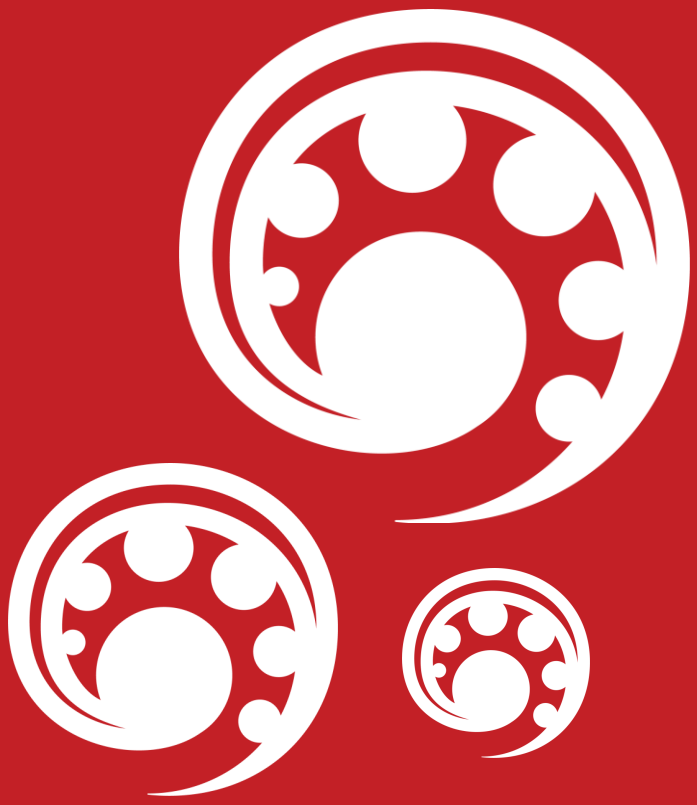

Submission to Social Services Select Committee

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

MANAAKITIA Ā TĀTOU TAMARIKI
Children's Commissioner

Message from the Children's Commissioner

Like most New Zealanders, I want every child to grow up knowing they belong with a whānau that has what they need to live a good life and are loved and nurtured.

The Office of the Children's Commissioner represents 1.2 million people in Aotearoa New Zealand under the age of 18, who comprise 23 per cent of the total population.

My role is to advocate for their interests, ensure their rights are upheld, monitor places where children and young people are detained, ensure their voices and ideas are heard, and help government agencies to listen and act on them.

My commitment is to influence positive change so all mokopuna in Aotearoa have the best opportunity to be safe, loved and to lead fulfilling lives with the support of their whānau and communities.

All mokopuna need to know:

"He kākano ahau i ruia mai i Rangiātea" – I am a seed which was sown in the heavens of Rangiatea.

For more information, please contact: Dr Katie Bruce, Acting Director, Strategy, Rights and Advice, k.bruce@occ.org.nz.

Contents

Summary of Recommendations

Oversight of Oranga Tamariki System Bill

A. The objectives and powers of the monitor must reflect its intended purpose for mokopuna
B. The Monitor must be independent of government
C. The vision the Government themselves have articulated for transformation of the care and protection system, to deliver *by Māori for Māori*, needs to extend to the Monitor
D. This requires the Monitor to have an independent, te Tiriti o Waitangi-based model of governance
E. OPCAT monitoring needs to be urgently considered as an important component of the oversight system
F. The objectives and functions of the Monitor must be matched by adequate powers to hold government to account.

Children and Young People's Commission Bill

G. The advocacy functions and powers for the Children and Young People's Commission need strengthening in the Bill to meet stated Cabinet intent
H. The named role of Children's Commissioner is critically important and must be retained
I. The Commission needs a te Tiriti o Waitangi-based governance model – which requires at least half the Commission Board to whakapapa Māori
J. The ability of the Commissioner to report directly to the Prime Minister must be retained
K. The investigation and complaints function of the Commission should be retained.

Introduction

1. *He mokopuna he taonga*. Children, mokopuna are precious, a treasure. They are precious now, and will grow to be the future leaders, and future parents and whānau who will in turn grow and nurture the next generation. Legislative change in the interests of mokopuna, especially the most vulnerable, is welcomed as a golden opportunity to advance their rights and improve their wellbeing.

2. The Office of the Children's Commissioner (OCC) welcomes the opportunity to submit on the Oversight of Oranga Tamariki and Children and Young People's Commission Bill (the Bill).

3. The submissions are considered from a practical and working perspective through the eyes of a Commissioner new to the role but with a firm eye on the future of the children, the mokopuna of Aotearoa and the staff of the office of the Children's Commissioner dedicated and committed to the kaupapa of the work of the Children's Commissioner.[1]

4. This submission centres children, young people, mokopuna and their whānau. It focuses on the rights of mokopuna[2], including the right to have their views heard.

5. This is both an enormous, and enormously significant Bill for mokopuna. It delivers expanded, and more comprehensive monitoring - that successive Children's Commissioners have not been resourced to deliver. This Bill also establishes a Commission to strengthen advocacy in the name of children and young people.

6. Cabinet's intention to strengthen both oversight and advocacy is laudable. It is a critical opportunity to get things right for mokopuna for generations to come. However, those ambitions have not been matched by the provisions in the Bill.

7. The Bill is, in our view, a lost opportunity to place the wellbeing of mokopuna at the heart of legislation designed to protect and promote their rights,

[1] Former Children's Commissioner Russell Wills, who held the role from 2011 to 2016 was also consulted during the development of this submission.

[2] Drawing from the wisdom of Te Ao Māori, we have adopted the term mokopuna to describe all children and young people aged under 18 years of age. This acknowledges the special status held by mokopuna in their whānau, hapū and iwi and reflects that in all we do. Referring to the people we advocate for as mokopuna draws them closer to us and reminds us that who they are, and where they come from matters, at every stage of their life.

interests, and wellbeing; and to advance and embed the vision of the Child and Youth Wellbeing Strategy for future generations. It must be focused on making children's lives better, a goal that should not be compromised in the drive for system improvement by the Government.

8. The context has shifted in care and protection in Aotearoa since the genesis of this Bill five years ago. The Royal Commission of Inquiry into Abuse in Care has highlighted, in a public way, past failings and therefore the need to improve practices and systems in care and protection to ensure that children are safe now and into the future.

9. In this context, the Bill lacks the vision articulated by this Government for the care and protection system to restore trust and deliver solutions *by Māori, for Māori*; solutions first called for more than 30 years ago in the landmark Puao-te-Atatū Report[3].

10. This Bill expands functions and activities across multiple agencies towards a more comprehensive system of monitoring, while at the same time removing the Monitor's independence from government and removing key powers and status from the Children's Commissioner.

11. The OCC acknowledges the opportunities we have had to provide input and feedback during the drafting of the Bill since Cabinet agreed to changes to the independent oversight arrangements of the Oranga Tamariki system and children and young people's issues in March 2019. Much of this feedback has not been incorporated into the Bill.

12. It is disappointing that the views of mokopuna have not been considered in the planning as the submission period has fallen entirely over the summer school holidays.

13. Given the Children and Young People's Commission will represent all mokopuna under the age of 18, and care-experienced young people up to the age of 25, it is vital they have a say on how the Commission best meets their rights and needs.

14. How can it be in the best interests of mokopuna for them not to have a say on the final Bill that establishes their Commission? Indeed, it is their right under Article 12 of the Convention on the Rights of the Child (Children's Convention).

[3] The Māori Perspective Advisory Committee (1988) Puao-te-Atatū: The report of the Ministerial Committee on a Māori perspective for the Department of Social Welfare. Wellington.

15. This submission starts with comments and concerns about the Oversight of Oranga Tamariki Bill, and then addresses the same for the Children and Young People's Commission.

16. In addition, we have included detailed feedback on specific clauses of the Bill in an Appendix.

17. A full list of our key recommendations can be found on page 3.

Comments on the Oversight of Oranga Tamariki System Bill

The Office of the Children's Commissioner was established out of concern for children and young people in the care and protection system

18. The Children's Commissioner was established as a voice for children and young people in 1989.

19. The impetus in Aotearoa to establish an Office of the Children's Commissioner largely arose out of growing international interest in children's rights, and domestic concern for the wellbeing of children in state care, especially those living in residential homes.

20. One of the Children's Commissioner's central responsibilities has been to monitor the policies and practices of the Department of Child, Youth and Family Services, Child Youth and Family, and then Oranga Tamariki, and encourage improvements so these work better for children and young people.

The Children's Commissioner has a legacy of speaking up for children and young people in state care

21. The establishment of the Office of the Children's Commissioner as an Independent Crown Entity gave the Commissioner broad powers.

22. Successive Children's Commissioners have been trusted and independent advocates for children enabled by these broad powers and independence under the Independent Crown Entity model.

23. These powers included the ability for the Commissioner of the day to determine their own work programme uncompromised by the obligation, that

departmental Chief Executives have, to enable the implementation of Government policy.

24. For example, Commissioners have demanded action on poverty, called for improvements in education and health, demanded the voices of children and young people be heard, and called for a child protection system that works for mokopuna and their whānau, not just the Government. At times these calls for action were not convenient for the Government of the day.

25. Policy change has often occurred as a result. Recently, Oranga Tamariki and the Government agreed to start the process of closing large institutional care and protection residences. This followed years of repeated, serious warnings made in Children's Commissioner's monitoring reports about the safety and wellbeing of children and young people detained in these places. The ability to identify damaging policies, and recommend improvements, has given potency to the Children's Commissioner's role as the monitor of Oranga Tamariki.

26. There has never been a requirement of the Government to implement the Commissioner's recommendations. Indeed, improvements have been achieved through advocacy for the rights, wellbeing and best interests of mokopuna, and collaborative relationships including a memorandum of understanding with the care and protection agency. This illustrates the benefits of monitoring and advocacy working together.

Mokopuna in state care need an independent advocate to hold Government to account for their well-being

27. In 2015, the Modernising Child, Youth and Family Expert Panel recommended a review of the resourcing of the Office of the Children's Commissioner be undertaken in light of the recommended changes to the care and protection and youth justice system. In August 2017, this scope was expanded to identify overlaps and gaps in the current mechanisms for monitoring, complaints, investigations and advocacy in services for vulnerable children, and to identify reform options to support the new system.

28. The decision to establish the Monitor as a departmental agency strips it of the independence that has made the monitoring function of the Commissioner such an influential and trusted voice for children since 1989, and is in contrast to the findings of the Beatie report, and expressed Cabinet intent.

29. A monitor constrained by Section 11 of the Public Service Act that requires the chief executive to 'enable and implement Government policy,' would be constrained, for example, in calling for the closure of care and protection

residences. Instead, it could only comment on the services and standards provided within them.

30. While it is true the new Commission, as articulated in the Bill, would be able to advocate for children and young people, and for change in any area it sees necessary, it would no longer be the monitor of the Oranga Tamariki system. There is no obligation in the Bill for the Commission to focus on oversight of the Oranga Tamariki Act or its policies. The focus areas for inquiries and advocacy of the Children and Young People's Commission will therefore be at the discretion of its board.

31. Mokopuna in state care may miss out on a strong, independent voice holding the Government to account for their care and protection.

The Bill presents an opportunity to adequately address a history of underfunded monitoring

32. We welcome and support the Government's initiative to increase resources to monitor the Oranga Tamariki system. The Office of the Children's Commissioner has been advocating for an adequately funded and independent children's monitor since at least 1999 when Roger McClay was Children's Commissioner.

33. Prior to the current Children's Commissioner Act (2003), Roger McClay made public statements regarding his concerns that independence and funding were the requirements needed to enable the Office of the Children's Commissioner to perform its functions including monitoring. At the time, Roger McClay stated:

> *"[A]ppropriate funding and independence are critical in the efficacy of a Children's Commissioner."* (McClay, 1999)

34. He added in his oral submission to Select Committee:

> *"My office is the only one charged with monitoring and investigating the Department of Child, Youth and Family Services. Many still feel that I am hamstrung because of finances being administered by departments closely allied and under the jurisdiction of the same Minister."* (McClay, 2000)

35. At this time, the Office of the Children's Commissioner was underfunded to the extent that staffing was approximately five full-time equivalent employees in total[4]. These limitations prevented the Office's ability to follow up on inquiries

[4] With a lack of resources to do more than request government to provide information or request a response to Children's Commissioner's recommendations.

and undertake investigations such as that relating to Lake Alice, which was raised with the Office in 2001-2002.

The Royal Commission of Inquiry demonstrates the need for a well-resourced independent monitor to prevent the need for a future inquiry

36. This Bill provides an opportunity to build a strong, independent Monitor at a time when survivors, who suffered abuse in state care, continue to share their stories with the Royal Commission of Inquiry into Abuse in Care.

37. Survivors of abuse in care have consistently called for assurances that abuse will not continue for mokopuna currently in state care. This specifically requires the children's Monitor to be set up in a way that addresses the failures of the state in past abuse.

38. Unfortunately, we know that abuse in state care continues as acknowledged by Oranga Tamariki in their bi-annual "Safety of children in care" reports. This is supported by independent reports completed by the OCC in the thematic review, "Te Kuku o te Manawa"[5] (2020); in the OCC insights report "A hard place to be happy"[6] (2019); and in our advocacy against women being handcuffed while in labour (2021); and the disclosures of physical abuse of mokopuna in residences (2021).

39. The Office of the Children's Commissioner has provided advice and recommendations to the Royal Commission of Inquiry of Abuse in Care in recent years. These have included calls for adequate funding to monitor across the whole system; adequate independence of the Monitor; child and whānau centred monitoring and complaints mechanisms; and requirements to give effect to Te Tiriti o Waitangi.

40. While we understand why the Government wants a 'trusted advisor', the view of the Children's Commissioner is that this must not be the Monitor. Indeed, it creates the opportunity for conflict between what is perceived to be in the interests of the Minister and what is in the interests of mokopuna.

41. The monitor of Oranga Tamariki must be focused solely on how the care system works for children and young people; serving their interests. The risks of compromising on that focus are too great, as the Royal Commission has shown.

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[5]Office of the Children's Commissioner (2020) Te Kuku O Te Manawa: Ka puta te riri, ka momori te ngākau, ka heke ngā roimata mo tōku pēpi and Office of the Children's Commissioner (2020) Te Kuku O Te Manawa - Moe ararā! Haumanutia ngā moemoeā a ngā tūpuna mō te oranga ngā tamariki.

[6] Office of the Children's Commissioner (2019) Hard Place to be Happy – Insights report.

Mokopuna Māori and disabled mokopuna will be disproportionately impacted by these changes

42. Mokopuna Māori and their whānau are disproportionately negatively impacted by state failure. Disabled mokopuna, inclusive of Māori, are also identified as a specific cohort at significantly greater risk of experiencing harm from the state. The Monitor needs to address these inequities by ensuring adequate legislative provisions for Māori and disabled mokopuna.

43. Te Tiriti o Waitangi needs to be at the centre of the monitoring legislation ensuring that Māori are provided opportunities to co-govern, co-design, and co-lead across the monitoring system and that it is done in a way that is authentic to the Articles of te Tiriti o Waitangi. This can only be achieved if Māori, as Treaty partners, have an active role in the decision-making process.

Many reviews have called for increased independent monitoring of the care system

44. The OCC is concerned that the interpretation of an 'independent monitor' no longer aligns with the many calls over the years for increased monitoring. For example, the Broad Report (2013), the Rebstock EAP Report (2015), the Beatie Report (2016) and the Royal Commission of Inquiry into Abuse in Care Interim Report (2020) – all stress the importance of independent oversight of the care system, as did the original intent of the 2019 Cabinet Paper.

45. Positioning the Independent Children's Monitor within a government departmental agency, or lead by a statutory officer, reduces its independence from Government. This creates a real risk of further eroding trust, rather than increasing public trust and confidence.

46. Instead, transparency, accountability and independence are all critical components of a monitor that will support trust across government, iwi and communities.

47. The Beatie review in particular was referred to in the March 2019 Cabinet Paper, which has informed the development of this Bill, and it was this review that proposed the goal of 'strengthening the independent oversight of the Oranga Tamariki system'.[7]

> *'The [Beatie] Review highlighted that independent oversight has a vital role in improving practices and processes. Independent oversight can provide assurance, and strengthens the resilience of systems. It can*

[7] p21 of the Beatie report

promote transparency, and builds public trust and confidence that the wellbeing and safety of children and young people is paramount. Independent oversight of the care, protection and youth justice systems is particularly critical, because the Government has coercive powers (such as the power of Oranga Tamariki to remove children and young people from their whānau or to place young people in secure residence) and the State has specific responsibilities for those in their care.' (p5-6, March 2019 Cabinet Paper).

48. The opportunity that this Bill represents should not be underestimated. In summary:
    a. It is a once in a generation opportunity to get it right for children, young people and their whānau and create the best oversight system for them, without compromise
    b. It must be a Monitor that it looks to a future in which the vision of a transformed Oranga Tamariki system has been realised
    c. It must promote and support the transfer of more Oranga Tamariki system functions to Māori (including iwi, hapū and Māori organisations).

49. The Bill splits the oversight functions amongst the newly established Monitor, the Ombudsman and the Commission:
    a. The Monitor will assess the Oranga Tamariki system, including services and Oranga Tamariki residences, and its interface with other systems
    b. The Ombudsman will receive complaints and undertake investigations
    c. The Commission will undertake OPCAT monitoring in places of detention in which mokopuna are held, including Oranga Tamariki residences, as well as advocating for all mokopuna, including mokopuna in care.

50. These agencies will need to work very closely together to ensure that there are no gaps in the multi-agency system of oversight envisaged in the Bill for mokopuna.

The perspectives, rights and wellbeing of mokopuna need to be prioritised

51. With the purpose of the Oversight Bill 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*" (s4) and from our perspective as the advocate for mokopuna, it is vital that we consider the system from the perspective of mokopuna and their whānau.

52. The Cabinet Paper in March 2019 noted the need to "ensure the voice, wellbeing and interests of children and young people are at the centre of oversight considerations and practices".

53. However, mokopuna have not been consulted on this Bill.

54. In 2019 existing insights, a small number of focus groups with children and young people, and consultation with the child rights sector was undertaken to inform a child impact assessment as part of the development of the Bill. Findings included that there is a low level of trust and confidence in the care and protection system. Consultation during the Review also highlighted that, children, young people and their families are often unlikely to raise concerns regarding their treatment or openly share their care experience with those providing services.

55. As identified by the Child Impact Assessment completed by MSD in the development of this Bill, strengthening the independent oversight of the Oranga Tamariki system and children's issues will likely have a positive impact on whānau and the wider hapu, iwi and community by instilling a new level of trust in the system.

56. However, the Child Impact Assessment was completed for this Bill in 2019. At this time the in-principle decision was for the Monitor to be placed back with the OCC. Given that the Bill proposes reduced independence for the Monitor of the care and protection system, we are concerned that this current low level of trust will not restored. If the Child Impact Assessment was conducted almost 3 years on, it may have raised these concerns.

57. From OCC's engagement with mokopuna in 2018 "*What makes a good life*?[8]" a key finding was 'how you support us matters just as much as what you do'.

58. Efforts to support children and young people will not be effective if the sole focus is on what needs to be delivered. How supports are delivered, and who they are delivered by, matters just as much, including services *by Māori, for Māori*.

59. Mokopuna also told us to "value and respect us". They want respect, and to be listened to and taken seriously.

[8] https://www.occ.org.nz/publications/reports/views-of-children-and-young-people-in-care/

60. Mokopuna in an Oranga Tamariki residence may interact with the Monitor undertaking assessments, be consulted by the Commission undertaking OPCAT monitoring, be referred to the Ombudsman if they have a complaint to make, and also contact the Commission about their experiences or advocacy ideas. This is a complex system for mokopuna to understand and navigate, many of whom have experienced trauma in their lives and little reason to be trusting of adults and systems. They are already navigating a complex care and protection system and its interface with other agencies and organisations.

61. The system must be designed with mokopuna and whānau at the forefront, and be set up so they know who they can go to and be heard. The OCC is committed to working closely with the other agencies to ensure that mokopuna experience an accessible oversight system and we are confident this can be done with close working relationships. This Bill is also about future-proofing.[9]

62. There is a risk that three separate agencies (Chief Ombudsman, Children and Young People's Commission, and the Monitor) may appear too daunting to mokopuna and whānau to whom intent of the Bill is focused on better serving. An example of the nuances to navigate, with multiple agencies holding oversight responsibilities, is the issue of grievances raised by mokopuna in detention.

63. Clarity is needed in terms of which agency is responsible for oversight of the grievance panels to ensure that oversight, rather than just information sharing, is achieved. The OCC currently receives grievance panel reports. Clause 77 of this Bill amends regulation 31(5)(d) of the Oranga Tamariki (Residential Care) Regulations 1996 so that the Chief Ombudsman and Monitor also receive grievance reports. We agree that the OCC should continue to receive these reports as part of our OPCAT monitoring. However, mokopuna will need clarity around who will work with them to ensure issues raised are resolved.

64. Currently, mokopuna can escalate their individual grievances to the OCC if they are not satisfied with the internal Oranga Tamariki process or outcome. This is often the only mechanism for mokopuna to share their experience of the residences with us, outside of our scheduled monitoring visits. The OCC's ability to investigate these grievances needs to remain because mokopuna and

[9] It should ensure that whichever Chief Ombudsman, Children's Commissioner (or board) and Chief Executive of the Monitor, mokopuna rights should be a focus.

whanau know that the Commissioner is their advocate, and this option should remain available to them.[10]

65. We recommend the complexity of the proposed system be carefully scrutinised through the Select Committee process. Bureaucratic layers will confuse and frustrate mokopuna and their whānau. It needs to be simple.

66. The OCC welcomes the submissions of others on this issue, particularly mokopuna and their whānau, and those with experience working in this area.

Recommendations on the Oversight of Oranga Tamariki System Bill

The objectives and powers of the monitor must reflect its intended purpose for mokopuna

67. OCC agrees and is encouraged by the purpose of the Bill[11] and principles section[12]. It explicitly obliges people performing functions and duties or exercising a power under the Bill to have regard to the well-being, interests, and voices of children and young people and the need to uphold their rights under the Children's Convention and the Convention on the Rights of Persons with Disabilities. Given that mokopuna Māori are disproportionately represented in the care system, it is encouraging that the Bill recognises the critical need to have regard to the importance of relationships and connections of mokopuna with their families, whānau, hapū, iwi and communities.

68. The objectives of the Monitor, however, contain some inherent tensions when read alongside its purpose. In our view, the objectives of the Monitor should be to:
    a. Understand how mokopuna are experiencing the care and protection system
    b. How the Monitor will assess if system is getting better outcomes for mokopuna
    c. On what basis the Monitor will alert the Minister to any serious issues regarding mokopuna experiences.

[10] Clause 120 removes this mechanism, meaning that mokopuna who meet with the OCC or Monitor staff are not able to raise individual issues of grievance with either organisation for resolution, and must be referred to a third organisation: the Ombudsman.

[11] Clause 4.

[12] Clause 5.

69. We are pleased to see that, as per clauses 13(2) and 14(c), the Monitor's function will include assessing *outcomes* for mokopuna, families, whānau and iwi who receive Oranga Tamariki support, and changes in outcomes over time, with a particular focus on mokopuna Māori and their whānau. Assessing outcome improvements for mokopuna is a vital part of ensuring mokopuna are receiving quality care in the Oranga Tamariki system.

70. We recommend that - in addition to a particular focus on Māori - clause 14(c) be extended to include disabled mokopuna. Evaluating outcomes is particularly important for those cohorts that are disproportionately represented, including Māori and disabled children. Mokopuna who are, or have been, involved with Oranga Tamariki are 2.6 times more likely to have at least one indicator of disability than children and young people with no previous involvement with Oranga Tamariki.[13]

71. We welcome the strengthened consent processes; namely, the requirement under clause 46(1)(b) to obtain informed consent from mokopuna before collecting information directly from them, and the duty of caregivers not to block access to mokopuna in their care under clause 47.

72. Gaining informed consent from mokopuna, and ensuring people are able to talk to mokopuna about their experiences directly, are crucial to ensuring their wellbeing in the care and protection system and upholding their rights.

73. Informed consent should be explicit in clause 38 of the Bill and apply to the Ombudsman.

The Monitor must be independent of government

74. We consider that in order to be effective, the Monitor must be structurally and functionally independent of government through either an Independent Crown Entity (ICE) or an Autonomous Crown Entity (ACE).

75. As proposed in the Bill, the Monitor is insufficiently independent. Establishing the Monitor as a departmental agency means it is not independent of government. While we acknowledge the Monitor is independent of Oranga Tamariki – the government department it is monitoring, it is a departmental agency within government.

76. The governance of the Monitor seems out of step with changes underway in the health sector and within Oranga Tamariki itself. The Waitangi Tribunal

[13] See: https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Research/Data-analytics-and-insights/Children-and-young-people-with-impairments.pdf Page 8

Inquiry into Oranga Tamariki (WAI 2915) made a range of findings and recommendations which apply not only to Oranga Tamariki, but also the Monitor. These do not appear to be reflected in this Bill.

77. True independence will future proof the activities the Monitor is able to undertake. Strengthening the Monitor's independence as an ACE or an ICE would make it possible for it to undertake activities that require functional independence from government in the future.

78. We encourage the Committee to reconsider the home of the Monitor, including the in-principle decision to place the Monitor with the Commission, and further explore independent hybrid governance models.

79. As articulated in the Cabinet papers proactively released by the Government in relation to the development of this Bill, there is a perception that the advocacy monitoring functions conflict within the same entity.

80. We do not agree that monitoring and advocacy functions conflict. In fact, they are complementary functions. On reading the Cabinet papers, this appears to be based on perception, not evidence. The impact of separation of the advocacy and monitoring functions may also run contrary to the stated intent and objectives of the Bill. There is a risk that it may undermine both functions, and public trust in the Oranga Tamariki system.

The vision the Government themselves have articulated for transformation of the care and protection system to deliver *by Māori for Māori,* needs to extend to the Monitor

81. It is vital that the Monitor have the public confidence of Māori, and that it is set up to prevent harm to mokopuna Māori.

82. Māori and tikanga Māori approaches should be embedded in the monitoring framework, relationships and processes, as envisioned in the wider care and protection system and the 2021 report of the Ministerial Advisory Group.

83. We do not have confidence that the Bill has strong enough te Tiriti o Waitangi provisions in its current form. Meeting Treaty obligations relating to partnership requires more than participation – it's about leadership, partnership and decision-making power.[14]

[14] This applies equally to the way that monitoring is carried out, as it does to the Oranga Tamariki system. For example, the Monitor will need specialist knowledge, or to partner with experts, to assess whether the obligations under s7AA of the Oranga Tamariki Act are being met by the Oranga Tamariki system.

84. It is crucial that provision for Māori co-leadership and governance be legislatively 'wired into' the new Monitor. Māori have been significantly harmed under the guise of care and protection, as seen in the Royal Commission of Inquiry into Historical Abuse in State Care interim and redress reports.

This requires the Monitor to have an independent, te Tiriti o Waitangi-based model of governance

85. The Bill proposes the Monitor appoint a Māori Advisory Group in order to support meaningful and effective engagement with Māori. The OCC supports the intent of this Bill to meaningfully and effectively engage with Māori, but do not consider an advisory group model will lead to this intended outcome.

86. The Māori Advisory Group is positioned as a group to consult with, and their role seems to vary between strategy and operations throughout the course of the Bill.

87. Their effectiveness will be reliant on their ability to influence, and the openness of the Chief Executive to collaborate, rather than their collective power. This falls short of its potential of genuine partnership. The Māori Advisory Group will be made up of respected Māori leaders, and they should be part of the decision-making process to fully benefit from their expertise.

88. The establishment of the Māori Advisory Group in lieu of independent governance and decision-making power is a risk, both to mokopuna Māori served by the Monitor, and to public trust. The 'Māori Advisory Group' model is outdated, inappropriate and is out of step with developments in other areas of government policy and operations; such as the establishment of the Māori Health Authority and Health New Zealand.

89. Instead of an Advisory Group model, we propose the Bill embeds a te Tiriti o Waitangi model of governance into the Monitor. The board would have a governance role, enabling Māori to have a meaningful role in strategic oversight of the Monitor, and therefore the care and protection system.

90. Under the in-principle decision to place the Monitor back with the OCC, a model of independent governance was proposed. The size of the Monitor was part of the rationale for this bolstered governance proposed for the Children and Young People's Commission.

91. The result in this Bill, however, is that the smaller Children and Young People's Commission has a board of three to six members, and the larger Monitor with

oversight of outcomes of mokopuna in the care and protection system, has no governance at all and instead a sole statutory officer reports directly to a Minister.

92. We consider that independent governance should include a requirement for members of the board to whakapapa Māori as well as having experience and knowledge of tikanga Māori as proposed in clause 17(2)(b). In addition, we recommend adding care experience as an additional criterion in appointing members to this board.

93. We recommend strengthening clause 19 in regard to the Monitor's obligations to develop arrangements with iwi and Maori organisations for the purposes of providing opportunities to improve oversight of the Oranga Tamariki system and information sharing. We suggest this clause reads:

> *The Monitor must—*
>
> *(i) Provide resources and opportunities for Māori to partner in the discharge of functions, including design, decision-making and implementation, as set out in this Act.*
> *(ii) Provide opportunities, and invite proposals, from Māori on how, to improve oversight of the Oranga Tamariki system.*
> *(iii) Enable the robust, regular, and genuine exchange of information between the monitor and Māori.*
>
> *The Monitor and an Ombudsman should seek to enter into partnerships or arrangements with Māori (including iwi, hapū and Māori organisations) in order to agree on any action both or all parties consider is appropriate.*

OPCAT monitoring needs to be urgently considered as an important component of the oversight system

94. The establishment of the Monitor – and subsequently, the proposed transfer of s13 monitoring functions from the OCC, means there will, in effect, be two agencies monitoring places where children and young people are detained by Oranga Tamariki. This is because both the Monitor, and the Children and Young People's Commission will be required to inspect places of detention under two different Acts, undertaking different types of monitoring with different mandates and a different focus.

95. The Government will need to make additional resource available to meet its responsibilities under OPCAT for children if the OCC is no longer funded to monitor the Oranga Tamariki system.

96. There is a real risk that mokopuna and staff in these places could be 'over monitored'. The OCC is committed to working closely with the Monitor to ensure that monitoring schedules are aligned so that this does not happen. However, it will mean that mokopuna in detention will be asked to build relationships with another set of adults in their lives, as will the staff.

97. If the Monitor were to become an Independent Crown Entity or an Autonomous Crown Entity, it would have the independence required to undertake OPCAT monitoring, alongside its Oranga Tamariki system monitoring. This could include the option to return to Cabinet's earlier in-principle decision to place the Monitor with the Commission.

98. There are efficiencies if the OCC hosted the Monitor; sharing office space, back-office functions and a hybrid governance model where some Board members sit on both Boards or one Board for both entities. This was shaped by the stated policy intent to separate monitoring and advocacy.

99. As a signatory to the UN's Convention Against Torture and a party to the Optional Protocol to the Convention against Torture and other cruel, inhuman or degrading treatment and punishment (OPCAT), New Zealand is required to enable National Preventive Mechanisms (NPMs) such as the OCC to establish a system of regular visits to places where people are detained "in order to prevent torture and other cruel, inhuman or degrading treatment or punishment".[15] Therefore, the New Zealand Government has an international responsibility to provide independent (from government) OPCAT monitoring to examine and monitor the treatment and conditions of people held in places of detention.[16]

100. Historically, this monitoring has been undertaken alongside s13 or other monitoring visits, providing two types of monitoring most visits.

101. OPCAT monitoring is not directly impacted by this legislation because it comes under the Crimes of Torture Act (COTA) 1989. However, it is an important

[15] Article 1, OPCAT.

[16] In addition to s13 monitoring functions, the OCC monitors places of detention where children and young people are held under its designation as an OPCAT monitor. These include care and protection and youth justice residences, youth justice remand homes and secure adolescent mental health units. The Ombudsman holds the designation for prison OPCAT monitoring, and we undertake joint visits to mother and baby units which operate within Women's prisons, with a focus on the child.

component of the oversight system, and we encourage the Committee to ensure that the Bill reflects this so that children experience a seamless, accessible and understandable monitoring system.

102. Under COTA, OPCAT inspections must be undertaken by an organisation that is functionally independent of the state, and OPCAT monitoring of most places in which children are detained has been designated to the OCC because of our independence as an Independent Crown Entity, and because of our focus and expertise in children's rights, participation, and wellbeing.

103. The Government decision to establish the Monitor as a departmental agency means it will not be independent enough to perform OPCAT monitoring to meet the international standards.[17]

104. This UN definition of independence should be taken as a barometer of independence that we should hold the same level of independence as equally important for the Monitor.

The objectives and functions of the Monitor must be matched by adequate powers to hold government to account

105. This requires independence and the ability to speak up for care-experienced mokopuna. It also means one of the Monitor's functions must be to make recommendations for change, as opposed to simply "assessing" compliance, quality of service delivery, and outcomes[18].

106. In the Children's Commissioner's view, for oversight to be strengthened, this power should extend to accountability on the monitored to respond to the recommendations and accept them unless there is good reason not to.

107. Furthermore, the functions under section 13(1)(b)(c) and (e) of the Children's Commissioner's Act 2003, giving oversight of the Oranga Tamariki system itself and care and protection policies should be included in this Bill. These functions are vital for effective monitoring and not providing for them will mean the Monitor will have weaker powers and, in that respect, constitutes a retrograde step compared to the provisions in the Children's Commissioner's Act 2003. Given Cabinet's intent to strengthen both oversight and advocacy, this is not only a missed opportunity, but a gaping hole in the new legislation.

108. An additional function is needed in the Bill "to monitor and keep under review the functioning of the Oranga Tamariki Act, to make recommendations on the

[17] Article 18.1 OPCAT.

[18] Clause 14(2).

working of the Act and to monitor the effectiveness of the policies and practices of Oranga Tamariki".

109. Ensuring the independence of the Monitor would ensure that this function can be carried out without being subject to s11 of the Public Service Act, as previously described in relation to the Monitor's independence.

110. However, if the Monitor remains a departmental agency, then it is still vital to retain, in some part of the overall system, the functions to monitor, review and make recommendations on the Oranga Tamariki Act and policies. In that case, the power to advocate for improvements in care and protection policy and practice should become a mandatory function for the new Children and Young People's Commission.

111. The Children and Young People's Commission will have the ability to advocate on any issue and inquire into how any legislation and policy is working for children and young people.

112. If it is envisaged that the Commission will undertake a role in keeping the Oranga Tamariki Act and policies under review, then this should be explicit in the Children and Young People's Commission Bill and resourced accordingly.

Comments on the Children and Young People's Commission Bill

The Children's Commissioner has successfully advocated for children for the last 32 years

113. The Children's Commissioner is the advocate for the 1.2 million children and young people under 18 in Aotearoa New Zealand - 23 per cent of the population. There are very few issues which do not directly or indirectly affect children. It is the role of the Commissioner to ensure that they have an independent voice, their rights are upheld, and their wellbeing is prioritised in decisions that affect them.

114. The role of the Children's Commissioner has never been more critical. We face challenges such as pandemics and climate change, and the unacceptable deepening of inequities among mokopuna across Aotearoa. The brunt of these inequities is felt most keenly by mokopuna Māori, Pacific and disabled children.

115. Since its inception, the Children's Commissioner, supported by their Office, has played a key role in raising awareness of challenges faced by children and young people, and the people who care for them. Working alongside allies in the children's rights sector and informed by the voices of mokopuna, the Children's Commissioner has advocated to measure and reduce child poverty, and to end discrimination, inequitable outcomes and poor practice in health, education, youth justice and care and protection systems.

116. The Office of the Children's Commissioner has contributed to the development of legislation, policies and practices that now incorporate the rights of children as articulated in the UN Convention on the Rights of the Child. The Children's Convention is now incorporated into the Oranga Tamariki Act (1989), the Child Poverty Reduction Act (2018) and the Children's Act (2018).

117. The Office has played a key role in developing solutions to child wellbeing challenges. Examples include: advocating alongside others to amend Section 59 of the Crimes Act to make better provision for mokopuna to live in a safe and secure environment free from violence by abolishing the use of parental force for the purpose of correction; leading the Expert Advisory Group on Solutions to Child Poverty; engaging with over 6,000 mokopuna to inform the Child and Youth Wellbeing Strategy; and advocating to raise the age of care

and protection for children to 21 years (with transition support and advice available to age 25) and to include 17-year olds in state care and youth justice.

The new Children and Young People's Commission must be fit for purpose, reflect mokopuna aspirations, and be resourced to carry out its functions

118. Cabinet's intention to strengthen advocacy for children and young people allows for the reimagining of the Children's Commissioner role to ensure that it is fit for purpose, reflects children and young people's aspirations for their advocate and is resourced to carry out its functions.

119. The Children and Young People's Commission Bill aims to provide for greater advocacy for children and young people's issues generally, through the creation of a new Children and Young People's Commission. The Bill will have a significant impact on the scope and structure of the OCC. The Bill replaces the sole Commissioner model with a board of three to six members and recognises the Crown's responsibility to give effect to te Tiriti o Waitangi.

120. It expands the functions in the current Children's Commissioner 2003 Act that relate to the participation and rights of children, and also increases the mandate of the Commission to include those under 25 with care experience.

121. The function and power to monitor the care system will move to a separate entity within government and no longer sit with the Children's Commissioner. In addition, in its current form, the Bill removes the Commissioner's powers to conduct investigations and receive complaints from, and on behalf of, mokopuna.

We welcome aspects of the Bill establishing the Children and Young People's Commission

122. These include:
    a. Recognition of the Crown's responsibility to give effect to te Tiriti o Waitangi.
    b. The extension of the Commission's mandate to promote and advance the rights, interests and participation of mokopuna who are care-experienced from 18 to 25.
    c. The strengthened principles section (clause 84) which makes the OCC's advocacy role more explicit than the Children's Commissioner's Act 2003 and includes obligations for the Commission to have regard to international instruments that affect mokopuna, alongside the Children's Convention.
    d. The expanded/more specific functions in regard to promoting interests and wellbeing of mokopuna (clause 99), promoting and advancing

rights of mokopuna (clause 100), and encouraging their participation and voices (clause 101).

123. The OCC is already well-placed to meet the new duties in relation to Te Tiriti o Waitangi, the extended mandate for care-experienced young people, and expanded activities in mokopuna participation and rights, with additional resource.

124. We have started our journey towards becoming a Te Tiriti o Waitangi-based organisation, such as establishing an Assistant Māori Commissioner for Children role, and being informed by mātauranga Māori research and engagement methods, including monitoring iwi-run remand homes.

125. Supported by adequate resources, the OCC office can continue the Te Tiriti journey that is envisaged in this Bill. This will support improved outcomes for mokopuna Māori and is welcomed by the OCC.

126. While we welcome the expanded mandate to promote and advance the rights, interests, and participation of mokopuna who are care-experienced from 18 to 25, this will require new and different areas of expertise and relationships. For example, this age cohort can include young people who are enrolling in tertiary education, who are entering employment and accessing independent housing for the first time.

127. These new areas of expertise will have resource implications and it will be important for the Commission to have a dedicated staff resource with the experience and expertise to advocate alongside care-experienced children and young people.

128. In relation to our child participation work, a respondent in our annual stakeholder survey commented that OCC is "*a voice for children influencing policy and decision-making*". In fact, many agencies, both within and beyond Aotearoa, now contact the OCC for suggestions on how best to engage with children and young people.

129. The number requesting advice is growing rapidly and we are now considered to be the experts on ethical and effective engagement with children and young people by government agencies, academics, and community groups.

The advocacy functions and powers for the Children and Young People's Commission need strengthening in the Bill to meet stated Cabinet intent

130. We welcome the expanded activities proposed in the Bill in regard to promoting the interests, wellbeing, rights and voices of mokopuna. However, we do not consider the advocacy role of the Commission has been strengthened, contrary to the stated intention of the Bill.

131. The lesser status afforded to the Children's Commissioner by not having a named role with that title, along with the removal of the Commission's monitoring, investigation and complaints functions means that this strengthened advocacy role has not been realised in practice. This is contrary to the intention of the policy objective of the Bill to improve advocacy for children and young people's issues generally.

132. It is also contrary to UN guidance[19] which states that independent human rights institutions for children should include:

- an identifiable commissioner specifically responsible for children's rights;
- necessary powers to enable them to discharge their mandate effectively, including the power to receive complaints and obtain any information necessary to promote and protect the rights of all children.

133. It is in this context that we provide the following feedback about outstanding key issues on the Bill.

Removing the named role of Children's Commissioner and the power to investigate is not in the best interests of children

134. We have significant concerns that removing the named role of Children's Commissioner and the power to investigate are not in the best interests of children and young people, nor in line with Cabinet's intention to strengthen advocacy.

135. Previous Commissioners have been spokespeople for mokopuna, with the ability to increase public awareness of, and empathy for, issues affecting children.

[19] See General Comment No 2: The role of independent national human rights institutions in the promotion and protection of the rights of the child (2002) http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsiQql8gX5Zxh0cQgSRzx6ZcNR3YdFwaRoLFkDFvNRlVoE9r590QoHaQTQRwonqARWV9Blutv2Nz3ITQ%2BFebW%2BlOKrOPw9z5qNBGnjUDapSbL.

136. Removing a named Children's Commissioner means that mokopuna and their whānau will not know specifically who represents children and young people. It risks reducing the status of the Commission, restricting its ability to advocate publicly for mokopuna.

137. The Bill proposes reducing the powers of the Children and Young People's Commission in relation to complaints and investigations for children and young people. This removes an option for children and their whānau to come to their representative with these issues for resolution.

Recommendations on the Children and Young People's Commission Bill

The named role of Children's Commissioner is critically important and must be retained

138. The Bill provides that the Commission's board must consist of at least three, but not more than six, board members. However, it does not state that one of the board members must have the named role of "Children's Commissioner".

139. It is critical that mokopuna know who represents them in this role and that there is a "face" of the Commission that is known and recognised by mokopuna, the public and media.

140. It is critical the Commissioner role be a full-time working role, so they can effectively advocate publicly, lead the work and be responsive to children's needs. We therefore urge a full-time lead Commissioner be appointed and named specifically as "Children's Commissioner". If not, the advocacy function will be weakened, not strengthened.

141. We have concerns that a number of part-time board members with the critical role of public advocacy for children, will not be an effective or responsive enough model for mokopuna.

142. We recommend the following wording is inserted in clause 91:

"A Chair of the Board will be appointed by the Governor General and be known as the Children's Commissioner".

The Commission needs a te Tiriti o Waitangi-based governance model – which requires at least half the Commission Board to whakapapa Māori

143. Currently, clause 92(2) of the Bill requires at least half the members of the Commission's board to have Māori knowledge and have experience in and knowledge of tikanga Māori.

144. As with the Monitor governance mechanism, the Commission needs a te Tiriti o Waitangi-based governance model, which requires at least half of the board to whakapapa Māori. This would enact the partnership envisaged in Te Tiriti between Crown and Maori. We recommend a subsection be added to this clause to reflect this. This will ensure that Māori whakapapa, knowledge and expertise in mokopuna Māori rights and issues are represented in the governance of the Commission. This is critical for their rights to be upheld, to increase participation, and to realise improved wellbeing of mokopuna. It will create the partnership model required to give effect to te Tiriti o Waitangi.

The ability of the Commissioner to report directly to the Prime Minister must be retained

145. Currently, the Commissioner is able to report, with or without request, to the Prime Minister on matters affecting the rights of children under section 12(1)(k) of the Children's Commissioner's Act 2003. This function is not explicitly carried over in this Bill.

146. To ensure that the Commissioner can discharge their role to promote and advance the rights, interests and participation of mokopuna effectively, it is vital that the function to be able to report directly to the Prime Minister is retained. Doing so gives weight to critical children's rights issues and to the voices of mokopuna, including those marginalised in and by government systems.

147. For example, the most recent report, jointly written with the Disability Rights Commissioner, has highlighted the need for government to better support children with Fetal Alcohol Spectrum Disorder and their whānau, given they receive no disability support services and the impact that has on their life outcomes.

148. As well as restraining the Commissioner's ability to advocate, not retaining this function would create an inconsistency with the Human Rights Commission's functions under the Human Rights Act. Section 5(2)(k) provides that one of the Commission's functions is to report to the Prime Minister on any matter affecting human rights. As the agency responsible for promoting and

advancing the rights, interests and participation of children, it is crucial that the Children and Young People's Commission also holds this function.

The investigation and complaints function of the Commission should be retained

149. Under section 12(1)(a) of the Children's Commissioner's Act 2003, OCC currently has a function to investigate any decision or recommendation in respect to any child, except those pertaining to the Oranga Tamariki system. This function has been removed in this Bill.

150. Additionally, the function to receive complaints directly from mokopuna under section 12(1)(b) has been removed.

151. Instead, these powers have been significantly weakened so that the Commission will instead have the power only to conduct inquiries into systemic matters (s99 (i)) rather than investigations[20], and to support "*a child or young person to engage with agencies to facilitate the resolution of issues*" (s99 (c)) rather than receiving complaints[21] on behalf of children.

152. These current powers of investigation and complaints are important to help ensure the wellbeing of mokopuna and, as stated above, are a key aspect of an effective Children's Commission according to UN Guidance. These functions must be retained and reinstated in the Bill.

153. It would be a significant decision to remove powers from the Children's Commissioner in legislation designed to strengthen advocacy for children and young people.

154. There are many named statutory officers who have the power to investigate decisions about children and young people, including the Ombudsman; a regime that has functioned adequately for 30 years. The Children's Commissioner's current power of investigation is conditioned and controlled by clause 17 to 26 of the Children's Commissioner Act 2003.

155. Amongst other things, clause 19 of the 2003 Act ensures that the Children's Commissioner must determine whether the subject matter of an investigation can better be carried out by one of seven other statutory officers list in clause

[20] Children's Commissioner Act (2003), s12(1) The general functions of the Commissioner are - (a) to investigate any decision or recommendation made, or any act done or omitted [...] in respect of any child in that child's person al capacity

[21] Children's Commissioner Act (2003), s12(1) The general functions of the Commissioner are - (h) to receive and invite representations from members of the public on any matter that relates to the welfare of children

19 (4), and complainants have a choice to come to the Children's Commissioner for specialist expertise in dealing with children.

156. The OCC believes there is no compelling principle or rationale for removing this option. There is no good reason why investigations regarding issues about any child should not continue to be carried out, as appropriate, by a wide variety of statutory officers each with specialist functions and expertise.

157. This Bill gives the Ombudsman additional duties and powers in relation to complaints about the Oranga Tamariki system. This means that the Ombudsman will have new duties to ensure that their Oranga Tamariki system complaints and investigations processes are visible and accessible to children, young people and their whānau, hapū and iwi, and that they incorporate a tikanga Māori approach.

158. This is particularly important, as highlighted in the Bill's Child Impact Assessment, mokopuna Māori and their whānau are less likely to make a complaint.

159. The Children's Commission will have a broad remit for all issues impacting on children, and, in our view, the power to investigate and receive complaints must be retained for the broader range of issues affecting children and young people.

160. Given these new duties for the Ombudsman, and also the common duties outlined in s102, in which the "Commission, the Independent Monitor of the Oranga Tamariki System, and Ombudsmen must participate in a comprehensive, cohesive, and efficient system with each other when their work relates to children and young people who are receiving, or have previously received, services or supports through the Oranga Tamariki system", the OCC would refer serious complaints regarding the Oranga Tamariki system to the Chief Ombudsman.

161. In our experience, the option, or foreshadowing, of an investigation has often been enough to prompt a quick resolution.

162. The power to investigate can have significant influence on a child having their rights met, as it adds weight to the role of the Commission. Beginning an investigation is often enough to prompt a timely resolution and is another tool in advocacy for the rights of mokopuna.

Concluding comments

163. The Children's Commissioner fully supports the intention of this Bill to strengthen both oversight and advocacy for mokopuna.

164. However, in her view, it cannot be concluded from the Bill in its current form that either of these Cabinet March 2019 intentions will be achieved.

165. The expanded activities that are provided for, particularly in the area of monitoring are laudable, but inside of agencies with reduced status and powers, these expanded activities will not, in the Commissioner's opinion, be in the best interests of mokopuna.

166. As stated in both parts of this Bill, upholding the rights, interests and wellbeing of children and young people is the purpose. Our mokopuna, our children, are the future – "He rangatira mo āpōpō". This Bill in its stated intent is an opportunity to fix the wrongs of yesterday and to build a brighter, safer future for our children.

167. We encourage the Committee to commit fully to this purpose to ensure that the entities are set up to enable this vision. To enable the vision of both the Child and Youth Wellbeing Strategy, and the transformation project ahead for the care and protection system.

168. We therefore encourage you to accept the recommendations in this submission towards strong and independent advocacy and monitoring for mokopuna for generations to come.

Appendix: Specific clause by clause comments

OVERSIGHT OF THE ORANGA TAMARIKI SYSTEM BILL			
Clause	**Comments**	**Suggested amendments**	**Previous feedback**
Clause 4	The purpose of the Bill should be to 'advance', in addition to 'uphold' the rights and improve the wellbeing of children who receive services through the Oranga Tamariki system.	Amend to read "uphold and advance the rights and interests, and improve the wellbeing of children and young people who are receiving, or have previously received, services or support through the Oranga Tamariki system".	We provided this feedback in July and August 2021.
Clause 5 (b)	Other international instruments are also relevant, including UNDRIP and CEDAW.	Add "and other relevant international instruments" at the end of the clause.	We provided this feedback in June 2021.
Clause 6	More contemporary legislation, such as the Education and Training Act refer to Te Tiriti o Waitangi, rather the Treaty of Waitangi, as the document that was most commonly signed by hapū and iwi.	Change from "The Treaty of Waitangi" to "Te Tiriti o Waitangi" throughout.	We provided this feedback in August 2019, March 2020, June and August 2021.
	An overall statement of obligations under Te Tiriti o Waitangi is missing. This means that each provision separately describes the level of requirement, rather than all being duties.	Change wording to "This Act should be interpreted and administered as to give effect to the principles of Te Tiriti o Waitangi."	We provided this advice multiple times since 2019, including in 2021.

OVERSIGHT OF THE ORANGA TAMARIKI SYSTEM BILL			
Clause	**Comments**	**Suggested amendments**	**Previous feedback**
Clause 6(a)	The obligation to ensure that in setting strategic priorities and work programmes they have as a key priority the need to support improved outcomes for Māori children and young people is also relevant for the Ombudsman in relation to the complaints function.	Insert parallel clause to 6 (a) for the Chief Ombudsman.	We provided this feedback in June 2021.
Clause 6(c)	Reference only to tools and approaches is too narrow.	Broaden to "in the discharge of the Monitor's functions".	We provided this feedback in June 2021.
Clause 6(f) and (i)	The reference 'to endeavour' to develop arrangements with iwi and Māori organisations mandates the effort but not the outcome, and all power and decision-making sits with the Monitor or the Chief Ombudsman.	Suggest amending to: 'The Monitor and an Ombudsman must: (i) Resource opportunities for Māori to partner in the discharge of functions, including design, decision-making and implementation, as set out in this Act. (ii) Provide opportunities, and invite proposals, from Māori on how, to improve oversight of the Oranga Tamariki system. (iii) Enable the robust, regular, and genuine exchange of information between the monitor, an Ombudsman and Māori. The Monitor and an Ombudsman may enter into partnerships or arrangements with Māori (including iwi, hapū and Māori organisations) in order to agree on any action both or all parties consider is appropriate.'	We provided this feedback in October 2020.

OVERSIGHT OF THE ORANGA TAMARIKI SYSTEM BILL			
Clause	**Comments**	**Suggested amendments**	**Previous feedback**
Clause 8	The definition of harm omits neglect	Add “neglect” to the list of types of harm.	
Clause 13	The Monitor should be focused on the wellbeing and experiences of children in the Oranga Tamariki system, rather than focusing on performance of systems.	Amend to read "The function of the monitor is to monitor the wellbeing of, and outcomes for, children and young people in the Oranga Tamariki system to ensure that the services they receive are being delivered in accordance with the legal, policy and practice frameworks". We also suggest the inclusion of care experienced children and young people and whānau as a group that should be consulted with in the development of the Monitor's tools and approaches.	We provided this feedback in August and September 2019; March, September and December 2020; July 2021.
Clause 13(1)(c)	The Monitor cannot build public trust and confidence in the system, and in fact this may be a perverse incentive not to exposure harm. What the Monitor can do is increase public trust and confidence in oversight of the Oranga Tamariki system.	Add "in the oversight of the" before "Oranga Tamariki"	We provided this feedback in September 2020.
Clause 14(2)	What is missing is the function to have oversight of the Oranga Tamariki Act itself, and care and protection policies. This is something that is in the current Children’s Commissioner 2003 legislation and would be a significant gap if left out.	Add a function that reflects the Children's Commissioner Act 2003 s13(1) existing functions to (d) on the Commissioner’s own initiative or at the request of the Minister, to advise the Minister on any matter that relates to the administration of that Act or regulations made under that Act: (e) to keep under review, and make recommendations on, the working of that Act.	We provided this feedback in September 2019 and August 2021.

OVERSIGHT OF THE ORANGA TAMARIKI SYSTEM BILL			
Clause	**Comments**	**Suggested amendments**	**Previous feedback**
Clause 14 (2)	The Monitor needs to have oversight of the Oranga Tamariki Act and care and protection policies. This is something that is in the current Children's Commissioner 2003 legislation and would be a significant gap if left out.	Amend to add this as a function of the Monitor	We provided this feedback in September 2019 and July and August 2021
Clause 14(2)(c)	The Monitor should also have particular regard for assessing outcomes for disabled children and young people.	Amend to add this as a function of the Monitor.	We provided this feedback in July and August 2021
Clause 16	Monitoring tools and approaches must recognise children and young people themselves. Alongside this, care-experienced children and young people should be included as a group the Monitor must consult with when developing its monitoring tools and approaches.	Amend to read "children and young people and their families, whānau, hapū, communities and culture". Also amend Bill to include care-experienced children and young people and their whānau as a group to consult with.	We provided this feedback in July and August 2021.
Clause 16(2)(b)	We welcome the reference to children and young people's families, whānau, hapū, and communities, but note children and young people themselves are not mentioned.	After "of", change the wording to "children and young people and their families, whānau, hapū, iwi, communities and culture".	We provided this feedback in August 2021.

OVERSIGHT OF THE ORANGA TAMARIKI SYSTEM BILL			
Clause	**Comments**	**Suggested amendments**	**Previous feedback**
Clause 17	The Monitor needs to have an independent, Ministerially appointed Board to provide oversight. The Māori Advisory Group is an outdated model that does not align with changes across the public sector to embed a model of partnership between the Crown and Māori.	Amend to allow for the appointment of an independent, Ministerially appointed Board to discharge Governance functions of the Monitor. The Bill should also add lived experience of the care system and lived experience of disability as recruitment considerations for the Board.	We provided this feedback in June, July and August 2021.
Clause 18	The functions of the advisory group are currently operational. These need to be more strategic in order to provide oversight on the direction of the Monitor to improve outcomes for Māori.	Amend to align this section with s16, particularly to reflect the strategic role of the advisory group.	We provided this feedback in June, July and August 2021.
Clause 19	The Monitor needs to have genuine partnership with Māori. "Reasonable efforts" to develop arrangements with Māori mandates the effort but not the outcome.	Amend to read "the Monitor must: (i) Resource opportunities for Māori to partner in the discharge of functions, including design, decision-making and implementation, as set out in this Act. (ii) Provide opportunities, and invite proposals, from Māori on how, to improve oversight of the Oranga Tamariki system. (iii) Enable the robust, regular, and genuine exchange of information between the monitor and Māori."	We provided this feedback in June and August 2021.
Clause 20	Care experienced children and young people and their whānau need to be consulted on the development of the code of ethics.	Amend to include care-experienced children and young people and their whānau.	We provided this feedback in June 2021.

OVERSIGHT OF THE ORANGA TAMARIKI SYSTEM BILL			
Clause	**Comments**	**Suggested amendments**	**Previous feedback**
Clause 23	There is a need for the Monitor to report more broadly on its Te Tiriti o Waitangi obligations.	Amend to require the Monitor to "demonstrate how it has given effect to Te Tiriti o Waitangi in its report on outcomes for Māori children, young people and whānau".	We provided this feedback in June 2021.
Clause 24	The Prime Minister and designated Minister should be able to request, but not direct monitoring activity, as it will undermine the Monitor's independence.	Change wording from "direct" to "request".	This feedback has been provided multiple times since August 2019.
Clause 25	The Monitor needs to make recommendations in its reports so that they effect change for children and young people.	Add a sub-clause: "The Monitor must make all recommendations available in its reports".	This feedback has been provided since 2019.
Clause 32	The Privacy Act limits the Monitor from entering private premises, such as those owned by Oranga Tamariki but occupied by private owners. Alongside this, the majority of children and young people in care reside in private premises.	Amend to specify how children and young people in state care but not living in residences, group homes or family homes will be engaged with and the quality of service and support delivered for them and for their caregivers assessed.	We provided this feedback in September 2020.
Clause 34	Unannounced visits by the Monitor must be able to occur in the interests of ensuring the safety and wellbeing of children and young people.	Amend clause 34(1) to clarify that unannounced visits may also be undertaken by the Monitor.	This feedback was provided in August 2021.

OVERSIGHT OF THE ORANGA TAMARIKI SYSTEM BILL			
Clause	**Comments**	**Suggested amendments**	**Previous feedback**
Clause 35	The current wording suggests that the Monitor will be prevented from accessing premises at exactly the time when oversight is most required. The risk of harm here seems very subjective. How will it be determined and what example would there be of the Monitor causing harm?	35(1) Amend to "serious harm" and provide a clear definition. Remove 35(2)(b).	We provided this feedback in June, July and August 2021.
Clause 38(c)	Children and young people, their family, whānau, hapū and iwi should be involved in any complaint or investigation processes with the consent of the complainant.	Amend to either clarify when this would not be appropriate, or remove "as appropriate" and replace with "with the consent of the complainant".	We provided this feedback in June 2021.
Clause 45	Gaining consent from a child or young person is equally important for the Ombudsman and should also apply to them in relation to the Complaints Oversight function.	Mirror this clause in the Complaints oversight section (sub part 2 of the Bill).	We provided this feedback in August 2021.
Clause 46	All children and young people have the right to access the Monitor and this should be enabled rather than constrained. This is particularly important for younger and disabled children.	Amend to clarify how the capacity to consent will be determined, and how this will support the child's right to be heard and to participate.	We provided this feedback in June, July and August 2021.

CHILDREN AND YOUNG PEOPLE'S COMMISSION BILL			
Clauses in current legislation	**Comments**	**Suggested amendments**	**Previous feedback**
Clause 84(c)	it is important to outline what this diversity includes to ensure that these things are considered by the Commission – as in the Human Rights Commission legislation. The Child Impact Assessment noted that the advocacy function will be well equipped to advocate for different minority groups of children and young people, to ensure that their voices are heard on important matters. The proposed change will help ensure that is the case.	Add on the end 'including, but not limited to: (a) educational and health needs; and (C) whakapapa; and (D) cultural and ethnic identity; and (E) gender identity; and (F) sexual orientation; and (G) disability (if any); and (H) age:	Feedback provided in June 2021.
Clause 84(e)	Need to clarify that it is groups of children and young people rather than individuals that are being referred to here, and broadening of the term 'disadvantaged' is needed.	Change to ''the need to give priority to groups of children and young people who are marginalised, discriminated against or otherwise disadvantaged, and the issues affecting them.'	Feedback provided in June 2021.
Clause 84(g)	Specific reference to a couple of international instruments would be useful here.	Add at the end of the clause "including but not limited to CRPD and UNDRIP".	Feedback provided in June 2021.
Clause 85	More contemporary legislation, such as the Education and Training Act refer to Te Tiriti o Waitangi, rather the Treaty of Waitangi, as the document that was most commonly signed by hapū and iwi.	Change from "The Treaty of Waitangi" to "Te Tiriti o Waitangi" throughout.	Feedback provided in August 2019, March 2020, June and August 2021.
Clause 85(c)(iii)	This provision is broad enough that 'as appropriate' is not necessary.	Remove "as appropriate".	Feedback provided in June 2021.

CHILDREN AND YOUNG PEOPLE'S COMMISSION BILL			
Clauses in current legislation	**Comments**	**Suggested amendments**	**Previous feedback**
Clause 85(d)	Special attention to te ao Māori [Māori worldview] is too broad. It needs to specifically relate to Māori research knowledge.	Replace "giving special attention to te ao Māori" with "prioritising mātauranga Māori" [Māori knowledge].	Feedback provided in June 2021.
Clause 85(e)	This provision should be strengthened.	Delete "make reasonable efforts to".	Feedback provided in June 2021.
	Suggest broadening.	Add "operational policies about information rules".	Feedback provided in June 2021.
Clause 86	OCC agree with this expanded scope to include care-experienced young people under 25, subject to recognition of the impact it will have on resourcing.	Ensure that this is factored into future budget bid discussions.	First raised in September 2019.
Clause 91	The Bill omits naming a Children's Commissioner.	Reinsert wording stating that one of the Commissioners will be known as the Children's Commissioner. "One of the board members will be appointed as Chair of the board and be known as the Children's Commissioner".	Feedback provided on this issue in March 2020 and August 2021.
Clause 92(1)	There is no requirement for the Board to have representation of those groups most marginalised.	Suggest adding lived experience in the following are desirable: care, disabled, rainbow, Pacific and migrant/refugee.	Feedback provided in June 2021.
Clause 92(2)	The current provision does not guarantee Māori participation in the leadership of the Commission as non-Māori could also fulfil this criteria.	Add an additional sub-clause: "(c) whakapapa Māori".	Feedback provided multiple times, including in March 2020.

CHILDREN AND YOUNG PEOPLE'S COMMISSION BILL			
Clauses in current legislation	**Comments**	**Suggested amendments**	**Previous feedback**
Clause 94(3)	The purpose of the nominations panel is to assess and recommend board members. A range of relevant expertise is needed (Māori leadership, working with children and young people etc) but disabled and care-experienced lived expertise are missing.	Amend to include care experienced and disabled people on the nominations panel.	Feedback provided in June 2021.
Clause 95	Judges would be unlikely to be given permission to apply or sit on a crown entity board as a part time board member due to constitutional conflict of interest.	Amend to refer specifically to the role of Children's Commissioner.	Feedback provided in June 2021.
Clause 96(1)	Duties to set the strategic direction, be responsible for the functions and duties under the Act and to build and maintain an understanding of issues pertaining to children and young people are missing, but core responsibilities for a board. The ordering of the current duties of the board seem out of balance.	Amend to reflect comment. Switch 1 (a) with 1 (a) (i) which seems like the higher-level outcome that the others will work towards.	Feedback provided in August 2021.
Clause 99(f)	Advice on complaints mechanisms is one form of advice, but there are other forms of advice that we provide.	After "people", add the word "including (without limitation)".	Feedback provided in August 2021.
Clause 99(i)	This needs to be strengthened as it is weaker than our current provisions, and the Cabinet intention was to strengthen advocacy.	Specify the power to make recommendations and to require a response from agencies.	Feedback provided in August 2021.

CHILDREN AND YOUNG PEOPLE'S COMMISSION BILL			
Clauses in current legislation	**Comments**	**Suggested amendments**	**Previous feedback**
Clause 102	The common duties of the Commission, Ombudsmen and the Monitor should have a requirement to reduce the burden on children, young people and whānau.	Amend to include wording "minimise the burden on children, young people and their whānau".	Feedback provided in June 2021.
Clause 105	This seems relevant in relation to a report, but not a comment, given the Commission's public advocacy role and independence.	Suggest deleting "or statement".	Feedback provided in June 2020, June 2021 and August 2021.