

What should the Children's Commissioner look like in NZ now and in the future?

The Children's Commissioner – now and into the future

1. The purpose of this paper is to consider what functions and roles we might need from an independent Children's Commissioner now and into the future, given the rapidly changing environment.
2. The Children's Commissioner is an independent Crown Entity with a primary role to advocate for the 1.12 million New Zealand children (defined as under the age of 18 years). This group constitute nearly one quarter of New Zealand's population.
3. The Children's Commissioner has an annual appropriation of \$2.657million (including an additional ½ million on-off grant this year). This funding supports a small office in Wellington with 24.275 full-time equivalent staff (including the Commissioner).
4. We are of the firm view that Aotearoa New Zealand needs a Children's Commissioner. There are several unique functions, activities and roles we undertake that likely only a mandated independent agency could fulfil. However, the mandate has shifted over time. The Children's Commissioner 2003 Act may need to change to reflect this. The current "Review of Independent Monitoring, Complaints Review, Investigations and Advocacy for the new Vulnerable Children's System, including the role of the Children's Commissioner" provides an opportunity where additional changes to the Act could be considered.
5. Balancing our mandate with our resources means we are only minimally fulfilling our current mandate. The Commissioner's office has been chronically underfunded over time. But we have the potential to be a critical lever in bringing about transformative change the government seeks for children. We are excited to be part of this change. We welcome discussion on how we can be even more effective in the future.

The role and purpose of the Children's Commissioner has evolved over time

6. The overall purpose of the Children's Commissioner is to advocate for the rights, interests and wellbeing of all children in NZ.
7. Children (including all young people under the age of 18) are a core part of our society. However, they are not included in our democratic process; they have no vote and often no voice in major decisions that impact them.
8. It is the role of the Children's Commissioner to be their voice: to encourage organisations to take more child-centred approaches, to advocate for improving their well-being, and to raise awareness of issues which directly or indirectly affect children or where children are not getting a fair go.
9. This role has grown over time in response to the changing needs and wider environment.

The role of the first Commissioner in 1989 related to the need for oversight in the care and protection sector

10. The role of the Commissioner for Children was established as part of the 1989 Children, Young Persons, and Their Families Act (CYP&F Act). The primary purpose for the role was to be an oversight and accountability mechanism for the then new Children, Young Persons and their Families Service (CYF).
11. The provisions establishing the Commissioner were added to the Bill at a very late stage, as a way to help address concerns that the principles and decision making processes established in the CYP&F Act gave insufficient weight to professional advice and accountability for individual children's welfare.

Changes to the Commissioner's role in 2003 brought more focus on: child rights, a general advocate for child wellbeing, and an independent voice for children

12. The Children's Commissioner Act 2003 re-enacted the functions of the 1989 Act with regard to children and young people receiving services from CYF under the CYP&F Act, but established a stand-alone statutory basis for the Commissioner, explicitly focused on the United Nations Convention on the Rights of the Child which was included as a schedule in the Act. The new Act expanded the Commissioner's mandate to advocate for children in a wide range of situations and added the role of promoting their participation in decision making. The new Act reflected the shifting ideas and priorities for the Commissioner at that time. The changes were founded in calls for increased autonomy of the Commissioner and related to:
 - Compliance with UNCROC
 - Independence and systemic advocacy
 - Focus on critique and review of government services to children
 - Review of deaths – "sentinel events" where CYF is involved in children's lives.

13. It was proposed that the Commissioner become an Officer of Parliament (akin to the Ombudsman). Eventually that proposal was withdrawn in favour of the current status, as to avoid precedent setting for other Commissioner roles to want that level of independence.

We now need to consider how the Commissioner can continue to keep step with the changing environment and demands

14. Now, 15 years on, the environment has further shifted. All the same rationale for the Children's Commissioner exists, but it is apparent new challenges have emerged – New Zealand's poor record on child health, youth suicide, child poverty, child abuse, and engagement and achievement in education cannot be ignored. Nor can we ignore that overall all our systems are systemically and clearly failing too many of our tamariki and rangatahi Māori.
15. Having a Children's Commissioner to be the voice and general advocate for all children's rights, interests and wellbeing is more relevant than ever. And while government now have increased focus on children, actions can often be ad hoc and miss underlying structural issues. Our "system-wide" view and interest in all children means we have unique insights and aspirations for children, and we reflect their voice and views into decision-making.
16. There is currently a review of independent monitoring, complaints review, investigations and advocacy for the new vulnerable children's system, including the role of the Children's Commissioner. This provides an opportunity to look more broadly at the roles and functions, and how the Commissioner can adapt to best serve the interests and wellbeing of all New Zealand children.
17. The current statutory functions and responsibilities of the Children's Commissioner are detailed in the Children's Commissioner Act 2003.

The Children's Commissioner monitors how all children are doing

18. The Children's Commissioner monitors how all children are doing, especially children in the care and protection and youth justice systems, and advocates for systemic change to improve wellbeing.
19. Each Children's Commissioner has brought different strengths to the role, and has had different challenges and priorities for their term. The approaches and the way the Office works have evolved over time. The wide statutory functions are inclusive and allow flexibility for priority setting. However, the funding is very limited, which necessitates hard choices on where to put effort.
20. Currently, the Office of the Children's Commissioner monitors how well all New Zealand children are doing and where we see important issues, we advocate for systemic change. We use the following broad categories based on the United Nations Convention on the Rights of the Child as a framework. We ask:
 - Are children protected from all forms of cruelty, abuse and neglect?

- Are children receiving all the services and supports they need for life, survival and development?
 - Are children participating in decisions that affect them, and having their voices and views heard?
 - Are the adults and agencies acting in the best interests and well-being of the children, and are all children's rights being upheld?
21. We look at evidence (including data, research, media, complaints and stories from frontline workers and community organisations) and the voices and experiences of children across all aspects of their lives, including home, school, health, and in their communities.
 22. For children in the care and protection and the youth justice systems, we have an added legislative mandate to monitor these same elements but to a much greater depth.
 23. We use all our monitoring to identify areas of concern, provide advice to agencies, and advocate for better outcomes for all children.
 24. The office currently includes corporate services (3.7 FTE), communications and media services (1.5 FTE) and two main teams: Monitoring & Investigations (9.85 FTE), and Strategy, Rights & Advice (8.225 FTE). The main teams are summarised here.

Monitoring & Investigations

25. The Monitoring & Investigations team carries out selected operational monitoring to ascertain whether children and young people in the care of Oranga Tamariki are safe, receiving the supports and services they need, and participating in decision-making as outlined in the legislation. The team visits all nine care and protection and youth justice residences twice each year. These visits take place under the Commissioner's mandate as a National Preventive Mechanism under the Crimes of Torture Act 1989 as well as our general monitoring and assessment mandate under Section 13 (1) (b) of the Children's Commissioner's Act.
26. The Monitoring & Investigations team carry out thematic monitoring reviews across a range of Oranga Tamariki sites and recently carried out the Office's first ever review with a non-government organisation (NGO) providing care services. Additionally, developmental monitoring to inform the building of Oranga Tamariki services takes place under Section 13 (1) (c) of the Act.
27. The team use a Te Ao Maori principled and child-centred lens called Mana Mokopuna to gather children and young people's service experiences, analysing all available sources of information to identify systemic enablers and barriers for this service experience. The Monitoring & Investigations team also provide advice to Oranga Tamariki on operational and practice policy and service design, and advocate for systemic changes in the best interests of children, young people, their families and whānau.
28. In reality, the office is only funded to monitor a small part of Oranga Tamariki's overall services. There has never been anywhere near sufficient funding for the comprehensive monitoring enabled in the Act.

Strategy, Rights and Advice

29. The Strategy, Rights & Advice team monitor overall statistics, research, community evidence, and children's own views to tell us how children are doing and establish key areas of concern, such as poverty, health, safety and education. This forms the basis for our child-centred advice to government and other agencies on policy and services that will improve wellbeing for children. It also informs our independent submissions to Select Committees to ensure children's best interests and voices are included in these processes. This team advocate for specific system change based on the Commissioner's annual priorities.
30. Collecting and sharing the voices and views of children and young people is another area of focus. The team encourages and supports government and community organisations to engage with children and young people, and to ensure their voices are heard and factored into the policy and operational decision-making.
31. The Strategy, Rights & Advice team monitors and reports on government's obligations under the UN Convention on the Rights of the Child and has begun a series of public reports on child rights issues. The team responds to public inquiries, including a phone line and email contact for Child Rights and Advice enquiries. Finally, the team manage the Child Poverty Monitor as part of a partnership with JR McKenzie Trust and Otago University.
32. The Commissioner works alongside the two teams to engage with a range of audiences across New Zealand, to raise awareness of issues and better ways of supporting all children to thrive. He works with government, iwi, academics, and community to share our findings and to advocate for better outcomes for children.

The Children's Commissioner could play a bigger role in transformative change for children and young people

33. The Children's Commissioner, as an established New Zealand institution for nearly 30 years, is now well positioned to take on increased services and responsibilities related to independent monitoring, oversight of complaints systems (including but not limited to complaints about Oranga Tamariki service delivery) or significant government strategies, and promoting the range of systemic changes we need for our children.
34. The role of Children's Commissioner provides a unique, independent position, with a balanced viewpoint between government and civil society. The Office of the Children's Commissioner can engage with community stakeholders without the stigma faced by many government organisations, and with government officials as peers operating under the Public Sector Code of Conduct.
35. The broad mandate of the Commissioner means the Office can maintain an overall view on issues impacting children, without being limited to particular elements of wellbeing or institutional boundaries. And the statutory mandate to promote child rights gives the Commissioner a distinct and internationally recognised reference point for assessing children's interests and rights.

Changes to consider

36. We need to be responsive to the changing environment and the growing awareness of the need for independent oversight related to services for children, our most vulnerable population. There have been many changes – including the current Child Poverty Reduction Bill that mandates a child well-being strategy – which we are excited about and proud to be a part of. They also present opportunities that if taken, could be truly transformative.
37. While each of these opportunities for our services could be further detailed, we present them here only briefly as some of the changes to consider:
 - a. changes in the wider care and protection and youth justice systems, and demand for more advice and input as these changes are designed and implemented
 - b. changes in the wider care and protection and youth justice systems, and demand for more independent oversight of some aspects, particularly:
 - implementation of new principles and provisions in the revised Oranga Tamariki Act
 - the new care standards
 - new child-centred complaints mechanisms
 - growth in community-based care facilities
 - c. the gap in independent monitoring of the effectiveness of inter-agency systems and collaborative practice around specific cohorts of children in the statutory system (for example young people entering the youth justice system and young people in state care facing serious mental health or educational challenges)
 - d. increasing age thresholds in care and protection and other young people in transition (eg NEETS) suggests more flexibility is needed in our statutory age threshold
 - e. the Royal Commission into Historical Abuse in State Care will require input and guidance from our office
 - f. the Royal Commission into Historical Abuse in State Care will likely call for more checks in the system, and increased independent monitoring and oversights
 - g. changes resulting from increased understanding and commitment to doing better for tamariki and rangatahi Māori, for example, from a strong commitment in the Oranga Tamariki Act (1989)
 - h. proposed legislation and reporting obligations on child poverty measures and targets are resulting in calls for independent oversight of the foreshadowed targets and strategy
 - i. development of the child wellbeing strategy which has increased requests for advice about how interventions might be child-centred and/or increase wellbeing
 - j. possible oversight of the delivery of the child wellbeing strategy

- k. growth in place-based and social investment initiatives focused on children, their families and their communities, and requests for advice on achieving better outcomes for children
- l. increased momentum for child rights work across government
- m. the inquiry into mental health and addiction will require our advice on how to involve young people
- n. growing interest across government and community organisation to listen to the voice of children, and the growing demand for our advice as to appropriate mechanisms, ethics and tools
- o. growing interest in addressing the gap in complaints mechanisms and appeal/review processes of decisions of school Board of Trustees
- p. growing demand for child-centred family court, restorative justice, and complaints processes that include child-centred elements
- q. a growing awareness of the gaps in child protection policy for a different sectors (e.g. schools, community organisations), and training to implement these policies
- r. the gaps in training about and support for, engaging with children and young people generally
- s. the gap in knowledge about children's rights across a range of sectors, including government policy analysts, and lack of training as to how to apply the Convention to policy and practice
- t. the disestablishment of the Families Commission, and the resulting gap in advocacy for families and whānau with children under 18.

38. Extending the Children's Commissioner's ability to play a contributing role in many or all the above functions has the potential to create transformative outcomes for children and young people in New Zealand. The OCC could provide a comprehensive system of monitoring, advocating for change, and building capability across the sector based on our expertise.

39. Our thinking here is not limited to considering independent oversight to the care and protections and youth justice systems. A brief overview of the potential of these functions follows:

Monitor & Independent Oversight

- Monitor across research, data, children's experiences, community views, complaints, media to understand how children are doing and when children's needs are not being met.
- Can include monitoring specific government policy and services as an accountability mechanism (e.g. Oranga Tamariki Act 1989 provisions, Wellbeing strategy) **or** general monitoring across sectors or where sectors need to work collaboratively around specific cohorts of children (e.g. welfare, health, education) **or** topics (bullying, impacts of pornography, disability issues).

Advice &
Systemic
Advocate

- Identify systemic issues and advocate for solutions using a range of approaches and audiences to influence change.
- Can be aimed at policy and practice of government or non-government organisations, or for raising public awareness

Build Government &
Sector Capability

- Where the barrier to change is gaps in knowledge and understanding, support capability building for policy and practice to government and community organisations.
- Do this by demonstrating and sharing good practice, providing training based on our expertise.
- Specific focus on supporting child-centred capability. This could include how to: collect and use child's views and voices to inform policy and service design; undertake child impact assessments; apply child rights to policy and legislation; embed child-centred decisions into processes.

Our legislation needs updating

40. Our legislation is very wide and enabling. It would even accommodate most of the possible changes or demands outline above. What it is lacking is any requirement for others to act on our recommendations. The main elements of our legislation and points for consideration are outlined here.

The Children's Commissioners Act 2003 outlines a range of functions and responsibilities

41. Our legislation stipulates the Commissioner must have a mechanism for consulting with children and must have regard to:
- the Convention:
 - the principle that the Commissioner should give serious consideration to the views of children and take those views into account:
 - the principle that the Commissioner should recognise the diversity of children in New Zealand:
 - the principles stated in sections 5 and 6 of the Oranga Tamariki Act 1989, so far as they are applicable and with all necessary modifications.
42. It also stipulates a wide range of general functions (section 12), specific functions related to Oranga Tamariki Act 1989 (section 13) and provisions for investigations (section 14). Some aspects of the current Act confuse 'what' the Commissioner should do with 'how' he might do this. This has resulted in a range of items as general functions that are not on the same level.
43. There is a mandate to investigate 'investigate any decision or recommendation made, or any act done or omitted (other than a decision, recommendation, or act to which section

13(1)(a) applies), in respect of any child in that child's personal capacity' (S12 (1)(a). Sections 17 thru 26 further stipulate provisions to investigate. But with all these provisions, alongside the other functions in sections 12 and 13, there is no requirement for any agency or body to act on our findings or recommendations.

44. Together, the functions in the Act encompass a wide-range of possible activities. The extent to which these are undertaken is currently based on the Commissioner's priorities, resources and discretion. A statement of performance expectation is agreed with our responsible minister. Reporting against this demonstrates the Office work to a set plan and priorities – e.g. 'do what we said we would do' and are expending public resources appropriately.
45. This means balancing limited resources across a range of demands, and not undertaking some possible activities simply due to resource constraints. It means trying to work at a level that provides only a minimal level of legislative compliance, rather than fully working with the authority of our legislation to drive even more changes in the best interest of New Zealand children.

We have other mandated functions

46. In addition, there are a number of other functions stipulated where the Children's Commissioner fulfils a role. The first is as a 'National Preventative Mechanism' under the Crimes of Torture Amendment Act 2003 and has responsibilities under the Optional Protocol to the United Nations Convention Against Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).
47. We also have a mandated role under the Human Assisted Reproductive Technology Act 2004 to provide the Minister of Health with advice on issues related to reproductive technology as a statutory appointee of the Advisory Committee on Assisted Reproductive Technology (ACART).

We have limited powers

48. The Children's Commissioner's main power rests in our independence. With the exception of aspects covered in our memorandum of understanding with Oranga Tamariki regarding disclosure of some aspects of our monitoring or work staff are involved in "in confidence", the Commissioner can make public statements about changes we want to see for children, the barriers to those changes, and what we want to see different from government agencies. The Commissioner also has the mandate to report, with or without request, to the Prime Minister on matters affecting the rights of children.
49. What appears to be missing is some middle ground, where the Commissioner may from time to time make a report or recommendation to a government agency, and that agency is required to acknowledge the recommendations and any steps they will take to action them.

Charting a new course for the Children's Commissioner

50. Now is the time to look at what we want from a Children's Commissioner in terms of monitoring how New Zealand children are doing, and where independence and rigour is needed to provide public confidence and accountability for government.
51. Consideration would need to be given to what functions you think appropriate, what structure would best achieve that, and then the scale of activity that is desirable. The final step is designing the organisation appropriately configured and resourced to enable these functions.
52. We have been considering these questions as an office, and have a view on what we do well, where the biggest demand for additional services are, and how an enhanced agency could deliver on these to support better outcomes for the children of New Zealand.
53. Now is the time to be courageous and ensure the systems are in place to support the transformational change we all seek for children. Expanding the legislative role, purpose and functions of the Children's Commissioner could:
 - embed more rigorous monitoring and oversight where it is needed
 - identify and advocate for changes across agency boundaries
 - bring the voice and experience of children and families into decision-making, and
 - provide confidence in the sector by having an independent watch dog for children.