

Departmental Disclosure Statement

Oversight of Oranga Tamariki System Legislation Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill; and
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Social Development.

The Ministry of Social Development certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

10 October 2024

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Part One: General Policy Statement

The Bill is an omnibus Bill introduced under Standing Order 267(1)(a). That Standing Order provides that an omnibus Bill to amend more than one Act may be introduced if amendments deal with an inter-related topic that can be regarded as implementing a single broad policy. The single broad policy is to enhance oversight and monitoring of the Oranga Tamariki system by making key structural changes to the Independent Children's Monitor (the **Monitor**) and Children and Young People's Commission (the **Commission**). The Bill does this by amending the Oversight of Oranga Tamariki System Act 2022 and the Children and Young People's Commission Act 2022.

Intent of Bill

The overall policy objective of the Bill is to improve outcomes for children and young people in New Zealand through structural changes to the Monitor and Commission.

These changes are intended to strengthen the independent monitoring of the Oranga Tamariki system, while maintaining institutional separation between the monitoring and advocacy roles. The independence of the Monitor will be reinforced by establishing the Monitor as an independent Crown entity (an ICE). Shifting the Commission to a corporation sole ICE led by a sole Commissioner will strengthen advocacy for children and young people's issues, ensuring there is a visible and identifiable 'face' for advocacy.

Strengthening the independent monitoring of Oranga Tamariki System

The Bill makes the Monitor, which has been the role of a chief executive leading a departmental agency hosted by the Education Review Office since mid-2023, an ICE. This change is intended to strengthen the independent monitoring of the Oranga Tamariki system by reinforcing its independence from government. The Bill provides that the Monitor is to be governed by a board of three members. These board members are to have collective experience in and knowledge of quality assurance, data governance and the care system. These changes are required to ensure the Monitor is truly independent in its monitoring of the Oranga Tamariki system.

Strengthening advocacy for children and young people's issues generally

The Bill also seeks to strengthen the advocacy for children and young people's issues generally. The Bill will disestablish the current board model of the Children and Young People's Commission and revert to an ICE with a single Children's Commissioner. The Commission has been operating as an ICE with a board of at least two but no more than five members since 1 July 2023. Shifting from the board model of an ICE to a corporation sole will ensure there is a visible and single advocate for children and young people. This helps provide a recognised 'face' for advocacy, and that children and young people, including those in state care or transitioning out of care, know who their advocate is. The Bill will also include a provision to enable the appointment of a Deputy Children's Commissioner in the event the Children's Commissioner is absent from duty for any reason, or if the Children's Commissioner needs to delegate the performance of functions due to limits on capacity or otherwise.

Transitional and consequential arrangements

The Bill also covers consequential and transitional arrangements for the Monitor and Commission to enable a smooth transition of functions. These arrangements include general workforce issues and the transfer of information, assets and liabilities, and the new appointments for the Monitor and Commission.

The Bill will provide that the current Chief Children's Commissioner will continue in office as the first Children's Commissioner for one year from the commencement of the Bill. Similarly, the current chief executive of the Monitor will continue in office for one year from commencement of the Bill as the chief executive of the ICE established by this Bill to carry out the functions of the Monitor.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	NO
The statutory review of the Oversight of Oranga Tamariki System Act 2022 and Children and Young People's Commission Act 2022 is currently underway and will be completed by late January 2025.	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	NO
The Treasury's Regulatory Impact Analysis team has determined that this proposal is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impact on businesses, individuals, and not-for-profit entities.	

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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In developing the policy, MSD has worked closely with the Monitor, the Commission, the Ombudsman and the Ministry of Justice to ensure the policy that underpins the Bill is consistent with relevant UN Conventions, particularly the United Nations Convention on the Rights of the Child.
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Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The Bill retains provisions intended to recognise and respect the Crown's responsibility to give effect to te Tiriti o Waitangi/the Treaty of Waitangi, such as requirements for knowledge and understanding of te Tiriti/the Treaty and knowledge and experience of tikanga Māori. These provisions were informed by previous engagement.
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Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES
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Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website .
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Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	NO
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(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
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Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
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The Bill will provide that the transfer of information from the Children and Young People's Commission board to the sole Children's Commissioner and the Monitor, currently a departmental agency, to the new Monitor as an ICE does not constitute a breach of Information Privacy Principle (IPP) 11 or any IPP under Part 3 of the Privacy Act 2020.

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
MSD consulted with the Office of the Privacy Commissioner (OPC) on a draft version of the Bill and LEG paper. The OPC are comfortable with the wording of the provisions dealing with the transfer of information to the new entities.	

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>The Monitor, Commission, and Ombudsman were consulted on the transitional arrangements that informed the LEG Cabinet paper and associated Bill.</p> <p>Several government departments, Crown Entities, and Officers of Parliament, including the Monitor, Commission and Ombudsman, were consulted on the policy Cabinet Paper, the draft Oversight of the Oranga Tamariki System Legislation Amendment Bill and subsequent LEG Cabinet paper.</p> <p>Other organisations consulted were: Oranga Tamariki, Te Puni Kōkiri, the Treasury, the Public Service Commission, Te Arawhiti, the Remuneration Authority, Ministries of Business, Innovation and Employment, Women, Health, Education, Justice, Housing and Urban Development, and Youth Development, Ministry of Disabled People – Whaikaha, the Ministries for Pacific Peoples and Ethnic Communities, the Departments of the Prime Minister and Cabinet, Corrections, and Internal Affairs, the Human Rights Commission, the Office of the Privacy Commissioner, the Mental Health and Wellbeing Commission, Accident Compensation Corporation, and the New Zealand Police.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO
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Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	YES
<p>The Bill will legislate for the current Chief Executive of the Monitor to automatically transfer to become the Chief Executive of the new independent Crown entity for one year, so the appointment would finish on 30 June 2026. This requires provisions changing:</p> <ul style="list-style-type: none">• how the Crown Entities Act 2004 is applied, ensuring that section 117, which allows the board to choose their Chief Executive, will not apply to the appointment of the first Chief Executive of the Monitor; and• how employment legislation or agreements apply to the Chief Executive, ensuring that the Chief Executive's employment is treated as continuous. <p>This is a novel provision as the two Chief Executive roles are different. An Independent Crown Entity's Chief Executive is usually appointed by the board, and not by the Minister, which is not the case with the transitional arrangements. This provision was included as the Minister wanted to ensure a smooth transition to the Monitor's new institutional arrangements and minimise interruptions to the Monitor's and Commission's work.</p>	