



**MINISTRY OF SOCIAL  
DEVELOPMENT**  
TE MANATŪ WHAKAHIATO ORA



**ORANGA  
TAMARIKI**  
Ministry for Children

## **Memorandum of Understanding**

**Independent monitoring of the  
Oranga Tamariki system – Phase 1 monitoring**

**Ministry of Social Development**

**and**

**Oranga Tamariki – Ministry for Children**

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

**In Confidence**

**Document version control**

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# Memorandum of Understanding

## Parties

The Sovereign in right of New Zealand acting by and through the Chief Executive of the **Ministry of Social Development (MSD, the Monitor)**

and

The Sovereign in right of New Zealand acting by and through the Chief Executive of Oranga Tamariki – Ministry for Children (**Oranga Tamariki**).

## Background

- 1 The Government is strengthening independent oversight of the Oranga Tamariki system<sup>1</sup> by:
  - (a) strengthening the resourcing of the Office of the Children's Commissioner (**OCC**) to carry out advocacy for New Zealand children and young people;
  - (b) appointing MSD to establish a robust independent monitoring function for the Oranga Tamariki system, with the intention to transfer it to the OCC once relevant legislation has passed and the monitoring function has been established; and
  - (c) enhancing the Ombudsman's complaints oversight and investigations function for the Oranga Tamariki system.
- 2 The overall purpose of these changes is to build trust and confidence in the Oranga Tamariki system and contribute to improved outcomes for children and young people and improve their care and wellbeing.
- 3 It is expected that the full package of changes will be achieved through a single omnibus Bill and associated regulations (**the New Legislation**).
- 4 Along with creation of the new independent monitoring function (and an enhanced complaints, oversight and investigation function), changes to legislation are expected to include:
  - (a) repeal of the Children's Commissioner Act 2003 (and re-establishment of the Commissioner in the New Legislation);
  - (b) amendments to the Oranga Tamariki Act 1989 and regulations under that Act relating to the independent monitoring function; and
  - (c) minor changes to the Ombudsmen Act 1975.
- 5 Whilst the full implementing legislation is not expected to be enacted until around late-2020, MSD has been appointed under section 447A of the Oranga Tamariki Act to:

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<sup>1</sup> The Oranga Tamariki system is the whole system of support provided for children, young people and their families under the Oranga Tamariki Act and associated regulations, not just services provided by Oranga Tamariki itself.

- (a) monitor compliance by Oranga Tamariki, and by organisations approved under section 396 of the Act (**Approved Organisations**), with regulations made under section 447(1)(fa) of the Act; and
- (b) report on compliance with those regulations to the Minister for Children,
- in accordance with the phasing referred to in paragraph 7 below.
- 6 The regulations are the Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018 (**NCS Regulations**).
- 7 The independent monitoring function will be phased in over time:
- (a) Phase 1: initial monitoring from 1 July 2019, focused on:
- (i) information disclosed to Oranga Tamariki and Approved Organisations passing on concerns in relation to a risk of harm caused by abuse or neglect of a child or young person in Care or Custody;
  - (ii) the response by Oranga Tamariki or the relevant Approved Organisation to such information;
  - (iii) the provision of information to the Monitor in relation to these matters; and
  - (iv) the compliance of Oranga Tamariki and Approved Organisations with their self-monitoring obligations, to the extent relevant to the matters above,
- as per regulations 69, 85 and 86 of the NCS Regulations, and as further described in the initial assessment framework;
- (b) Phase 2: expanded monitoring by December 2020 (or earlier if possible) focused on compliance with all aspects of the National Care Standards set out in the NCS Regulations; and
- (c) Phase 3: intended longer-term expansion, which would enable broader monitoring of compliance with the Oranga Tamariki Act and associated regulations, at a date that is yet to be determined.
- 8 The intention is to transfer the monitoring function to OCC once the legislative arrangements and a robust monitoring function are in place. The Monitor has been directed to report back to Ministers in March 2021 on the plan, timeframes and readiness for the transfer of the monitoring function.
- 9 In Phase 1 the Monitor's monitoring function is expected to be developed incrementally, in consultation with Oranga Tamariki and Approved Organisations. The monitoring function will or may entail):
- (a) Oranga Tamariki and Approved Organisations providing to the Monitor a range of personal and other information and the Monitor collecting additional information from other sources relevant to the performance of its monitoring function, some of which could be highly sensitive, and all of which needs to be handled appropriately and secured against unauthorised access, use or disclosure;
  - (b) the Monitor coming into possession of information that suggests a risk of harm to children or young people in Care or Custody of which Oranga Tamariki or the relevant Approved Organisation may not be aware, warranting action by the Monitor to bring

such information to the attention of the relevant agencies or organisations (for example, the Monitor may come across such information itself or other parties may proactively bring such information to the attention of the Monitor);

- (c) assessment by the Monitor of the compliance of Oranga Tamariki and the Approved Organisations with applicable NCS Regulations and reports to the Minister for Children on such assessment, both of which could impact Oranga Tamariki and/or the Approved Organisations.
- 10 There is also the potential for overlap between the monitoring Oranga Tamariki does of Approved Organisations and the Monitor's independent monitoring function.
- 11 For these and other reasons, it is important that:
- (a) the manner in which the Monitor, Oranga Tamariki and the Approved Organisations perform their respective duties, roles and functions is clearly understood;
  - (b) expectations are recorded and the basis for obligations are agreed;
  - (c) rules are put in place to protect the flows and security of information that reflect applicable laws and give everyone confidence that information will be appropriately protected; and
  - (d) processes are put in place to ensure that Oranga Tamariki and Approved Organisations are involved when they need to be.

## **1. Purpose and scope**

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### **1.1 Purpose**

The purpose of this MOU is to record:

- (a) the parties' commitments relating to the Monitor's independent monitoring function, recognising:
  - (i) the importance of this function to the Oranga Tamariki system and, therefore, the safety and wellbeing of children and young persons; and
  - (ii) the potential impacts that the exercise of the function could have on Oranga Tamariki, Approved Organisations, and affected children and young persons;
- (b) the principles to which the parties will adhere in dealings with one another relating to the monitoring function;
- (c) the basis on which information will be provided and shared and how it will be protected;
- (d) controls on the Monitor collecting information directly from affected children and young persons and third parties;
- (e) the circumstances in which the Monitor may need to notify Oranga Tamariki and, where relevant, an Approved Organisation, should it discover a risk of abuse or neglect of which Oranga Tamariki or the relevant Approved Organisation may not be aware; and

- (f) how the Monitor proposes to consult on the establishment and development of the assessment framework (which is expected to have an initial form on 1 July 2019 and be developed incrementally over time).

## 1.2 Scope

As at the Commencement Date, this MOU only addresses the monitoring that will occur during Phase 1. There will be periodic reviews of the MOU and the initial assessment framework, as described in clause 13 (Review and change). It is anticipated that a substantially revised MOU will be required before Phase 2 commences.

## 1.3 New Legislation

Nothing in this MOU shall limit any duty, power, function, responsibilities or controls in the New Legislation once it is enacted and comes into force.

## 2. Commitments, principles and acknowledgement

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### 2.1 Commitments

The Monitor and Oranga Tamariki are committed to:

- (a) implementing and contributing to the implementation, respectively, of the independent monitoring function in a manner that:
  - (i) acknowledges the Monitor's legislative responsibilities and the expertise and legislative responsibilities of Oranga Tamariki in relation to care and protection matters;
  - (ii) gives effect to the Government's priorities;
  - (iii) ensures that the wellbeing and interests of children and young people are at the centre of oversight consideration and practices;
  - (iv) protects the privacy of children and young people and their families and whānau;
  - (v) recognises the Crown's relationship with Māori and the need for the Crown to meet its obligations under Te Tiriti o Waitangi and to reduce disparities affecting Māori children and young people in the Oranga Tamariki system;
  - (vi) recognises the important contexts of family, whānau and culture in children and young people's lives; and
  - (vii) supports cohesion and minimises the potential for duplication across the wider independent oversight framework that involves OCC and the Ombudsman, in terms of fostering information sharing and collaboration to the extent it is lawful and appropriate; and
- (b) in exercising their powers and responsibilities related to the monitoring function, having due regard to the principles in section 5 of the Oranga Tamariki Act, to the extent they are applicable.

## 2.2 Principles

The Monitor and Oranga Tamariki agree that, in all dealings with one another in connection with this MOU, they will, to the extent appropriate and without limiting their legal duties and responsibilities:

- (a) act fairly and in good faith;
- (b) work together in a spirit of open and transparent collaboration and public service;
- (c) communicate with one another openly, early and often, using a 'no surprises' approach;
- (d) ensure a free exchange of information (to the extent lawfully permissible and subject to the controls set out in this MOU) to best support the implementation and development of the independent monitoring function and its intended transition to OCC, and recognising that the overall goal of the monitoring function is to contribute to improved outcomes and a better care experience for tamariki;
- (e) act respectfully, acknowledge each other's roles, responsibilities and perspectives, and utilise each other's expertise;
- (f) adopt an approach that fosters continuous learning and improvement;
- (g) engage in a manner that supports the Government's priorities of the day; and
- (h) take all reasonable steps to ensure non-adversarial dealings with one another, including the taking of constructive steps to avoid or resolve differences and identify mutually acceptable solutions.

## 2.3 Acknowledgement as to extent of the Monitor's role

The parties acknowledge that the Monitor's monitoring function in relation to the compliance of Oranga Tamariki and Approved Organisations with the applicable NCS regulations does not extend to the Monitor undertaking responsibility for ensuring the safety of individual children or young persons. That remains the responsibility of Oranga Tamariki and the Approved Organisations. This clause 2.3 does not limit clause 7 (Notification of risk of harm to child or young person).

## 3. Term and effect of MOU

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### 3.1 Term

- (a) This MOU commences on the Commencement Date and, unless the parties agree otherwise in writing, continues until 31 December 2020, unless the Monitor notifies Oranga Tamariki in writing that it will terminate on:
  - (i) an earlier date, due to Phase 2 monitoring commencing before 31 December 2020; or
  - (ii) a later date, due to delays in enactment of the New Legislation,in which case the MOU will terminate on the date specified in the Monitor's notice.



- (b) The parties acknowledge that the approach to termination in clause 3.1 is premised on a substantially revised MOU being required before Phase 2 commences.

### 3.2 Effect

This MOU is not legally binding (as two departments of the Crown cannot enter into a legally binding contract) but the parties agree to comply with it in good faith to ensure the parties have certainty in relation to the matters it covers.

## 4. General responsibilities

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### 4.1 Common general responsibilities

The Monitor and Oranga Tamariki will each:

- (a) perform their obligations under this MOU with reasonable care, skill and diligence;
- (b) notify the other party's Relationship Manager of:
  - (i) any material non-compliance with this MOU; and
  - (ii) any matter that may materially affect the other party's ability to comply with the MOU;
- (c) use all reasonable endeavours to ensure that internal controls within their Ministry relevant to this MOU are maintained and operate effectively; and
- (d) ensure that their staff comply with the other party's health and safety requirements and reasonable directions relating to those requirements when on the other's premises.

### 4.2 Oranga Tamariki responsibilities

Oranga Tamariki will notify the Monitor in writing reasonably promptly:

- (a) if, to the knowledge of Oranga Tamariki:
  - (i) additional Approved Organisations come to have children or young persons in their Care or Custody; or
  - (ii) Approved Organisations that recently have had children or young persons in their Care or Custody no longer have any children or young persons in their Care or Custody; or
- (b) if Oranga Tamariki is experiencing any system-level issues that are interfering with its ability to comply with regulations 69 and 85 of the NCS Regulations or this MOU.

### 4.3 Monitor responsibilities

Without limitation to its statutory responsibilities, the Monitor will use reasonable endeavours to avoid or minimise any:

- (a) conflicts of interest; and
- (b) unnecessary overlap or duplication of the monitoring that Oranga Tamariki does of Approved Organisations and the Monitor's own monitoring of Approved Organisations.

## 5. Provision of information by Oranga Tamariki to the Monitor

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### 5.1 Context

Oranga Tamariki acknowledges that, during Phase 1, the Monitor will be:

- (a) developing the substantive assessment framework for Phase 2 monitoring (in consultation with Oranga Tamariki and Approved Organisations) in accordance with regulations 77-78 of the NCS Regulations; and
- (b) continuing to evolve the Phase 1 assessment framework, and commencing monitoring of the compliance of Oranga Tamariki with:
  - (i) regulation 69 (Duties in relation to allegation of abuse or neglect);
  - (ii) regulation 85 (Provision of information to independent monitor); and
  - (iii) regulation 86 (Self-monitoring), to the extent relevant to monitoring compliance with regulations 69 and 85,of the NCS Regulations.

### 5.2 Development of assessment framework

During the Monitor's development of the assessment framework (including iterations of the framework over time), Oranga Tamariki will act in a collaborative manner and provide such information to the Monitor as the Monitor reasonably requires for the purposes of developing the framework. This clause 5.2 does not limit the Monitor's consultation obligations referred to in clause 9.1.

### 5.3 Provision of information as per initial assessment framework

- (a) Oranga Tamariki:
  - (i) acknowledges that it must provide the Monitor with information to enable the Monitor to monitor compliance by Oranga Tamariki with regulation 69; and
  - (ii) agrees that, for that purpose, it will provide the Monitor with the kinds of information, and with access to relevant personnel, as specified in the initial assessment framework, in accordance with the Monitor's reasonable requests and within the Monitor's reasonable timeframes.
- (b) In providing the information referred to in clause 5.3(a), Oranga Tamariki:
  - (i) will not include the names or dates of birth of the children or young people concerned or their families and whānau, or of the alleged perpetrators concerned, but will include an alpha-numeric identifier for each child and, where known, alleged perpetrator, that will enable Oranga Tamariki (or, where relevant, an Approved Organisation) to provide further information relating to specific individual cases if the Monitor requests it under regulation 84 (as referred to in clause 5.4 below);<sup>2</sup> and

- (ii) will only include other personally identifying information to the extent that the inclusion is reasonably necessary for the Monitor to be able to:
  - (A) understand the nature of the information disclosure referred to in regulation 69;
  - (B) assess the compliance of Oranga Tamariki with regulation 69 at an aggregate or systems level; and
  - (C) request further information from Oranga Tamariki or a specific Approved Organisation in relation to specific individual cases should it elect to do so.

#### 5.4 Provision of other information

- (a) Oranga Tamariki acknowledges that, in addition to the requirements in clause 5.3, under regulation 84(1)(b) it must provide to the Monitor such other information as the Monitor reasonably requires, by notice in writing to Oranga Tamariki, for the purpose of assessing compliance by Oranga Tamariki with the NCS Regulations, including in particular for Phase 1, compliance with:
  - (i) regulations 69 and 85; and
  - (ii) regulation 86 (Self-monitoring).
- (b) Oranga Tamariki acknowledges that the provision of such information by Oranga Tamariki:
  - (i) may entail the provision of further details (including, where the Monitor reasonably requires, additional Personal Information) relating to specific information disclosures referred to in regulation 69 and how they have been responded to;
  - (ii) may, at the Monitor's reasonable request, be in the form of written information or discussions between the Monitor's monitoring personnel and Oranga Tamariki staff; and
  - (iii) may, subject to clause 6 and prior arrangement with the Oranga Tamariki Relationship Manager, involve the Monitor making visits to sites controlled by Oranga Tamariki to obtain the information from those who have it.
- (c) Oranga Tamariki agrees to provide such information to the Monitor reasonably promptly following the Monitor's written request for it and, in any event, within 5 Business Days of the request (except where Oranga Tamariki reasonably requires further time to organise a site visit or make relevant staff available for discussion with the Monitor's monitoring personnel, in which case the timeframe will be agreed between the Monitor and Oranga Tamariki).
- (d) When requesting information under regulation 84, the Monitor will take into account:
  - (i) the commitment in clause 2.1(a)(iv) to protect the privacy of children and young people and their families and whānau; and
  - (ii) the principle that information identifying children and young people and their families and whānau should only be requested when reasonably necessary.

## 5.5 Means of providing information to the Monitor

Oranga Tamariki will provide the information referred to in this clause 5 to the Monitor via:

- (a) the Data Exchange; or
- (b) if the parties' integrations with the Data Exchange are not ready by 1 July 2019, SEEMail, using the appropriate SEEMail protective tags, and to the Monitor's email address(es) provided to Oranga Tamariki for this purpose.

## 5.6 Use of information by the Monitor

(a) The Monitor may use the information referred to in clauses 5.3-5.4 for the purposes of:

- (i) developing and establishing the assessment framework referred to in regulation 77 of the NCS Regulations;
- (ii) monitoring and reporting on compliance by relevant persons or bodies (including Oranga Tamariki and Approved Organisations) with the NCS Regulations;
- (iii) considering and making recommendations in relation to systems improvement; and
- (iv) subject to clause 5.6(b), as otherwise permitted by law,

in all cases taking into account:

- (v) the commitment in clause 2.1(a)(iv) to protect the privacy of children and young people and their families and whānau; and
- (vi) the principle that information identifying children and young people and their families and whānau should only be used for the purposes above when reasonably necessary.

(b) To avoid doubt, the Monitor will not include in:

- (i) any recommendations contemplated by clause 5.6(a)(iii); or
- (ii) any reports that are to be published, or released under the Official Information Act 1982,

any information that identifies, or together with other information is capable of identifying, any children or young people or their families or whānau.

(c) The Monitor shall not, without prior written agreement from Oranga Tamariki, use information referred to in clauses 5.3-5.4 for any other purpose falling within clause 5.6(a)(iv) where that information identifies or is capable (e.g., together with other information) of identifying:

- (i) children or young persons; or
- (ii) their family, whānau or caregiving family; or
- (iii) perpetrators or alleged perpetrators of abuse, neglect or other harm to children or young persons,

other than in the circumstances permitted by the Privacy Act's Information Privacy Principle (IPP):

- (iv) 10(1)(b) (the Monitor believes on reasonable grounds that the use is authorised by the individual concerned, with – to avoid doubt – that person's fully informed and freely given consent);
- (v) 10(1)(c) (the Monitor believes on reasonable grounds that non-compliance with IPP10's prohibition on use for other purposes is necessary for maintenance of the law as described in IPP10(1)(c)); or
- (vi) 10(1)(d)(ii) (the Monitor believes on reasonable grounds that use of the information for the other purpose is necessary to prevent or lessen a serious threat to the life or health of the person or another person),

bearing in mind that usually each proposed use needs to be considered on its merits to ensure that the Monitor believes on reasonable grounds that the relevant exception applies.

#### 5.7 De-identification is not "use"

To avoid doubt, the act of the Monitor fully de-identifying Personal Information (so that no person is identifiable within it or can be identified from it) is not a "use" for the purposes of clause 5.6(c).

#### 5.8 Disclosure by the Monitor of Personal Information obtained from Oranga Tamariki

Without limiting the Monitor's rights and responsibilities under the NCS Regulations, and except as stated in clause 11 (Communications among oversight bodies), the Monitor will not disclose Personal Information it receives from Oranga Tamariki under clause 5 to any other agency or organisation other than:

- (a) as required by law; or
- (b) in the circumstances permitted by the Privacy Act's IPP:
  - (i) 11(c) (the Monitor believes on reasonable grounds that the disclosure is to the individual concerned);
  - (ii) 11(d) (the Monitor believes on reasonable grounds that the disclosure is authorised by the individual concerned, with – to avoid doubt – that person's fully informed and freely given consent);
  - (iii) 11(e) (the Monitor believes on reasonable grounds that non-compliance with IPP11's prohibition on disclosure is necessary for maintenance of the law as described in IPP11(e)); or
  - (iv) 11(f)(ii) (the Monitor believes on reasonable grounds that disclosure is necessary to prevent or lessen a serious threat to the life or health of the person or another person),

bearing in mind that usually each proposed disclosure needs to be considered on its merits to ensure that the Monitor believes on reasonable grounds that the relevant exception applies.

**5.9 No use or disclosure of information identifying children, young persons or alleged perpetrators for research purposes**

To avoid doubt and without limiting clause 5.6(a)(i), the Monitor will not, in reliance on IPP10(1)(f)(ii) or IPP11(1)(h)(ii), allow any researchers (whether from the Monitor or otherwise) to access Personal Information of a kind referred to in clause 5.6(c)(i)-(iii), regardless of whether the information will not be published in a form that could reasonably be expected to identify the individual concerned.

**5.10 New Legislation**

To avoid doubt, nothing in this MOU will limit the exercise by the Monitor of any power or duty relating to the use or disclosure of information that may be conferred on the Monitor by the New Legislation once it is enacted and comes into force, regardless of when the Monitor obtained the information.

**6. Obtaining information directly from affected children and young persons and third parties**

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6.1 The Monitor agrees that it will not seek to collect information directly from children and young people until such time as:

- (a) the privacy and related implications of doing so have been fully assessed, including the extent to which staff involved in such collection need to be vetted as children's workers;
- (b) processes have been put in place, in consultation with Oranga Tamariki, Approved Organisations, OCC and the Ombudsman, to safeguard and support the children and young people concerned; and
- (c) this MOU has been amended to reflect the outcome of the assessment mentioned in (a) and the processes mentioned in (b).

6.2 Without limiting clause 6.1, the parties acknowledge that the Monitor may, at some point during Phase 1 and for the purposes of assessing the compliance of Oranga Tamariki with the NCS Regulations (in particular regulation 69), seek information directly from children and young people to whom an information disclosure of a kind referred to in regulation 69 relates. The Monitor may do this to validate or better understand the data it is obtaining at an aggregate or systems level.

6.3 The Monitor will not, in connection with its monitoring functions, seek information directly from third parties such as other family or whānau members, foster parents or medical professionals, without first consulting Oranga Tamariki. To avoid doubt, this clause 6.3 does not apply to the Monitor's collection of information directly from Approved Organisations, or from the Office of the Children's Commissioner or the Ombudsmen (to the extent permitted by law).

## **7. Notification of risk of serious harm to child or young person and other information to be provided to Oranga Tamariki**

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### **7.1 Notification to Oranga Tamariki of risk of serious harm**

If, during the course of its monitoring of Oranga Tamariki and Approved Organisations, the Monitor:

- (a) comes into possession of information that suggests; or
- (b) otherwise believes,

that a child or young person in Care or Custody is at immediate risk of suffering, or is likely to suffer, serious harm, the Monitor will inform Oranga Tamariki and, where relevant, the Approved Organisation, of the information or belief as a matter of urgency. To avoid doubt, the requirement in this clause 7.1 is independent of, and does not limit, reporting and referral provisions in the Oranga Tamariki Act 1989.

### **7.2 Oranga Tamariki to act upon receipt of such notification**

If:

- (a) the Monitor provides such information to Oranga Tamariki; and
- (b) Oranga Tamariki is not already of the risk or is aware of the risk but has not yet responded to it,

Oranga Tamariki will act on it in accordance with its obligations under the Oranga Tamariki Act 1989 and regulation 69 of the NCS Regulations.

### **7.3 Provision of other personal information to Oranga Tamariki**

If, during the course of its monitoring of Oranga Tamariki and Approved Organisations:

- (a) the Monitor comes into possession of other personal information that is relevant to the performance of Oranga Tamariki statutory functions and duties relating to the care and protection of a child or young person; and
- (b) it appears to the Monitor that Oranga Tamariki may not be aware of that information,

the Monitor will use reasonable endeavours to provide a copy of that information to Oranga Tamariki where permitted to do so by the Privacy Act's IPP11 or other applicable law.

### **7.4 Notification to Oranga Tamariki of suspected professional misconduct or negligence**

If, during the course of its monitoring of Oranga Tamariki and Approved Organisations, the Monitor:

- (a) comes into possession of information that suggests; or
- (b) otherwise believes there is or has been,

professional misconduct or negligence on the part of Oranga Tamariki personnel or personnel of the relevant Approved Organisation, the Monitor will provide written details of the information to the Relationship Manager appointed by Oranga Tamariki.

## 8. Relationship management

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### 8.1 Relationship Managers

The Monitor and Oranga Tamariki will each appoint a manager (**Relationship Manager**) who will be:

- (a) the primary point of contact for all matters arising under this MOU, including:
  - (i) requesting and providing (respectively) the information referred to in clause 5; and
  - (ii) in the case of Oranga Tamariki, providing comment to the Monitor on proposed decisions, findings, recommendations or actions in respect of which the Monitor has sought comment from Oranga Tamariki; and
- (b) responsible for:
  - (i) identifying, reviewing and resolving issues or matters relating to the successful operation of this MOU;
  - (ii) involving other members of the person's Ministry where required for the day to day operation of this MOU; and
  - (iii) escalating matters within that person's Ministry if required.

### 8.2 Contact details

- (a) Each party will notify the other in writing of its Relationship Manager, including the person's phone number(s) and email address.
- (b) A party may change its Relationship Manager by written notice to the other party.

### 8.3 General consultation

The Monitor and Oranga Tamariki will consult with one another, when either of them reasonably requires, on any matter that relates to the performance of their monitoring and care obligations respectively. (Specific consultation obligations relating to the assessment framework are addressed in clause 9.)

## 9. Assessment of compliance

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### 9.1 Consultation on development of assessment framework

- (a) In developing and establishing the assessment framework as required by regulation 77 of the NCS Regulations, the Monitor will:
  - (i) consult Oranga Tamariki in accordance with regulation 78(2)(a); and
  - (ii) have regard to the consistency of the framework with Oranga Tamariki systems for continuous improvement and self-monitoring, as referred to in regulation 78(2)(b).
- (b) Oranga Tamariki acknowledges and accepts that the Monitor's consultation referred to in clause 9.1(a) may be iterative, in that there may be a need for the Monitor to:



- (i) develop an initial assessment framework for Phase 1 monitoring from 1 July 2019, as described in clause 5.1(b) above (some or all of this consultation may have occurred prior to the Commencement Date);
- (ii) develop one or more further iterations of the assessment framework for Phase 1 after 1 July 2019; and
- (iii) further develop the assessment framework to prepare for and implement subsequent phases of monitoring.

## 9.2 Assessment framework from 1 July 2019

From 1 July 2019, the Monitor will assess the compliance of Oranga Tamariki with regulations 69 and 85 of the NCS Regulations (and regulation 86 to the extent relevant to monitoring compliance with regulations 69 and 85) against an initial assessment framework provided to Oranga Tamariki separately in writing prior to, or as soon as possible after, 1 July 2019. That initial assessment framework may be updated from time to time by the Monitor in consultation with Oranga Tamariki and the Approved Organisations.

## 9.3 Procedural fairness

- (a) If, in the course of its monitoring, the Monitor is proposing to make an adverse finding in relation to the compliance of Oranga Tamariki with regulations 69 and/or 85 (or regulation 86 to the extent relevant to monitoring compliance with regulations 69 and 85), the Monitor will, before making the finding:
  - (i) provide Oranga Tamariki with written notice of the draft proposed finding, together with reasons for the proposed finding;
  - (ii) give Oranga Tamariki a reasonable opportunity to review, consider and provide feedback on the proposed finding; and
  - (iii) take any feedback from Oranga Tamariki into account before finalising its finding.
- (b) Oranga Tamariki must provide any feedback it wishes to provide in writing. Oranga Tamariki may also request a meeting to discuss its feedback and, if it does so, relevant Monitor staff will attend such a meeting.
- (c) To avoid doubt, this clause 9.3 does not prevent the Monitor from keeping responsible Ministers apprised of its monitoring activities if requested by the relevant Minister(s), provided that the Monitor will:
  - (i) inform Oranga Tamariki as soon as possible of any such Ministerial request; and
  - (ii) make it clear, when commenting on any proposed adverse finding on which Oranga Tamariki is still to provide feedback in accordance with this clause 9.3, that the finding is provisional and subject to consideration of feedback from Oranga Tamariki.
- (d) If the Monitor decides that its systems level monitoring of the compliance of Oranga Tamariki with regulations 69 and 85 is revealing patterns or signals that warrant consideration of more detailed information than the information in its possession (a **Deeper Inquiry**), or if the Monitor otherwise decides to conduct a Deeper Inquiry, it

will notify Oranga Tamariki in writing of its intention to conduct the Deeper Inquiry. The Monitor may provide this notice either before commencing the Deeper Inquiry or when requesting additional information from Oranga Tamariki in accordance with clause 5.4.

## 10. Reporting on compliance

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### 10.1 Reports to Minister

- (a) Oranga Tamariki acknowledges that, from the Commencement Date, the Monitor may, under regulation 82 of the NCS Regulations, provide reports on any relevant topic to the Minister for Children, either on its own initiative or at the Minister's request. At the Commencement Date, the Monitor's intention is to provide its first report to the Minister in December 2019, as further described in the initial assessment framework referred to in clause 9.2.
- (b) The Monitor will use all reasonable endeavours to provide Oranga Tamariki with a draft of any such report to the Minister (whether positive, neutral or adverse), for the purposes of enabling Oranga Tamariki to check, and to provide comment on its view of, the draft report's accuracy.
- (c) If the Minister requests an urgent report from the Monitor and the Monitor does not have time to provide a draft to Oranga Tamariki in advance of providing it to the Minister, the Monitor will as soon as possible advise Oranga Tamariki of the request and will inform the Minister that:
  - (i) Oranga Tamariki has not had an opportunity to comment on it;
  - (ii) the Monitor would like to extend that opportunity to Oranga Tamariki and consider any comment Oranga Tamariki may provide; and
  - (iii) unless the Minister otherwise directs, the Monitor will provide an updated version of the report to the Minister if comment from Oranga Tamariki warrants provision of an updated version.
- (d) The Monitor will provide copies of its finalised reports to:
  - (i) Oranga Tamariki, OCC and the Ombudsman; and
  - (ii) any other agencies, bodies or persons specified by the Minister.

### 10.2 Public reports

The Monitor will not publish any report or other findings relating to compliance of Oranga Tamariki with the NCS Regulations without first:

- (a) providing a draft of the report or findings to Oranga Tamariki for comment, giving Oranga Tamariki a reasonable opportunity to comment and taking any comments from Oranga Tamariki into account; and
- (b) informing Oranga Tamariki of the fact that the Monitor proposes to publish the report or findings.

## 11. Communications among oversight bodies

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### 11.1 Sharing of non-Personal Information

- (a) Oranga Tamariki agrees that the Monitor may share non-Personal Information it obtains under clause 5 with OCC and with the Ombudsman (regardless of whether Oranga Tamariki may consider it to be confidential) in connection with the performance of their functions, provided the Monitor gives Oranga Tamariki a reasonable period of notice before doing so and considers any comments or additional or updated documentation Oranga Tamariki may provide during that notice period). The non-Personal Information referred to in this clause may include:
  - (i) information relating to Oranga Tamariki internal policies, procedures and internal measures for implementation and compliance with the NCS Regulations; and
  - (ii) information received from Oranga Tamariki, regarding information disclosures under regulation 69(1) and how Oranga Tamariki has responded to them, that has been fully de-identified prior to sharing it with OCC or the Ombudsman.
- (b) If the Monitor shares information with OCC or the Ombudsman that is confidential to Oranga Tamariki, the Monitor will inform OCC or the Ombudsman of its confidential nature.
- (c) This clause 11 does not limit any legal obligation the Monitor may have to provide the non-Personal Information referred to in this clause to OCC or the Ombudsman under either the Children's Commissioner Act 2003 or the Ombudsmen Act 1975.

### 11.2 Sharing of Personal Information

The Monitor will not share any Personal Information obtained under clause 5 with OCC or the Ombudsman unless the Monitor:

- (a) is required by law to do so, including under:
  - (i) section 20 of the Children's Commissioner Act, in the case of OCC; or
  - (ii) section 19 of the Ombudsmen Act, in the case of the Ombudsman; or
- (b) is permitted by law to do so under IPP 11(d) (the Monitor believes on reasonable grounds that the disclosure is authorised by the individual concerned, with – to avoid doubt – that person's fully informed and freely given consent).

### 11.3 General consultation and engagement with other oversight bodies

- (a) Subject to clauses 11.2 and 11.3(b), the Monitor may consult or engage with OCC and the Ombudsman on matters relating to the oversight functions performed by the Monitor, OCC and the Ombudsman, including the content of and matters arising from the operation of this MOU. Where relevant, the Monitor will take into account and promote the desirability of fostering the cohesiveness of the overall monitoring system, and avoiding or minimising duplication across its different component parts.
- (b) Unless required by law to do so the Monitor will not, in the course of such consultation or engagement, provide evaluative material prepared by the Monitor that is critical of or adverse to the interests of Oranga Tamariki without first informing Oranga Tamariki

that it proposes to do so and giving Oranga Tamariki a reasonable opportunity to comment.

## 12. Personal Information, confidentiality and security

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### 12.1 Personal Information

The parties will handle Personal Information:

- (a) with the utmost care;
- (b) in accordance with the law; and
- (c) with all due regard to the potential sensitivity of the information to the individuals to whom the information relates.

### 12.2 Confidential Information

- (a) Neither party may disclose to a third party any of the other party's Confidential Information, other than:
  - (i) as expressly permitted by this MOU;
  - (ii) in proper performance of this MOU;
  - (iii) as required by law, Ministers, Select Committees or Parliamentary questions; or
  - (iv) with the prior written consent of the other party.
- (b) A party (the **Disclosing Party**) must immediately notify the other party in writing on becoming aware of any:
  - (i) potential, threatened or actual misuse or unauthorised disclosure of the other party's Confidential Information; or
  - (ii) breach of the Disclosing Party's confidentiality obligations,and will co-operate with the other party in preventing or limiting such misuse, unauthorised disclosure or breach, which may include investigating the misuse or unauthorised disclosure.
- (c) Where an investigation is undertaken, the parties will provide each other with reasonable assistance and will keep each other informed of progress.

### 12.3 Security

- (a) The parties agree to effect and maintain adequate security measures to safeguard the other party's Confidential Information from unauthorised access or use, including periodic assurance activity such as the maintenance and checking of access logs.
- (b) Without limiting clause 12.3(a):
  - (i) the Monitor will store information it obtains from Oranga Tamariki in a secured part of the Monitor's Electronic Document and Records Management System (**EDRMS**); and

- (ii) that secured part of the EDRMS shall be accessible only by authorised staff involved in the Monitor's independent monitoring function.
- (c) If either party has reasonable cause to believe that any breach of security has occurred or is likely to occur:
  - (i) the party with that belief must promptly notify the other party in writing of the actual or likely security breach; and
  - (ii) the parties may undertake such investigations in relation to the actual or likely breach as they consider necessary.
- (d) The parties must:
  - (i) to the extent permitted by law, provide each other with reasonable assistance in undertaking the investigations and, where relevant, remedying the breach; and
  - (ii) if necessary, co-operate in amending this MOU to reflect new security requirements.
- (e) The parties acknowledge that each party will be required to follow its own information security policies and procedures when dealing with an actual or likely security breach.

#### 12.4 Privacy breaches

- (a) Each party acknowledges the importance to the other of compliance with both the Privacy Act and the Privacy Breach Guidelines.
- (b) If there is a privacy breach, each party will be responsible for investigating and addressing the breach to the extent the breach:
  - (i) involves Personal Information that the party holds or is deemed by the Privacy Act to hold; or
  - (ii) has or is likely otherwise to have been caused or contributed to by that party,and in each case in accordance with the party's own privacy and internal investigation policies and processes and the Privacy Breach Guidelines.
- (c) Each party will cooperate with the other as required in the investigation of a privacy breach.
- (d) Neither party will make any public comment on a privacy breach that involves or affects the other party (an **Impacting Privacy Breach**) without first consulting the other party and each party will use its best endeavours to consult the other party on an Impacting Privacy Breach before discussing the matter with any Regulator. However, this clause does not prevent a party from keeping its responsible Minister(s) informed of such matters as it considers appropriate, provided that the party shall inform the other party before doing so or, if not practicable, within a reasonable time after doing so.
- (e) Where an internal investigation confirms the loss of, or unauthorised access to, Personal Information, amounting to an incident that the party intends to notify to the Office of the Privacy Commissioner, and the breach is an Impacting Privacy Breach, the party experiencing the breach will notify the other party as soon as possible.

- (f) The parties acknowledge that this clause 12.4 may need to be amended during the term of this Agreement to reflect legislative changes.

#### 12.5 Public Records Act

Each party remains responsible for complying with its own obligations under the Public Records Act 2005.

#### 12.6 Official Information Act and Privacy Act requests

- (a) The parties acknowledge that, as a matter of law, each party remains responsible for complying with its own obligations under the Official Information Act 1982 (**OIA**) and the Privacy Act 1993, despite any provision in this Agreement that may appear to the contrary.
- (b) If an individual makes a request to one party (the **Requested Party**) for his or her Personal Information under IPP6 of the Privacy Act 1993 or requests correction of his or her Personal Information under IPP7:
- (i) the Requested Party does not need to consult the other party, unless:
- (A) the information to which the request relates is held or substantially held by the other party, such that the request may need to be transferred to the other party under section 39 of the Privacy Act; or
- (B) the other party may have information relevant to the existence or application of a good reason under Part 4 of the Act for refusing a request under IPP6 (for example, the other party may have information as to whether a request should be withheld on the basis that disclosure would be likely to endanger someone's safety or prejudice the investigation of an offence); but
- (ii) if the Requested Party is the Monitor, the Monitor will seek consent from the individual to inform Oranga Tamariki of the request and, if consent is given, the Monitor will inform Oranga Tamariki of the request reasonably promptly.
- (c) If either party receives:
- (i) an Official Information Act or Privacy Act-related complaint relevant to the subject matter of this MOU; or
- (ii) an OIA request for information relating to the subject matter of this MOU (including a media enquiry that could affect the other party),
- that party will consult the other party on the proposed response prior to making a decision on the complaint or request.

#### 12.7 Consultation with Information Regulators

If either party wishes to seek assistance from or consult an Information Regulator in relation to any form of information sharing covered by this Agreement, it will first consult with the other party. To avoid doubt, this clause 12.7 does not prevent a party from keeping its responsible Minister informed of such matters as it considers appropriate and at one or more times that it considers appropriate.

## 13. Review and change

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- 13.1 The Monitor will review this MOU every 3 months from the Commencement Date or earlier if both parties agree, in consultation with Oranga Tamariki, with a view to determining whether any changes are required. Changes to the MOU require the parties' agreement in accordance with clause 13.4.
- 13.2 The Monitor will review the initial assessment framework approximately every three months from the Commencement Date, in consultation with Oranga Tamariki, Approved Organisations and such other parties as the Monitor considers appropriate, with a view to determining whether any changes are required.
- 13.3 Where there are changes in Government policy or law that affect any terms of this MOU or require additional terms, each party will inform the other of those changes as soon as possible (to the extent the party is aware of them) and, if necessary, meet to discuss affected parts of this MOU.
- 13.4 Changes to this MOU need to be agreed between the parties in writing (agreement not to be unreasonably withheld or delayed). To avoid doubt, nothing in this clause 13 limits the Monitor's ability to review and amend the initial assessment framework after consultation with Oranga Tamariki, Approved Organisations and such other parties as the Monitor considers appropriate.

## 14. Notices

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- 14.1 Notices under this MOU will be given by email to the other party's Relationship Manager.
- 14.2 Notices are deemed to be received upon confirmation of receipt by the recipient's email system or the recipient him or herself, provided that if a notice is received by a party on a date that is not a Business Day, or the delivery or transmission is made after 5pm on a Business Day, then the notice will be deemed to have been received on the next Business Day.

## 15. Definitions and interpretation

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### 15.1 Definitions

In this MOU, unless the context indicates otherwise:

**Approved Organisation** has the meaning in Background paragraph 5(a);

**Business Day** means a day of the week other than:

- (a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Labour Day, Wellington Anniversary and Auckland Anniversary; and
- (b) a day in the period commencing with 25 December in a year and ending with 2 January in the following year; and
- (c) if 1 January falls on a Friday, the following Monday; and
- (d) if 1 January falls on a Saturday or a Sunday, the following Monday and Tuesday; and

(e) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday;

**Care or Custody** has the meaning in regulation 5(1) of the NCS Regulations;

**Commencement Date** means 1 July 2019;

**Confidential Information** means, in relation to a party, all information concerning the party's organisation, administration, operation, business, customers, clients, finances and methods that is by its nature confidential or which the recipient ought to know is confidential whether received before or after the commencement of this MOU;

**Data Exchange** means the secure data sharing solution known by that name which is facilitated by the Social Investment Agency, available on the government marketplace (marketplace.govt.nz) and provided by Eight Wire Limited;

**Impacting Privacy Breach** has the meaning in clause 12.4(d);

**Information Regulator** means the Privacy Commissioner, Government Chief Privacy Officer, Government Chief Digital Officer and the Government Communications Security Bureau;

**IPP** means an Information Privacy Principle in section 6 of the Privacy Act 1993 or equivalent section in the successor to that Act;

**NCS Regulations** means the Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018;

**New Legislation** has the meaning in Background paragraph 3;

**OCC** means the Office of the Children's Commissioner;

**Ombudsman** means the Office of the Ombudsman;

**Personal Information** means information about an identifiable individual;

**Phase 1** has the meaning in Background paragraph 7(a);

**Phase 2** has the meaning in Background paragraph 7(b);

**Phase 3** has the meaning in Background paragraph 7(c);

**Privacy Breach Guidelines** means the privacy and data breach guidance published by the Office of the Privacy Commissioner on its website (privacy.org.nz) and any statutory provision enacted after the Commencement Date that makes privacy breach notification by agencies mandatory; and

**Relationship Manager** has the meaning in clause 8.1

## 15.2 Interpretation

In this MOU, unless the context requires otherwise:

- (a) references to "consultation" or "consulting" mean providing sufficient information to the consulted party to enable it to provide its views, giving that party a reasonable period of time to provide its views, and taking those views into account with an open mind before proceeding with the relevant action or decision;



- (b) derivations of defined words and terms have a corresponding meaning; and
- (c) a reference to a law, or to a provision of any law, includes that law as amended, re-enacted or replaced from time to time.


## Execution

In signing this MOU, each party acknowledges that it has read and agrees to follow it.

For and on behalf of the **Ministry of Social Development**:

For and on behalf of **Oranga Tamariki - Ministry for Children**:

  
\_\_\_\_\_  
(signature)

  
\_\_\_\_\_  
(signature)

**Name:** MELISSA GILL  
**Position:** Executive Director  
**Date:** Independent Children's Monitor  
1/7/2019 Unit

**Name:** GRAEME MOSS  
**Position:** CEO  
**Date:** 28/dune/2019

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982