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Legislative Statement: Oversight of the Oranga Tamariki System and Children and Young People's Commission Bill – First reading

This legislative statement supports first reading of the Oversight of the Oranga Tamariki System and Children and Young People's Commission Bill. This is an omnibus Bill that aims to improve outcomes for children and young people in New Zealand by strengthening independent monitoring and complaints oversight of the Oranga Tamariki system, and advocacy for children's issues generally.

The Bill will be split into two Bills during the Committee of the Whole House. Parts 1 to 4 and Schedule 1 of the Bill will become the Oversight of the Oranga Tamariki System Bill. This Bill creates the legislative framework for the Monitor and incorporates new duties and powers for the Ombudsman. Part 5 and Schedules 2 to 4 will become the Children and Young People's Commission Bill. This Bill reviews and refreshes the Children's Commissioner Act 2003 and reconstitutes the Office of the Children's Commissioner as the Children and Young People's Commission.

The need for strengthened oversight of the Oranga Tamariki System

The Bill defines the Oranga Tamariki System as the system that is responsible for providing services and support to children, young people and their families or whānau under, or in connection with, the Oranga Tamariki Act 1989. It also includes responding under that Act to offending by children and young people. This definition is deliberately broad to encompass the complex and overlapping needs of children and young people.

Numerous reports and historical systemic failings have highlighted the need for independent oversight of how the government interacts with, provides support and services to, and upholds the rights of children and young people. A review in response to reforms of the Oranga Tamariki system found that oversight arrangements for the system require strengthening to address key issues and gaps. This included a lack of investment in the resources and powers for effective independent monitoring and complaints resolution; the need for strengthened advocacy, and a lack of Māori views across all elements of the Oranga Tamariki system and across independent oversight functions.

The Bill addresses these identified issues and gaps by:

- establishing a new Independent Monitor of the Oranga Tamariki system (the Monitor) to monitor outcomes for children and young people receiving services through the Oranga Tamariki System
- providing for a strengthened complaints and investigation system, led by the Office of the Ombudsman (the Ombudsman)
- strengthening system-level advocacy for all New Zealand children and young people by establishing the Children and Young People's Commission (the Commission) to replace and enhance the existing Children's Commissioner's functions

- providing for a treaty clause that clause summarises the functions and duties on oversight bodies that are woven throughout the Bill in order to demonstrate a practical commitment to the Treaty of Waitangi (Te Tiriti o Waitangi). This acknowledges both the Crown’s Treaty partnership with Māori, and the disproportionate impact of the Oranga Tamariki System on tamariki and rangatahi Māori.

The Bill intends to create a framework for the Monitor, Ombudsman, and the Commission to work together in a comprehensive, cohesive, and efficient way and to consult one another and share information, as appropriate.

Independent Monitoring

An Independent Children’s Monitor was established in July 2019 under the Oranga Tamariki Act 1989 to monitor the National Care Standards Regulations. The Bill will establish the Monitor under a new Act, with a broader scope of monitoring across the entire Oranga Tamariki System.

Objectives and functions

The objectives of the Monitor are to carry out objective, impartial and evidence-based monitoring of the performance of the Oranga Tamariki System and to provide authoritative and trusted advice to the Government and the public.

The Bill provides for the function of the Monitor to monitor the performance of the Oranga Tamariki system in the context of the interface with other systems. This includes assessing compliance with the Oranga Tamariki Act 1989; assessing the quality and impacts of service delivery; and assessing the outcomes being achieved for children, young people and their families through the Oranga Tamariki System, having particular regard to tamariki and rangitahi Māori.

Scope of the monitoring function

The requirement in the Bill for the Monitor to assess the performance of the Oranga Tamariki System “in the context of other systems” reflects the need to understand how the outcomes of children and young people in the Oranga Tamariki system do not just depend on the services delivered through the Oranga Tamariki Act – but on the wider range of services provided by other agencies, under other Acts. The Bill therefore requires the Monitor to assess the Oranga Tamariki system in the context of these wider systems of support and services to children and young people that are, or were, the subject of a Report of Concern to Oranga Tamariki or who are in the Youth Justice system.

Provisions to ensure Monitor can provide impartial evidence and advice

A key priority is to ensure the Monitor is set up in a way so that it can provide the government and the wider public with trusted evidence and advice. The Bill achieves this by establishing the Monitor as a statutory officer, with specific legislated functions and duties, and by placing limits on Ministers’ powers in relation to the Monitor. The Bill requires that Ministers must not direct the Monitor from carrying out an activity that the Monitor considers is necessary to enable them to perform their functions and duties under the Act.

Information rules and code of ethics

To ensure the Monitor has the right tools to provide effective oversight, the Bill empowers the Monitor to gather information from agencies and providers in the Oranga Tamariki system. The Monitor will also be able to interview children and young people directly subject to their consent and in accordance with a code of ethics that the Bill requires the Monitor to develop. The Bill also provides for a number of additional safeguards for ensuring the safe and ethical collection, use and sharing of information – including a requirement to develop information rules.

To ensure there is a high level of transparency and accountability about the outcomes being achieved for children and young people - and areas of strength and areas for improvement within the Oranga Tamariki System - the Bill requires that the information collected by the Monitor informs regular, publicly available reports. This includes an annual report on outcomes being achieved for tamariki and rangatahi Māori and their whanau; and a three yearly “State of the Oranga Tamariki System” report.

Te Tiriti clause requirements

The Bill includes a number of requirements that aim to ensure the Monitor operates in a way that best supports better outcomes for tamariki and rangatahi Māori. This includes a requirement for the Monitor to develop arrangements with Iwi and Māori organisations in order to share information and to seek proposals on how to improve oversight. The Monitor must also appoint a Māori Advisory Group to support meaningful and effective engagement with Māori. The Monitor must have regard to the views of the group when developing their priorities, work programmes, and monitoring approaches. To ensure a high level of accountability to uphold this requirement, the Monitor must also demonstrate annually how they have had regard to the views of the group.

Strengthened Complaints and Investigation Oversight

The Bill empowers the Ombudsman to provide an effective, timely and child-centred complaints and investigation mechanism that is independent from internal Oranga Tamariki processes and Government.

Additional powers and broadened complaints and investigation jurisdiction

The Bill supports the Ombudsman’s role by providing additional powers and duties that augment the Ombudsman’s existing investigatory powers under the Ombudsmen Act 1975. The Bill also broadens the Ombudsman’s current jurisdiction – which includes a wide range of public service agencies and organisations (including Oranga Tamariki) set out in Schedule 1 of that Act – to include partners providing care or holding custody under Section 396 of the Oranga Tamariki Act 1989.

The Bill strengthens the Ombudsman’s existing complaints and investigation function by placing requirements on Oranga Tamariki and care or custody providers to proactively provide information that can help inform complaints and investigations (including information, for example, about critical or serious incidents).

Te Tiriti clause requirements

Like the Monitor, the Ombudsman will be required to endeavour to develop arrangements with iwi and Māori to provide opportunities to improve and share information under the Act. The Ombudsman must also incorporate a tikanga Māori

approach and involve the child or young person and their whānau, hapū and iwi in their complaints or investigation processes, as appropriate.

Establishment of the Children and Young People's Commission

Currently under the Children's Commissioner Act 2003, the Children's Commissioner has key functions to monitor the Oranga Tamariki system, investigate decisions, report on children's issues, and advocate for children generally. The Bill re-focuses the role of the Children's Commissioner on systemic-advocacy.

Shift from a Commissioner-sole to a board

Children and young people's issues span a very diverse array of sectors, including education, health, care and protection, and the justice system. The Bill will replace the current Commissioner-sole model with a new, enhanced Children and Young People's Commission (the Commission), governed by a Board that reflects the diverse skills and experience required to advocate on a broad range of issues. The requirements set out in the Crown Entities Act 2004 applies to the Commission with the exception of a number of bespoke provisions that are provided for in the Bill, including a requirement for the commission to have, among its board members, experience and knowledge of children's and young people's rights and issues and for half of the board members to have Māori knowledge and skills.

Scope of the Commission

The Commission's role is to promote the interests and wellbeing of children and young people in New Zealand and advocate for their rights. These rights include those under the United Nations Convention on the Rights of the Child and other child-specific local and international obligations such as Te Tiriti o Waitangi. In addition, the Bill provides for the Commission to have more clearly prescribed and expanded responsibilities to encourage and facilitate the participation of children and young people in matters that affect them. The broader scope of the Commission recognises its role as an advocate for all children and young people in New Zealand, with a more specific focus on the full diversity of children, and the outcomes of tamariki and rangatahi Māori.

Information rules and code of ethics

The Bill includes new powers and duties to ensure the Commission can safely gather information needed to support their advocacy role. Like the Monitor, the Commission is required to develop a code of ethics and information rules to ensure that information is gathered, stored and used safely and ethically. The Bill also strengthens the Commission's function of inquiring generally into any children's matters by allowing the Commission to require the provision of non-identifying information from agencies to support their systemic inquiries.

Te Tiriti clause requirements

In addition to the Māori knowledge and experience requirements of board members, the Bill provides for a number of requirements to recognise the Crown's responsibility to give effect to the Treaty of Waitangi (te Tiriti o Waitangi). This includes a requirement that the Commission's board must build and maintain relationships with iwi and Māori organisations and requirements to set strategic priorities and work programmes that

support improved outcomes for tamariki and rangatahi Māori within the context of their whānau, hapū and iwi.