



# AIDE-MEMOIRE

## Strengthening independent oversight of children's system

**Date:** 28 November 2018

**For:** Hon Chris Hipkins, Minister of State Services  
[IN-CONFIDENCE]

**Report No:** SSC2018/1091

### Strengthening independent oversight of children's system

#### Purpose

Provide SSC-specific comment on the MSD-led briefing on strengthening independent oversight of the children's system.

#### Proposal

Ministers Sepuloni and Martin recently met with the Prime Minister to discuss which agencies should be allocated which responsibilities for the elements of independent oversight. They asked for further advice on whether there were viable options for allocating the monitoring of the care and protection system to an agency other than the Children's Commissioner, and the merits of those options.

**We recommend that you support allocating the monitoring of the care and protection system to a government department – the main candidates are MSD and ERO.**

The functions examined included:

#### Key issues

- Advocacy on behalf of all children and overall monitoring of how government agencies are delivering for children, including groups with disadvantages such as those in care – this is currently with the Children's Commissioner and there is no intention to move it
- Complaints escalation (ie beyond Oranga Tamariki's internal processes) and investigation of serious but non-criminal complaints (and deemed complaints) eg deaths in care – 9(2)(f)(iv) confidentiality of advice
- Systematic independent monitoring of the performance of the care system, including delivery on the National Care Standards – this is a different type and extent of monitoring than what the Children's Commissioner currently does in relation to Oranga Tamariki residences and sites.

Theoretically the independent monitoring function could be undertaken anywhere. By law it needs to be independent of Oranga Tamariki, but it should report to the Minister for Children as the Minister responsible for the policy settings underpinning the system.

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A department is an appropriate choice for this function (which could potentially sit in a business unit or departmental agency). The monitoring function is specific and does not constitute blanket oversight of Oranga Tamariki. Precedents for this role include Te Puni Kōkiri's legislative role of monitoring how other departments perform for Māori.

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SSC has been extensively engaged in this process, including the discussions about location of the monitoring function.

The MSD-led briefing invites Ministers to confirm their initial view about whether they wish to pursue locating the monitoring function in the Children's Commission or in another existing agency such as MSD or ERO. We agree that these are the appropriate options – in our view a new agency would be unnecessary and undesirable, especially as the resources required for monitoring are likely to change over time as Oranga Tamariki develops its own compliance systems.

The main risks with the Children's Commission are that:

- it would seek to simply scale up its existing monitoring approach to the new task, with limited regard to the intention of the legislation;
- its feedback, which may extend beyond what is required by current policy settings, would not be particularly helpful to Oranga Tamariki;
- Oranga Tamariki and others may perceive its feedback as coloured by its advocacy role on behalf of children.

SSC supports allocating the monitoring of the care and protection system to a government department. The best placed agencies are MSD and ERO.

#### **Our advice**

MSD's Social Services Accreditation Team already provides Oranga Tamariki with assurance on its contracted providers and is working with Oranga Tamariki on how to measure the elements in the National Care Standards. MSD is concerned that as an organisation it would be seen as too close to Oranga Tamariki. If MSD was chosen as the monitor it would be necessary to determine whether these existing services to Oranga Tamariki would assist the monitoring role or require separation from it.

ERO's strength is that it is a specialist monitor and evaluator and would probably be the most efficient at building the new function. It also has a national footprint and is already strongly focused on issues for Māori and other vulnerable groups in the education system. The main risk with ERO is that, depending on how it approached the capability build needed, it may be viewed as too light on understanding the care and protection system itself.

The government's decisions on the recommendations of the Tomorrow's Schools review could affect ERO's ability to add this new function and the extent to which this new function would fit its overall future direction.

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#### **Next steps**

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Once the direction of travel has been confirmed with the Ministers engaged to date, MSD and SSC will draft a joint Cabinet paper in the new year developing the proposals further for decisions (including which agency and key points for legislation).

As signalled in the Weekly Report, Minister Sepuloni may take an oral item to Cabinet pre-Christmas, mainly to confirm how she wishes to handle the expiry of the Children's Commissioner's term in March 2019.

MSD has already lodged a Budget bid for a preliminary estimate of the necessary capability for B19 and bid for space on the 2019 legislative programme, as either approach to monitoring will require legislative change.

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We recommend

- that you release this aide-memoire in full once the substantive Cabinet decision process has taken place;

Agree/disagree.

#### **Proactive Release**

Hon Chris Hipkins  
Minister of State Services

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