



Care System Board – Role of oversight bodies

Date:	8 August 2023	Security Level:	IN CONFIDENCE
Minister and Portfolio:	Hon Andrew Little, Minister for the Public Service		
Report No:	2023-0227		

Purpose This aide memoire responds to your request for information on the role of oversight bodies in relation to the proposed Care System Board. We will also include key messages on this question in an aide memoire for you when you take the paper to Cabinet committee (GOV on 31 August).

Oversight of State care is a role carried out by several different monitoring bodies, including the Ombudsman, the Human Rights Commissioner, the Children’s Commissioner, the Independent Children’s Monitor, the Mental Health and Wellbeing Commission, and the Health and Disability Commissioner.

Some oversight bodies have a role restricted to specific populations – e.g. the Children’s Commissioner (an advocate for children’s rights), and the Health and Disability Commissioner (an independent watchdog promoting and protecting the rights of people accessing health and disability services). Others have broader roles that span different sectors (e.g. Ombudsman and Human Rights Commission).

Oversight bodies in the care system

The roles and functions of these bodies are clearly set out in legislation, and have a variety of functions, which can include:

- the investigation of complaints or decisions affecting a person or people (*for example, the Ombudsman can investigate decisions, recommendations, acts, or omissions carried out by the public service that affect any person or people in their personal capacity*)
- inquire into the adequacy of laws, practices or procedures (*for example, the Human Rights Commission can inquire into laws, practices and procedures if it appears that they may involve an infringement of human rights*)
- advocacy on behalf of specific populations (*for example, the Children’s Commissioner acts as an advocate for children’s interests, rights and welfare*).

Further information on the specific oversight bodies for particular care settings is attached.

Advice

Investigations carried out by an oversight bodies tend to relate to actions or decisions made during the delivery of care in specific cases, and investigative powers tend to be narrow and relate to operational matters such as the operation of specific facilities or treatment of individuals. The Board would not be responsible for the delivery of care, and as such we do not anticipate the Board and its work would be the subject of dedicated investigations. Delivery of care would remain the responsibility of individual chief executives and their agencies, who would be the appropriate subject for any investigation into decisions or actions regarding an individual’s care. However in conducting any investigation it is possible that oversight bodies may comment on the influence that the Board’s work may have had on the operational practices relevant to the particular case under investigation.



The Board would be responsible for strengthening and aligning the policies, standards and processes used in providing care across government by implementing consistent approaches and minimum standards. Where oversight bodies have a role in commenting on adequacy of laws, practices or procedures, they may comment on the sufficiency of the board's work in strengthening these across agencies. However ultimately agency chief executives will remain responsible for the specific policies, standards and processes they implement within their departments. This is because they are not only responsible for implementing any minimum standards or adjustments to processes and policies agreed by the Board, but also for ensuring care settings within their sector are appropriate for the specific care delivered or managed by their agency.

Oversight bodies may comment on Board activity as part of their advocacy roles. Most oversight bodies have a role to advocate on behalf of the populations they are aiming to protect, and may take a broad interpretation on what falls within their scope for comment. This could include comment on work undertaken by the Board to align care settings between departments, and the impact the Board's work has on individual agency's operational policies, standards or processes in delivering care.

We suggest the Board engage with the relevant oversight bodies on the potential effects of its approaches to achieve consistent approaches and minimum standards across the care system. In its engagement with oversight bodies, it should be clear where the different roles and responsibilities lie. In particular, the Board should be clear that beyond the agreed consistent approaches and minimum standards promulgated by the Board, individual agency chief executives will remain responsible for the design and delivery of care settings by their agencies.

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Summary of oversight of State care

Care system/key agencies	Oversight bodies/key legislation	Summary of powers
Oranga Tamariki system	<ul style="list-style-type: none"> Oranga Tamariki Act 1989 Oversight of Oranga Tamariki Act 2022 – sets out roles of Ombudsman (investigate serious complaints), Children’s Commission (system advocate) and Independent Children’s Monitor (governmental monitor) 	<ul style="list-style-type: none"> Ombudsman investigates serious complaints Children’s Commission undertakes the ‘National Preventative Mechanisms’ role inspecting residences and provides recommendations on the system Independent Children’s Monitor monitors Oranga Tamariki performance against National Care Standards
Disability – Whaikaha/ Ministry of Social Development/ Health	<ul style="list-style-type: none"> Health and Disability Commissioner Act 1994 Health and Disability Services (Safety) Act 2001 	<ul style="list-style-type: none"> The Health and Disability Commissioner advocates, investigates and issues findings, refers cases to Human Rights Review Tribunal Ministry of Health certifies providers according to standards
Health/ Te Whatu Ora	<ul style="list-style-type: none"> Pae Ora (Healthy Futures) Act 2022 Mental Health (Compulsory Assessment and Treatment) Act 1992 Health and Disability Commissioner Act 1994 Mental Health and Wellbeing Commission Act 2020 	<ul style="list-style-type: none"> The Health and Disability Commissioner advocates, investigates and issues findings, refers cases to Human Rights Review Tribunal Mental Health and Wellbeing Commission – public reporting, making recommendations to any person, obtaining information Ombudsman inspects and reports on acute mental health wards and units under Optional Protocol to the Convention Against Torture
Education	<ul style="list-style-type: none"> Education and Training Act 2020 	<ul style="list-style-type: none"> Ministry of Education - licensing of education institutions General powers of Ombudsman, Children’s Commission and Human Rights Commission

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