

# **Periodic review of legislation, policy, and other accountability arrangements**

**Report to Parliament by the Minister for Children  
under section 448B of the Oranga Tamariki Act  
1989**

**July 2022**



# Contents

<b>Section 448B requires the Minister to report...</b>	<b>2</b>
<b>Oranga Tamariki has two specific functions</b>	<b>3</b>
This Government has high aspirations for tamariki	3
<b>Oranga Tamariki is not fully meeting the needs of the children and young people it is intended to serve</b>	<b>5</b>
<i>Te Kahu Aroha</i> largely answers the questions posed by section 448B	5
<b>Change is underway to transform Oranga Tamariki</b>	<b>7</b>
The Future Direction Plan	7
The Oranga Tamariki Action Plan	10
Legislative amendments are also required	11
<b>Continuing oversight to ensure the transformation</b>	<b>14</b>
Governance arrangements	14
Continued oversight and assurance	14
Further legislative changes may be required	15

# Section 448B requires the Minister to report...

Section 448B of the Oranga Tamariki Act 1989 (the Act) requires me, as Minister for Children, to report to Parliament as to whether:

- existing legislation, government policy, and other arrangements that affect the accountability of the Minister, the Chief Executive, and other persons or bodies carrying out functions under this Act ensures that –
  - the needs of children and young persons with whom the Ministry is concerned are met; and
  - the needs of Māori children and young persons with whom the Ministry is concerned are met
- any amendments to legislation, government policies, or other arrangements are necessary or desirable to ensure the needs of the children and young persons, or particular groups of children and young persons (referred to above) are met.

In addition, section 7AA of the Act sets out the duties of the Chief Executive of Oranga Tamariki to improve outcomes for tamariki and rangatahi Māori who come to the attention of the organisation. It requires the Chief Executive to report publicly on the actions taken, and the progress made, in meeting those duties. The second Section 7AA annual report was published on 9 March 2022. The report can be found on the Oranga Tamariki website.

These two reporting mechanisms are intended to provide a system for Oranga Tamariki to monitor its operating model and framework on a regular basis, to ensure that the needs of children and young people in contact with it – particularly tamariki and rangatahi Māori – are being met, and to assess whether change is needed.

# Oranga Tamariki has two specific functions

This Government is committed to making New Zealand the best place in the world for children and young people.

Oranga Tamariki has two core roles. To support the Government's vision, it must be:

- a high performing, highly trusted statutory care and protection and youth justice agency that works in an integrated way with other agencies and communities
- an enabler and coordinator for Māori and communities, to enable them to put in place the support, solutions, and services they know will work for their people to prevent tamariki coming to the attention of Oranga Tamariki.

Its purpose is to ensure that all children in New Zealand are in loving whānau and communities where oranga can be upheld. Oranga Tamariki also has an obligation to uphold people's rights, including those rights set out in the United Nations Convention on the Rights of the Child, the United Nations Declaration on the Rights of Indigenous Peoples, and the United Nations Convention on the Rights of Persons with Disabilities.

Oranga Tamariki supports and works with children and young people for a range of reasons. It may be as a consequence of their family environment or their own complex needs. It may be because their wellbeing is at significant risk of harm now or in the future. Or it may be because they have offended or are likely to offend.

Oranga Tamariki also works to enable communities and whānau to support the needs of children and young people and prevent the need for a statutory care or protection or youth justice response.

Tamariki and rangatahi Māori are disproportionately represented in the cohorts entering the care and protection system and the youth justice system. It is important that Oranga Tamariki works with whānau, hapū, iwi and communities to find ways of reducing disparities and achieving equitable wellbeing outcomes for tamariki and rangatahi Māori.

## **This Government has high aspirations for tamariki**

This Government has high aspirations for children and young people, and rightly so. To ensure that children and young people in New Zealand are safe, loved, and nurtured is one of the most important tasks we have.

This Government is also committed to ensuring Oranga Tamariki partners with iwi, hapū, and Māori organisations to find appropriate solutions for children in need. Our view is that Oranga Tamariki should enable communities and whānau to support the

needs of all children and young people who are at risk of harm, so that their own families and whānau can provide the loving care and nurturing they deserve, and to prevent the need for a statutory care or protection, or youth justice response.

A statutory response will continue to be needed when serious harm has or is likely to occur, when there is unstable care, or when there is a need to respond to youth offending. Oranga Tamariki also needs to ensure there is safe and loving care for children and young people when there are care and protection concerns or when a young person offends or is likely to offend.

# Oranga Tamariki is not fully meeting the needs of the children and young people it is intended to serve

Since it was established, Oranga Tamariki has been subject to a number of reviews and inquiries. These include the Hawkes Bay Practice Review, the Māori-led (Whānau Ora Commissioning Agency) Inquiry, and reviews or inquiries by the Office of the Children's Commissioner, the Office of the Ombudsman, and the Waitangi Tribunal.

Taken together, the reviews point to significant failures in the care and protection system, including Treaty breaches.

While some of these failures are historic – i.e. they predate the establishment of Oranga Tamariki, some of the concerns and issues outlined are current. They have cast real doubt about the ability of the organisation, in its current form, to fully meet the role this Government has set out for it.

In February 2021, I appointed a Ministerial Advisory Board to provide me with specific advice and assurance across three key areas of Oranga Tamariki:

- relationships with families, whānau and Māori
- professional social work practices
- organisational culture.

The Ministerial Advisory Board's initial report *Hipokingia ki te Kahu Aroha Hipokingia ki te Katoa (Te Kahu Aroha)* was published in September 2021.

## ***Te Kahu Aroha* largely answers the questions posed by section 448B**

The Ministerial Advisory Board undertook intensive engagement with service providers, hapū, iwi, heads of government agencies and statutory organisations, whānau, and more than 750 Oranga Tamariki kaimahi, including social workers. It also reviewed a large number of documents and reviews, as well as the Ministry's current strategies, plans, financial statements, and workforce, operations, and human resource policies.

*Te Kahu Aroha* makes for confronting, but compelling, reading.

On the basis of *Te Kahu Aroha* in particular, but also supported by the findings of other reports, I conclude that:

- the existing arrangements of Oranga Tamariki **do not meet** the needs of children and young people, in particular tamariki and rangatahi Māori, with whom it is concerned
- **changes are needed** to accountability settings (i.e. legislation, government policies and other arrangements) to enable Oranga Tamariki to be able to meet the needs of the children and young people with whom it is concerned, in particular, the needs of tamariki and rangatahi Māori.

There will always need to be a state care and protection agency. However, there needs to be a fundamental and significant change in the approach, operating model, and practice of Oranga Tamariki so that the needs of children and young people with the greatest needs, in particular tamariki and rangatahi Māori, are met.

And while *Te Kahu Aroha* was focused largely on the care and protection system, the change needed is likely to impact other parts of the Oranga Tamariki system, including, for instance, its role as a youth justice agency.

# Change is underway to transform Oranga Tamariki

Based on the recommendations and findings from *Te Kahu Aroha*, and previous reviews, three key mechanisms have been identified for transforming the system so that the needs of children and young people who come to the attention of Oranga Tamariki can be met:

- ***The Future Direction Plan for Oranga Tamariki*** – This will drive transformation across the Oranga Tamariki system. It draws together themes from across *Te Kahu Aroha* as well as recommendations and findings from previous reviews and the Waitangi Tribunal report.
- ***The Oranga Tamariki Action Plan*** – The Ministerial Advisory Board noted in *Te Kahu Aroha* that other government agencies needed to support Oranga Tamariki better, to prevent the need for a statutory response. The Oranga Tamariki Action Plan will support change at the inter-agency level by requiring children’s agencies<sup>1</sup> to collaborate on steps to improve the wellbeing of children and young people with the greatest needs – those who are at risk of, have previously been in, or are currently involved in the statutory care and protection or youth justice systems.
- ***Legislative change*** – Some proposed legislative changes are already before the House:
  - the *Oranga Tamariki Amendment Bill*, which will partially repeal the subsequent child provisions, and make a number of other minor and technical amendments to the Oranga Tamariki Act 1989
  - the *Oversight of Oranga Tamariki System and Children and Young People’s Commission Bill (Oversight Bill)*, led by the Minister for Social Development and Employment, provides for increased oversight of the Oranga Tamariki system.

## The Future Direction Plan

In response to the Ministerial Advisory Board’s recommendations, as well as the recommendations and findings of the Waitangi Tribunal and previous reviews, I presented a paper to Cabinet in August 2021, with an accompanying plan (the Future Direction Plan) to begin the change process.

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<sup>1</sup> Children’s agencies are Oranga Tamariki, New Zealand Police and the Ministries of Education, Social Development, Health, and Justice, but other agencies, such as Te Puni Kōkiri, the Department of Corrections and the Ministry for Housing and Urban Development can be involved.

Cabinet accepted the recommendations from *Te Kahu Aroha* and agreed to the 36 actions set out in the Future Direction Plan. In doing so, this Government agreed to a fundamental transformation in the way Oranga Tamariki works.

The Future Direction Plan draws together themes from across *Te Kahu Aroha*, as well as the Waitangi Tribunal and previous reviews, and supports this Government's vision that New Zealand is the best place in the world to be a child. The Future Direction Plan aims to:

- ensure that the intent of *Te Kahu Aroha* is realised
- rebuild trust and confidence in Oranga Tamariki
- strengthen engagement to embed the perspectives of Māori, Pacific peoples, disabled people, and front-line kaimahi
- deliver complex transformational change alongside significant organisational and structural changes
- support kaimahi through the change
- continue, where possible, to reorient funding towards the activities in the Future Direction Plan in a constrained fiscal environment.

The Future Direction Plan focuses on five key areas:

- **Organisational Blueprint:** ensuring the Ministry's functions support a high-performing statutory care and protection agency and enable Māori and communities to care for their children and young people
- **People and culture:** making key supports available to front-line kaimahi to ensure their wellbeing; developing the Workforce Strategy; and embedding positive and safe workplace standards and culture across the organisation
- **Relationships, partnering and decision-making:** building on current locally-led initiatives to support a community-led, regionally-supported and centrally-enabled structure, with Oranga Tamariki as an enabler
- **Social work practice:** drawing from Te Ao Māori knowledge so that practice becomes relational, restorative, and inclusive. This change will better support tamariki, rangatahi, and whānau Māori while also meeting all the needs of all children and families we work with
- **Data, insights, and evidence:** supporting evidence-based decision-making, improved performance, and improved outcomes for tamariki and whānau. This includes ensuring communities have the data and tools needed to achieve their aspirations and drive evidence-based change within their communities and regions.

## **Progress is being made on most of the Future Direction Plan's actions**

Work has progressed on the implementation of the actions set out in the Future Direction Plan, recognising that many of these actions are about long-term change.

A key milestone that has been achieved is the reorganisation of functions and the establishment of Te Riu, the new Leadership Team for Oranga Tamariki, with strong social work experience. This team is important to ensure that Oranga Tamariki is structured in a way that ensures the Ministry's operational capability is fit for purpose, and to deliver on the transformational change needed.

Oranga Tamariki is also making a fundamental shift in its approach to social work practice. At the heart of this shift are the relationships it builds with the children and young people, families, whānau, communities and partners it works with. This approach will have a much stronger emphasis on partnered practice, where the knowledge and skills of colleagues in iwi, Māori and community organisations are recognised and valued, and collaborative ways of working are encouraged. The foundations for this shift include the introduction of a new Practice Framework and associated practice models and tools for social work practitioners.

Progress is also being made on Enabling Communities (to be confirmed), with Oranga Tamariki initially working closely with five communities (Waikato, Heretaunga/Ahuriri, Ōtautahi, Taumarunui and Te Tai Tokerau). This work involves identifying how Oranga Tamariki, through its National Office and regions, can support and enable a community led approach to prevention and early support.

## **We need to ensure that change continues**

I am committed to this transformation. To ensure the transformation is well designed and delivered, there must be collective buy-in to the new direction. Stakeholders and partners should be involved including communities, whānau, hapū, iwi, and children and young people themselves. The Ministerial Advisory Board will also have an ongoing mandate to provide me with specific advice and assurance as needed.

Oranga Tamariki is engaging widely with stakeholders and partners on the Future Direction Plan approach and actions, including engaging with the communities, individuals, and agencies that the Ministerial Advisory Board engaged with in the development of *Te Kahu Aroha*. This would include kaimahi, children and young people, and whānau. It is also important that Oranga Tamariki works with iwi, and Māori and community providers as it develops its future direction.

There must also be clear and high-level oversight. I am receiving regular progress reports from Oranga Tamariki, and these are shared with the Ministerial Advisory Board.

The Ministerial Advisory Board itself is engaging with Te Riu, as well as with frontline kaimahi. In December, I also appointed three additional members to the Board to ensure representation for youth, disability, and Pasifika communities.

As part of the Ministerial Advisory Board’s ongoing oversight role, it also provides me with Quarterly Assurance Reports on progress. Cabinet will receive regular updates which will be made publicly available.

I believe that delivery of the Future Direction Plan will ensure Oranga Tamariki is in the best position to deliver better outcomes for tamariki, rangatahi and whānau; empower kaimahi to excel; enable local approaches; and lead across the system.

## **The Oranga Tamariki Action Plan**

The need to provide earlier and more holistic support to communities and whānau to help prevent children and young people coming to the attention of Oranga Tamariki has been highlighted for many years. *Pūao Te Ata Tū* told us this in 1988, and many commentators and stakeholders have repeated it since. *Te Kahu Aroha* again drew attention to this.

Oranga Tamariki cannot provide every support that is needed for children and young people to flourish. However, in too many cases, the government system defers responses, on a range of challenges, to Oranga Tamariki rather than proactively stepping in to provide support when it is needed.

I intend to shortly release the Oranga Tamariki Action Plan. It is a statutory requirement under the Children’s Act 2014 and sits beneath the Child and Youth Wellbeing Strategy (the Strategy). It sets out the steps chief executives of children’s agencies will take to work together to achieve the outcomes of the Strategy for the core populations of interest to Oranga Tamariki<sup>2</sup> or “priority populations” and to improve their wellbeing.

The Oranga Tamariki Action Plan is a critical enabler for advancing a shared accountability and monitoring framework across children’s agencies to improve the wellbeing of the priority populations, and prevent the need for them to come into care or enter the youth justice system. It will require the chief executives of children’s agencies and their staff to work together with a clear focus on improving outcomes. This is vital to realising our vision of making New Zealand the best place in the world to be a child.

### **We need to ensure that change happens**

Children’s agencies are jointly responsible for delivering on the Oranga Tamariki Action Plan. The Social Wellbeing Board<sup>3</sup> will hold all agencies accountable to the Oranga Tamariki Action Plan through regular monitoring and reporting.

In addition, Child and Youth Wellbeing Strategy Ministers will monitor the implementation of the Oranga Tamariki Action Plan and hold agencies accountable.

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<sup>2</sup> This includes children who have early risk factors for future involvement, are currently involved in or have been involved in the statutory care, protection, and youth justice systems. There are nearly 120,000 children and young people in this cohort.

<sup>3</sup> The Social Wellbeing Board is a cross-sector group of chief executives that oversees work seeking to achieve outcomes beyond the remit of any one agency.

Further, as required by the Children's Act 2014, children's agencies will provide a joint implementation report each year, which will be made publicly available.

## **Legislative amendments are also required**

While there are areas where practice improvements have been made as a response to internal and external reviews, some legislative amendments are required to support the future direction of Oranga Tamariki.

Current legislative proposals will enhance the rights of children and young people, support improved practices, and will increase independent oversight of Oranga Tamariki and the Oranga Tamariki system.

### **Amendments to the Oranga Tamariki Act 1989**

Amendments to the Oranga Tamariki Act 1989 (the Act) are currently underway through the Oranga Tamariki Amendment Bill (the Amendment Bill). I am also reviewing a range of other areas to identify whether any amendments are desirable.

#### ***The Oranga Tamariki Amendment Bill (the Amendment Bill)***

The Oranga Tamariki Amendment Bill (the Amendment Bill) has been considered by the Select Committee and its report is currently with the House. The Amendment Bill includes:

- partial repeal of the subsequent child provisions
- repeal of a redundant provision relating to public notification of information about combined datasets
- some minor technical amendments.

The subsequent child provisions were introduced by the previous government with the aim of improving the safety of any child born to someone who has previously had a child permanently removed from their care, or who had been convicted for the death of a child in their care. Under the provisions, the Family Court is required to oversee all decisions about whether a subsequent child needs care and protection, even when Oranga Tamariki considered there were no care or protection concerns.

The subsequent child provisions have been used in only a small number of cases. A review of the provisions found that the provisions may be causing harm, and impacted on the ability of social workers to work constructively with families and whānau. In particular, the provisions were not promoting the best interests of children, particularly of children already in care, as the requisite Court proceedings result in additional, and potentially traumatic, Court proceedings for those children.

Partially repealing these provisions will support the new strategic direction for Oranga Tamariki as it will support effective and professional social work practice. It will promote practice that recognises mana tamaiti and the whakapapa of tamariki and rangatahi Māori, and the whanaungatanga responsibilities of their whānau, hapū and iwi. It will help ensure family and whānau-centred decisions regarding the appropriate course of action.

The provisions will however be retained where they relate to people who have been convicted for the death of a child in their care. This reflects the seriousness of those offences.

The Amendment Bill also makes amendments to the Act that will enhance the rights of children and young people who come to the attention of Oranga Tamariki:

- section 11(2)(f) will be amended to require decisions to be explained to children and young people in a manner appropriate for their age and level of understanding
- section 144(1) will be amended to reflect that children and young people can provide their consent to the relevant agreements in a variety of ways – the current provision requires them to provide their consent in writing. The amendment reflects the needs of our children and young people who are not able to read or write.

### ***Possible areas for future legislative reform***

The Government is currently looking at the following areas to identify whether any amendments are desirable. Other areas will also be considered where necessary to enable the Oranga Tamariki Future Direction Plan or to fulfil recommendations made in reviews of Oranga Tamariki.

#### *Residential care*

The Future Direction Plan calls for the establishment of a new model of residential care. To realise that plan, the legislation governing both care and protection and youth justice residential care requires amendment. As part of this, this Government is looking at how to support a shift towards smaller more family-like homes for residential care and a corresponding focus on more therapeutic and trauma-informed care. This work is also likely to involve reviewing the powers currently available to staff under the Residential Care Regulations, such as the power to restrain or search young people in a residence.

Any changes in this space would cover homes or residences owned or leased either by Oranga Tamariki or another social service agency.

#### *Other potential areas for future legislative reform*

I have also asked for advice from Oranga Tamariki on:

- measures to reduce the number of young people detained in custody pending their hearing.
- clarifying the law that applies to young people who are serving a custodial sentence under the adult jurisdiction in an Oranga Tamariki youth justice residence.
- reviewing access to voluntary extended care agreements, particularly for disabled children and young people.
- reviewing special guardianship orders.

- reviewing the relationship between the Treaty principles and the information sharing provisions of the Act.

## **Legislation to increase independent oversight**

The Oversight Bill, led by the Minister for Social Development and Employment, is expected to come into force in late 2022 – early 2023. The report of the Select Committee is currently being considered by the House.

The Oversight Bill establishes greater independent oversight of Oranga Tamariki and the “Oranga Tamariki system”<sup>4</sup> by establishing three key roles:

- the Independent Monitor of the Oranga Tamariki System will objectively assess the extent to which the Oranga Tamariki system supports the rights, interests, and well-being of those who are receiving or have previously received services and support through the system, and is intended to identify areas of high performance and areas for improvement
- the advocacy function of the Children and Young People’s Commission is increased, enhancing rights for children and young people. The Commission’s role in monitoring Oranga Tamariki services against the seven domains under the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is unchanged
- the Ombudsman will have an expanded and strengthened jurisdiction to investigate complaints.

Together, these three roles provide a comprehensive mechanism for identifying significant or systemic issues within Oranga Tamariki and the Oranga Tamariki system.

While initially focusing on the performance of Oranga Tamariki, and care partners providing services under the Oranga Tamariki Act 1989, in time, the monitor will play an important role in assessing the contributions of agency partners in meeting the wellbeing needs of children. It will provide insights on the impact of policies and practices of relevant agencies on our priority populations.

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<sup>4</sup> The Oranga Tamariki system, as defined in the Oversight Bill, means the system that is responsible for providing services or support (including health, education, and disability services, or responses to youth offending) to children, young people, and their families and whānau, under or in connection with the Oranga Tamariki Act 1989.

# Continuing oversight to ensure the transformation

This report sets out the changes this Government has already committed to, to ensure the needs of children and young people who come to the attention of Oranga Tamariki are met. Major transformation of the Oranga Tamariki system is necessary and work has started on this and more will come.

## Governance arrangements

One of the most significant changes Oranga Tamariki and the Ministerial Advisory Board are considering is options on the future governance of the organisation.

In *Te Kahu Aroha* the Ministerial Advisory Board recommended establishing a National Oranga Tamariki Governance Board. The governance board would oversee the diversity and depth of changes needed, help ensure investment is supported to stay the course to deliver benefits for improved outcomes for tamariki and their whānau, and provide guidance and oversight across the broader social sector system. This recommendation builds on the recommendations of the Waitangi Tribunal.

I have asked the Ministerial Advisory Board to lead work in developing options for a permanent governance board.

The Ministerial Advisory Board has had initial conversations with Oranga Tamariki and other government agencies on options they could recommend for a more permanent governance board. Given the significant changes occurring at Oranga Tamariki and the need for the Ministerial Advisory Board to remain focused on the implementation of the Future Direction Plan however, I have asked the Ministerial Advisory Board to pause progress on this work until September 2022.

It is likely that work on a permanent governance board would require engagement and involvement of kaimahi, children and young people, Māori, and communities, to ensure that any governance model meets the needs of all children and young people with whom Oranga Tamariki is concerned, in particular, the needs of tamariki and rangatahi Māori.

## Continued oversight and assurance

Like you, I want to see that Oranga Tamariki is changing and making a difference in the lives of the children and young people it cares for, and for the families and whānau, and the communities in which it operates – and for the workers on the frontline. And I will continue to watch the performance of Oranga Tamariki closely.

At the same time, I am aware that progress and results will not happen immediately. Trying to achieve 'quick wins' will not result in the fundamental change required at

Oranga Tamariki. The care and protection system has been broken for a long time. It needs to be overhauled but I want it done in the right way.

The Ministerial Advisory Board is providing me with Quarterly Assurance Reports on the progress Oranga Tamariki is making to implement the Future Direction Plan.

I will also be taking advice from the new oversight bodies established by the Oversight Bill, in particular the Independent Monitor, whose primary focus will remain on Oranga Tamariki in the immediate term.

I will continue to scrutinise the department's own performance reporting, including its annual section 7AA report, to ensure this government and the New Zealand public can have confidence that Oranga Tamariki is fulfilling its role, and in the transparency of the system.

## **Further legislative changes may be required**

I am considering what additional amendments may be required to the Oranga Tamariki Act 1989 and associated regulations to underpin the new direction for Oranga Tamariki.

I will bring any such proposals to the House through the standard legislative process.