

## **Oversight of Oranga Tamariki System Bill**

(Divided from the Oversight of Oranga Tamariki System and Children and Young People's Commission Bill)

Government Bill

As reported from the committee of the whole House

This Bill was formerly part of the Oversight of Oranga Tamariki System and Children and Young People's Commission Bill as reported from the Social Services and Community Committee. The committee of the whole House has further amended the Bill and divided it into the following Bills:

- this Bill comprising clauses 1 and 2, Parts 1 to 4, and Schedule 1
- Children and Young People's Commission Bill comprising Part 5 and Schedules 2 to 4.



**Key to symbols used in reprinted bill**

**As reported from the committee of the whole House**

text inserted

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*Hon Carmel Sepuloni*

# **Oversight of Oranga Tamariki System Bill**

Government Bill

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**Schedule 1**  
**Transitional, savings, and related provisions**

**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Oversight of Oranga Tamariki System Act **2021**.

**2 Commencement**

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

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**Part 1**  
**Preliminary provisions**

**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: 20
- (ia) requiring the Monitor to act independently when carrying out their monitoring function and developing their tools and monitoring approaches:
- (iii) requiring the Monitor to appoint a Māori Advisory Group:
- (iv) requiring the Monitor to make reasonable efforts to enter into arrangements with hapū, iwi, and Māori organisations: 25
- (v) requiring the Monitor to have a code of ethics relating to ~~its~~ their 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: 30

- (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:
- (b) in **subpart 2**, providing ~~an Ombudsman~~ 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 Oranga Tamariki and care or custody providers. 5
- (3) **Part 3** deals with information and other miscellaneous matters and contains provisions,—
- (a) in **subpart 1**,— 10
- (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:
- (iii) providing for the sharing of information under this Act between the Monitor and Ombudsmen: 15
- (iv) providing for the disclosure of information by Ombudsmen to appropriate agencies or persons:
- (b) in **subpart 2**,—
- (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: 20
- (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: 25
- (iia) requiring the Monitor to refer certain matters to prescribed persons:
- (iii) allowing the Monitor to refer matters to specified persons:
- ~~(iv) protecting the Monitor and the Monitor's staff from personal liability:~~ 30
- (v) providing for the making of regulations under the Act:
- (vi) providing for a review of this Act no later than ~~5 years~~ 3 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. 35

#### 4 ~~Purpose of this Act~~

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
- (b) giving Ombudsmen additional duties and powers when dealing with matters that may fall under the Ombudsmen Act 1975 and that relate to services or support delivered by— 5
  - (i) Oranga Tamariki:
  - (ii) care or custody providers; and
- (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. 10

## 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: 15
  - (aa) the best interests of children and young people:
  - (ab) the perspectives of children and young people:
- (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): 20
- (c) the importance of relationships and connections of children and young people with their families, whānau, hapū, iwi, and communities. 25

## 6 Tiriti o Waitangi/Treaty of Waitangi

In order to recognise and respect the Crown's responsibility to give effect to te Tiriti o Waitangi/the Treaty of Waitangi, and to improve the well-being of children and young people within (without limitation) the context of their whānau, hapū, iwi, and communities,— 30

- (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:
- (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: 35

- (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:
- (d) **section 17** requires the Monitor to appoint a Māori Advisory Group: 5
- (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:
- (f) **section 19** requires the Monitor to make reasonable efforts to develop arrangements with 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: 10
- (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: 15
- (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— 20
- (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
- (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: 25
- (i) **section 42** provides that the Chief Ombudsman must make reasonable efforts to develop arrangements with 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: 30
- (j) **section 49(4)(b)(i)** requires the Monitor to consult 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: 35
- (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 hapū, iwi, and Māori organisations.

## 7 Common duties

- (1) This section applies to the ~~Monitor and Ombudsmen~~ Monitor, an Ombudsman, and the Children and Young People’s Commission 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. 5
- (2) The common duties of the ~~Monitor and Ombudsmen~~ Monitor, the Ombudsman, and the Children and Young People’s Commission 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: 10
- (b) to minimise the burden and potential risk of harm to individuals when the ~~Monitor or an~~ Monitor, the Ombudsman, or the Children and Young People’s Commission is performing or exercising a function, duty, or power ~~under this Act~~: 15
- (c) to minimise the burden on agencies when they are gathering information under this Act and carrying out preliminary inquiries, investigations, or reviews: 15
- (d) to co-ordinate communications to individuals, agencies, Ministers of the Crown, and the public, as appropriate.

## 8 Interpretation 20

- (1) In this Act, unless the context otherwise requires,—
- agency—**
- (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 25
- (c) to avoid doubt, includes a department; but
- (d) does not include—
- (i) the Sovereign; or 30
- (ii) the Governor-General or the Administrator of the Government; or
- (iii) the House of Representatives; or
- (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 35
- (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 5
- (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~~ 10
- approved provider** means—
- (a) a care or custody provider:
- (b) an organisation or a body approved under section 403 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: 15
- (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: 20
- (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
- (b) includes a whānau caregiver; but 25
- (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
- child** has the same meaning as in section 2(1) of the Oranga Tamariki Act 1989
- 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** 30
- code of ethics** means the code of ethics required by **section 20**
- coercive powers** means powers under the Oranga Tamariki Act 1989 that can be exercised without the consent of the individual concerned 35
- department** means a department within the meaning of section 5 of the Public Service Act 2020

- harm** includes physical, psychological, emotional, or sexual harm
- 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 5
- 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 10
- 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** 15
- 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 20
- monitoring function** or **functions** means all the functions of the Monitor set out in **section 14**
- 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 25
- 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
- non-personal information** means information that is not personal information 30
- Ombudsman** means an Ombudsman appointed under the Ombudsmen Act 1975
- Oranga Tamariki—Ministry for Children** or **Oranga Tamariki** means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of the Oranga Tamariki Act 1989 35
- 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**

**premises** has the meaning given in **section 32(3)**

**services or support**, in relation to the Oranga Tamariki system, includes responding under the Oranga Tamariki Act 1989 to offending (or alleged offending) by children and young people 5

**State of the Oranga Tamariki system report** means the report prepared under **section 21**

**tikanga Māori** means Māori customary law and practices

**whānau caregiver**, in relation to a child or young person, means a person (other than a parent or guardian)— 10

(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 15

(c) who has primary responsibility for the care of the child or young person.

**young person** has the same meaning as in section 2(1) of the Oranga Tamariki Act 1989.

(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. 20

## 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 25~~

~~(b) responding under that Act to offending (or alleged offending) by children and young people.~~

(2) ~~For the purposes of this Act, the Oranga Tamariki system— 30~~

~~(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. 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 providing services or support to chil-



dren, young people, and their families and whānau under, or in connection with, the Oranga Tamariki Act 1989.

- (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 5
- (b) includes (without limitation) the delivery of health, education, disability, and other services by those agencies or contracted partners within the system.

## 10 Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms. 10

## 11 Act binds the Crown

This Act binds the Crown.

## Part 2

### Oversight of Oranga Tamariki system 15

#### Subpart 1—Monitoring of Oranga Tamariki system

##### *Independent Monitor of Oranga Tamariki System*

## 12 Independent Monitor of Oranga Tamariki System established

- (1) This section establishes the Independent Monitor of the Oranga Tamariki System (the **Monitor**). 20
- (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.
- (3) The Monitor must be independent of Oranga Tamariki—Ministry for Children.

##### *Monitor's objectives, monitoring function, duties, and powers* 25

## 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—
- (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: 30

- (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:
- (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: 5
- (e) support an understanding of specific aspects of the Oranga Tamariki system and its interface with other systems:
- (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. 10
- (2A) When developing their monitoring priorities, work programme, and monitoring approaches, the Monitor must have regard to the need to listen to the voices of children, young people, and whānau in contact with the Oranga Tamariki system, including, in the case of children and young people, upholding their right to share their views and have those views taken into account. 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,— 20
- (a) in relation to children or young people who—
- (i) are or were the subject of a report made under section 15 of the Oranga Tamariki Act 1989; or 25
- (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. 30
- 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.
- (2) For the purposes of **subsection (1)**, the function includes (without limitation)— 35
- (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:

- (b) assessing the quality and impacts of service delivery, service mix, service resourcing, and practices on the experiences of children, young people, families, and whānau:
- (c) assessing outcomes for children, young people, families, and whānau 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. 5

## 16 Tools and monitoring approaches

- (1) The Monitor must develop tools and monitoring approaches to support their monitoring and reporting under this Act. 10
- (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
  - (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 15
  - (c) incorporate a tikanga Māori approach.
- (3) The tools and monitoring approaches must have regard to systems for continuous improvement, self-monitoring, and assurance. 20
- (4) In developing their tools and monitoring approaches, the Monitor must consult—
  - (a) the chief executive of Oranga Tamariki:
  - (b) the chief executive of services approved under section 396 of the Oranga Tamariki Act 1989, who has custody of children or young people: 25
  - (c) the Commissioner of Police.

## 16A Duty to act independently

- (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**. 30
- (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.

*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 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 hapū, iwi, and Māori organisations* 20**19 Arrangements with hapū, iwi, and Māori organisations**

- (1) The Monitor must make reasonable efforts to develop arrangements with 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 legislation that applies to the sharing of information.

*Engagement by Monitor***19A Engagement by Monitor** 30

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: 35

- (b) the chief executive of Oranga Tamariki, approved providers, and care-givers:
- (c) relevant stakeholders, including advocacy services:
- (d) any other individual or agency that the Monitor considers appropriate.

*Code of ethics*

5

**20 Monitor must have code of ethics relating to engagement**

- (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— 10
  - (a) ensure safe (including culturally safe) and ethical engagement:
  - (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. 15
- (3) The code of ethics must—
  - (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**. 20
- (4) When developing the code of ethics, or any amendments to the code of ethics, the Monitor must consult the person or persons prescribed by regulations made under **section 56**.
- (5) The Monitor must publish the code of ethics on an Internet site maintained by or on behalf of the Monitor. 25

*Reports and reviews*

**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** 30

- (1) The Monitor must prepare an annual report on compliance with national care standards regulations.
- (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. 35

- 23 Annual report on outcomes for Māori children and young people and their whānau**
- (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. 5
- (2) When preparing the report, the Monitor must consider and be informed by—
- (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** 10
- (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.
- (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. 15
- (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.
- (4) The Monitor must prepare a ~~final~~ report of the results of a review carried out under this section. 20
- 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.
- (2) The Monitor must prepare a ~~final~~ report of the results of a review carried out under this section. 25
- 26 Comments on Monitor’s draft findings or draft report**
- (1) Before finalising any report prepared under ~~this~~ **subpart section 21, 22, 23, 24, or 25**, 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 30
- (b) give the chief executive a reasonable opportunity to comment on the draft findings or draft report.
- (2) Despite anything in this **subpart**, the Monitor must not, in any report prepared under ~~this~~ **subpart section 21, 22, 23, 24, or 25**, 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. 35

- 27 Final reports**
- The Monitor must provide a copy of a final report prepared under **section 21, 22, 23, or 24 24, or 25** to—
- (a) the Minister responsible for the Monitor; and
  - (b) the Minister responsible for the administration of the Oranga Tamariki Act 1989; and
  - (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** 10
- 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, 24, or 25** to the House of Representatives as soon as ~~is~~ reasonably practicable after receiving the report.
- 29 Responses to final reports** 15
- (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.
  - (2) In the response, the chief executive must—
    - (a) state what the agency intends to do in response to the Monitor’s findings; and 20
    - (b) specify the time frame in which the agency intends to make any necessary changes; and
    - (c) state how the agency intends to monitor the impact of those changes.
  - (3) ~~The chief executive must provide their response, within 60 working days of a final report being published under **section 30**, to the following:~~ 25
    - (a) ~~the Monitor;~~
    - (b) ~~the Minister responsible for the Monitor;~~
    - (c) ~~the Minister responsible for the administration of the Oranga Tamariki Act 1989.~~
  - (3) The chief executive must provide their response to the Monitor, the Minister responsible for the Monitor, and the Minister responsible for the administration of the Oranga Tamariki Act 1989,— 30
    - (a) for a final report prepared under **section 21, 24, or 25**, no later than 35 working days after receiving the report:
    - (b) for a final report prepared under **section 22 or 23**, no later than 20 35 working days after receiving the report.

- (4) The Minister responsible for the Monitor may, ~~in accordance with regulations made under **section 56**~~, extend the time frame for providing a response under **subsection (3)(a) or (b)** if—
- (a) a final report of the Monitor makes findings relevant to multiple agencies; and 5
  - (b) the Minister responsible for the Monitor considers that a multi-agency response is desirable.
- 30 Publication of final reports and responses**
- (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**— 10
- (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**.
- (2) If a final report or response contains information that may identify an individual, the information must be redacted or withheld from publication, unless— 15
- (a) the information is of a kind referred to in **section 31(4)(a) or (b)**; and
  - (b) **section 31(5)** applies.
- (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 services or support through the Oranga Tamariki system from an individual referred to in **section 31(4)(a) or (b)**. 20
- 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**. 25
- (2) The report must not contain any personal information about a child or young person or any member of their 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 report with full knowledge of who will receive the response report. 30
- (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— 35
- (a) an individual caregiver:
  - (b) any other individual delivering services or support to children and young people through the Oranga Tamariki system.



- (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. 5

*Power of entry for monitoring purposes*

**32 Authorisation of staff**

- (1) The Monitor may authorise any of their employees or contracted staff (an **authorised staff member**) to enter premises in accordance with this Act. 10
- (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. 15

**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~~ 20
  - (b) ~~monitoring the performance of the Oranga Tamariki system under **section 14**.~~
- (1) An authorised staff member may enter premises if they reasonably believe it is necessary for the purpose of monitoring the performance of the Oranga Tamariki system under **section 14**. 25
- (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. 30
- (2) The notice must—
  - (a) state that the power of entry is being exercised ~~under~~ for the purpose described in **section 33(1)**; 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~~ 35
  - (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.~~ 5
- (3) However, the notice need not explain why the authorised staff member reasonably believes entry is necessary for the purpose described in **section 33(1)**.
- 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 or young person being at risk of being harmed; 10  
or
  - (b) a person in charge of the premises denies entry to the premises in exceptional circumstances.
- (2) In **subsection (1)(b)**, **exceptional circumstances** means— 15
- (a) people within the premises are experiencing serious health concerns (for example, an outbreak of gastroenteritis); or
  - (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. 20
- (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.

## Subpart 2—Complaints oversight by Ombudsmen

- 36 Purpose of this subpart** 25
- 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—
- (a) Oranga Tamariki; or
  - (b) care or custody providers. 30
- 37 Application of Act to Ombudsmen**
- (1) The provisions specified in **subsection (2)** apply to ~~Ombudsmen~~ an Ombudsman when they are dealing with matters that fall under the Ombudsmen Act 1975 and relate to services or support delivered by—
- (a) Oranga Tamariki; or 35
  - (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): 5
  - (ca) **section 51A** (disclosure of information by Ombudsman to appropriate agency or person):
  - (d) **section 54** (referrals of matters).
- (3) Nothing in this Act limits or affects the functions, duties, and powers of ~~Ombudsmen~~ an Ombudsman under the Ombudsmen Act 1975. 10
- 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—
- (a) operate in a way that recognises the importance of a child’s or young person’s family, whānau, hapū, iwi, and culture; and 15
  - (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 20
  - (c) involve the child or young person, and their family, whānau, hapū, and iwi in their complaints or investigations processes, as appropriate.
- 39 Guidance relating to complaints and systems improvement**
- (1) An Ombudsman may provide guidance to Oranga Tamariki and care or custody providers— 25
- (a) on the design of their complaints processes; and
  - (b) to support the learning and continuous improvement of those processes.
- (2) The Ombudsmen Act 1975 applies, with all necessary modifications, to the matters specified in **subsection (1)**.
- 40 Preliminary inquiries** 30
- (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.
- (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. 35

**41 Information to be proactively provided to Ombudsman**

- (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— 5
- (a) Oranga Tamariki; or
  - (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: 10
- (a) information relating to every critical or serious incident:
  - (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**. 15
- (3) ~~The~~An 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. 20
- (4) For the purposes of **subsection (2)(a)**, **critical or serious incident** includes (without limitation)— 25
- (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 who was in recent contact with Oranga Tamariki or ~~where the person who~~ was the victim of youth offending (or alleged youth offending): 30
  - (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: 35
  - (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:

- (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: 5
- (h) use of force against a child or young person in care or custody by a staff member of a residence 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: 10
- (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. 15

*Arrangements with hapū, iwi, and Māori organisations*

**42 Arrangements with hapū, iwi, and Māori organisations**

- (1) The Chief Ombudsman must make reasonable efforts to develop arrangements with hapū, iwi, and Māori organisations for the purposes of— 20
  - (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 legislation that applies to the sharing of information. 25

**Part 3**

**Information provisions and other matters**

Subpart 1—Information provisions

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

- The Monitor may only collect, use, or disclose information under this Act— 30
  - (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.

*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: 5~~
- ~~(b) the chief executive of Oranga Tamariki, approved providers, and care-givers:~~
- ~~(c) relevant stakeholders, including advocacy services: 10~~
- ~~(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. 15
- (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 20
  - (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. 25
- (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 30
  - (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. 35
- (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**. 5
- (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.

*Disclosure of information*

- 48 Disclosure of information** 10
- (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)**:
- (b) the information is shared with hapū, iwi, or Māori organisations in accordance with arrangements developed under **section 19(1)(b)**: 15
- (c) the information is shared with an Ombudsman in accordance with **section 51**:
- (d) the information is for a referral under **section 54**:
- (e) the information is—
- (i) available to the public under this Act; or 20
- (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:
- (ea) the information is non-personal information included in materials proposed to be published by the Monitor and the disclosure is for the purpose of any 1 or more of the Monitor's objectives set out in **section 13**: 25
- (eb) the information is non-personal information and the Monitor believes on reasonable grounds that the disclosure is for statistical or research purposes and the information will not be used in a form that could reasonably be expected to identify any individual: 30
- (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**: 35
- (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—
    - (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. 5
- (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:
  - (a) the likelihood of the threat being realised; and
  - (b) the severity of the consequences if the threat is realised; and 10
  - (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).

*Monitor's information rules* 15

**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. 20
- (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.
- (3) The power of the Monitor to make information rules must not be delegated to another person. 25
- (4) When making information rules, the Monitor must—
  - (a) make reasonable efforts to consult interested or affected agencies; and
  - (b) consult the following:
    - (i) hapū, iwi, and Māori organisations with whom the Monitor has entered into arrangements under **section 19**: 30
    - (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). 35



**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): 5
- (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): 10
- (f) the disclosure of information under this Act:
- (g) the operational procedures to support the sharing of information between hapū, iwi, and Māori organisations and the Monitor under **section 19**.

*Sharing of information***51 Sharing of information between Monitor and Ombudsman** 15

- (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~~ or agencies:
  - (b) the sharing of the information would assist the Monitor or an Ombudsman in the performance ~~of each~~ or exercise of their functions, duties, ~~and~~ or powers. 20
- (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~~ their functions, duties, ~~and power~~ or powers under this Act: 25
  - (b) in the case of an Ombudsman, the performance or exercise of ~~an Ombudsman's functions, duties, or powers~~ their duties or powers under this Act or functions, duties, or powers under the Ombudsmen Act 1975.
- (3) Information may be provided whether or not a request has been made. 30
- (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** 35

- (1) An Ombudsman may disclose information obtained in the course of performing or exercising their functions, duties, or powers under this Act or the Ombuds-

men Act 1975 (as applicable) to an appropriate agency or person if the Ombudsman considers that—

- (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. 5
- (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— 10
  - (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 time frame specified in **section 29(3)**, or as extended under **section 29(4)**: 15
  - (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)**):
  - (d) an agency has not complied with a requirement to provide information under **section 45**: 20
  - (e) a child's 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**.
- (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. 25
- (3) The Minister responsible for the Monitor may report to the House of Representatives on the matter.
- (4) The Monitor may publicly notify the matter on an Internet site maintained by or on behalf of the Monitor. 30
- (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— 35

- (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. 5
- (7) However, the exception in **subsection (6)** may not be relied on if release of the information may identify any child or young person who has received services or support through the Oranga Tamariki system from an individual referred to in that subsection.

*No power for Monitor to review courts or tribunals* 10

**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.
- (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. 15

Compare: 2003 No 121 s 18

*Notification of certain matters*

**53A Monitor must notify certain matters** 20

The Monitor must notify the person (or persons) prescribed by regulations made under **section 56(1)(a)** if 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. 25

*Referrals*

**54 Referrals of matters**

(1AAA) This section applies when—

- (a) the Monitor is performing or exercising their functions, duties, or powers under this Act: 30
- (b) an Ombudsman is performing or exercising their duties or powers under this Act or functions, duties, or powers under the Ombudsmen Act 1975.
- (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 the Ombudsman must, without delay, con- 35

- sult that person or body to determine the appropriate means of dealing with the subject matter.
- (2) As soon as practicable after consulting the person or body, the Monitor or the Ombudsman must determine whether the subject matter should be dealt with, in whole or in part, under this Act. 5
- (3) If the Monitor or the 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 the Ombudsman must, without delay,—
- (a) refer the subject matter, or the appropriate part of the subject matter, to that person or body ~~without delay~~; and 10
- (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: 15
- (c) the Monitor:
- (d) ~~the Ombudsmen~~ an Ombudsman 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: 20
- ~~(g) the chief executives of district health boards:~~
- (g) the chief executive of Health New Zealand:
- (ga) the chief executive of the Māori Health Authority:
- (h) the Health and Disability Commissioner:
- (i) the Secretary for Education: 25
- (j) a board constituted under subpart 5 of Part 3 of the Education and Training Act 2020:
- (k) the Commissioner of Police:
- (l) the Independent Police Conduct Authority:
- (m) the Privacy Commissioner: 30
- (n) any other person or body that the Monitor or the Ombudsman considers appropriate.

Compare: 2003 No 121 s 19

*Miscellaneous***56 Regulations**

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
- Notifications* 5
- (a) prescribing, for the purposes of **section 53A**, 1 or more persons whom 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: 10
- 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: 15
- (d) prescribing any 1 or more persons ~~that~~ who must be consulted when the Monitor is developing their code of ethics or any amendments to the code of ethics:
- Monitor's reports* 20
- (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,—
- (i) the application of section 7AA of the Oranga Tamariki Act 1989; 25  
and
- (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): 30
- (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: 35
- ~~(i) prescribing the grounds upon which the Minister responsible for the Monitor may extend the time frame for responses to a final report:~~

*General*

- (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. 5
- (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. 10
- (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
  - (b) whether the Monitor is—
    - (i) ~~working efficiently and~~ effectively with Ombudsmen and hapū, iwi, and Māori organisations; and 15
    - (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 20
    - (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
  - (c) whether any amendments to this Act are necessary or desirable; and
  - (d) any other matters that the Minister considers appropriate, after consulting the Monitor, the Chief Ombudsman, and other Ministers of the Crown with relevant portfolios, as necessary. 25
- (3) The review must commence no later than ~~5 years~~ 3 years after the commencement of this Act.
- (4) The findings of the review must be reported to— 30
  - (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. 35
- (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~~ as soon as practicable after receiving the report.

## Part 4 Amendments to other legislation

### Subpart 1—Amendments to Acts

#### *Amendments to Official Information Act 1982*

<b>58</b>	<b>Principal Act</b>	5
	<b>Section 59</b> amends the Official Information Act 1982.	
<b>59</b>	<b>Section 2 amended (Interpretation)</b>	
(1)	In section 2(1), definition of <b>official information</b> , paragraph (i), before “does not include”, insert “subject to <b>paragraph (ia)</b> .”	
(2)	In section 2(1), definition of <b>official information</b> , after paragraph (i), insert:	10
	(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:	15
	(ii) the provision of guidance by an Ombudsman under <b>section 39</b> of the <b>Oversight of Oranga Tamariki System and Children and Young People’s Commission Act 2021</b> , other than information that came into existence before the commencement of the process to give such guidance; and	20
	(ib) does not include information provided by an Ombudsman to the Independent Monitor of the Oranga Tamariki System under <b>section 51</b> of the <b>Oversight of Oranga Tamariki System and Children and Young People’s Commission Act 2021</b> ; and	25
(3)	In section 2(1), insert in their appropriate alphabetical order:	
	<b>Independent Monitor of the Oranga Tamariki System</b> has the same meaning as in <b>section 8(1)</b> of the <b>Oversight of Oranga Tamariki System and Children and Young People’s Commission Act 2021</b>	30
	<b>Oranga Tamariki system</b> has the meaning given in <b>section 9</b> of the <b>Oversight of Oranga Tamariki System and Children and Young People’s Commission Act 2021</b>	35

*Amendments to Ombudsmen Act 1975*

- 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)** 5
- (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**”. 10
- 62 Schedule 1 amended**
- In Schedule 1, Part 2, insert in its appropriate alphabetical order:
- 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** 15

*Amendments to Oranga Tamariki Act 1989*

- 63 Principal Act**  
**Sections 64 to 70** amend the Oranga Tamariki Act 1989.
- 64 Section 2 amended (Interpretation)** 20
- In section 2(1), insert in its 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**
- 65 Section 7 amended (Duties of chief executive)** 25
- Replace section 7(2)(bae) with:
- (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)** 30
- (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— 35



- (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. 5
- (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,—
- (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. 10
- (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. 15
- 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)”. 20
- (2) Repeal section 445E(1)(a)(ii).
- 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: 25
- 69 Section 447A repealed (Minister to appoint independent persons to monitor compliance with prescribed standard of care)**
- Repeal section 447A. 30
- 70 Schedule 1AA amended**
- In Schedule 1AA, clause 6, replace “1 January 2008” with “1 April 2017”.

## 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. 5
- 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**. 10
- 73 Regulations 77 to 85 and cross-heading revoked**  
 Revoke regulations 77 to 85 and the cross-heading above regulation 77.
- 74 Regulation 86 amended (Self-monitoring)**  
 In regulation 86(2), after “The Minister”, insert “or the Independent Monitor of the Oranga Tamariki System”. 15
- 75 Regulation 87 amended (Reporting to the Minister and independent monitor on results of self-monitoring)**
- (1) In the heading to regulation 87, replace “**the Minister and independent monitor**” with “**Minister and Independent Monitor of Oranga Tamariki System**”. 20
- (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**”. 25

*Amendment to Oranga Tamariki (Residential Care) Regulations 1996*

- 76 Principal regulations**  
**Section 77** amends the Oranga Tamariki (Residential Care) Regulations 1996. 30
- 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.

*Amendments to Family Court Rules 2002***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)** 5

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

*Amendment to Ombudsmen Rules 1989***80 Principal rules****Section 81** amends the Ombudsmen Rules 1989.**81 Rule 2 amended (Power to publish reports)** 10

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

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

. . . . .

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## Schedule 1

### Transitional, savings, and related provisions

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#### Part 1

##### Provisions relating to this Act as enacted

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#### 1 Interpretation

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

**commencement** means the commencement of **Parts 1 to 4 of the Oversight of Oranga Tamariki System and Children and Young People’s Commission Act 2021**

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**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.

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(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.

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#### 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.

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(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)**.

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. . . . .

**Legislative history**

11 August 2022

Divided from Oversight of Oranga Tamariki System and  
Children and Young People’s Commission Bill (Bill 94–2) as  
Bill 94–3A