9)

5

In Schedule 1, Part 2, replace “Children’s Commissioner” with “Children and Young People’s Commission”.

Oranga Tamariki Act 1989 (1989 No 24)

In section 2(1), replace the definition of **Commissioner** with:

Children and Young People’s Commission means the Children and Young People’s Commission established by **section 90** of the **Oversight of Oranga Tamariki System and Children and Young People’s Commission Act 2021**

10

In section 66M(1)(b), replace “Children’s Commissioner” with “Children and Young People’s Commission”.

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In section 447(1)(ga), replace “Children’s Commissioner” with “Children and Young People’s Commission”.

Public Safety (Public Protection Orders) Act 2014 (2014 No 68)

In section 53(2)(c)(vii), replace “the Children’s Commissioner” with “a board member of the Children and Young People’s Commission”.

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Remuneration Authority Act 1977 (1977 No 110)

In Schedule 4, repeal the item relating to the Children’s Commissioner.

In Schedule 4, insert in its appropriate alphabetical order:

The board members of the Children and Young People’s Commission

Substance Addiction (Compulsory Assessment and Treatment) Act 2017 (2017 No 4)

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In section 63(2)(g), replace “the Children’s Commissioner” with “a board member of the Children and Young People’s Commission”.

Part 2

Amendments to secondary legislation

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Education (Hostels) Regulations 2005 (SR 2005/332)

In regulation 70(2), replace “the Children’s Commissioner” with “the Children and Young People’s Commission”.

Family Court Rules 2002 (SR 2002/261)

Replace rule 427(2)(c)(vi) with:

- (vi) a board member of the Children and Young People's Commission or a person authorised by that board member to act on their behalf:

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Oranga Tamariki (Residential Care) Regulations 1996 (SR 1996/354)

In regulation 10(1)(l), replace “the Children’s Commissioner” with “a board member of the Children and Young People’s Commission”.

In regulation 29(2)(c), replace “Children’s Commissioner” with “Children and Young People’s Commission”.

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In regulation 31(5)(d), replace “Children’s Commissioner” with “Children and Young People’s Commission”.

In regulation 37(6), replace “Children’s Commissioner” with “Children and Young People’s Commission”.

Legislative history

8 November 2021
16 November 2021

Introduction (Bill 94–1)
First reading and referral to Social Services and Community
Committee