

In Confidence

Office of the Minister for Children

Cabinet Social Wellbeing Committee

Ministerial report under section 448B of the Oranga Tamariki Act 1989

Proposal

- 1 This paper seeks your endorsement of the section 448B report, attached at **Appendix One**, so that it can be tabled in the House by 1 July 2022.

Relation to government priorities

- 2 This proposal relates to the government's priority of *laying foundations for the future*. We are committed to ensuring that New Zealand is the best place in the world to be a child. We are also committed to ensuring Oranga Tamariki partners with iwi, hapū, and Māori organisations to find appropriate solutions for children in need.
- 3 My vision is that all children are safe, loved and nurtured by whānau, hapū and iwi, and supported by thriving communities. Our government has committed to fixing the care and protection system, improving the youth justice system, and ensuring that Oranga Tamariki becomes an enabler; the organisation that people trust and go to for help.

Executive Summary

- 4 Section 448B of the Oranga Tamariki Act 1989 requires the Minister for Children to report to Parliament by 1 July 2022, and every three years thereafter, on whether:
 - 4.1 existing legislation, government policy and other accountability arrangements are meeting the needs of children and young people, particularly tamariki and rangatahi Māori
 - 4.2 any amendments to legislation, or government policies or other arrangements are necessary or desirable in order to ensure the needs of the children and young persons with whom Oranga Tamariki is concerned with are met, or the needs of particular groups of those children and young persons are met.
- 5 Since section 448B was enacted in 2017, there have been a number of reviews into aspects of the functioning of Oranga Tamariki, including the report from the Ministerial Advisory Board *Hipokingia ki te Kahu Aroha Hipokingia ki te Katoa (Te Kahu Aroha)*. These reviews all indicate that changes to the legislative, policy and accountability arrangements are required to ensure the needs of the children and young persons with whom

Oranga Tamariki is concerned, or the needs of particular groups of children and young persons with whom Oranga Tamariki is concerned, are met.

- 6 In this context, I have taken a relatively high-level and concise approach to this section 448B report that reflects and reiterates the proposed direction of travel for Oranga Tamariki, and work proposed or currently underway to achieve that direction.
- 7 I recently set out my vision and plan for the future direction of Oranga Tamariki. This followed independent advice from the Ministerial Advisory Board through its report, *Te Kahu Aroha*. Achieving the vision set out in *Te Kahu Aroha* and the Future Direction Plan will require substantial changes in how Oranga Tamariki approaches its core business, roles, and functions.
- 8 Legislative amendments will also be required to support the future direction for Oranga Tamariki and achieve some of the transformational change needed.
- 9 Following endorsement from Cabinet, I intend to table the report by 1 July 2022. It will be published on the Oranga Tamariki website in July 2022.

Background

- 10 Section 448B of the Oranga Tamariki Act 1989 was introduced as part of a range of legislative changes made in 2017, to support the establishment of Oranga Tamariki.
- 11 With a view to ensure that the system changed as a result of those legislative changes, section 448B set out an accountability mechanism for the Minister for Children to report to Parliament by 1 July 2022, and every three years thereafter on:
- 11.1 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—
- 11.1.1 the needs of children and young persons with whom the department is concerned are met; and
- 11.1.2 the needs of Māori children and young persons with whom the department is concerned are met:
- 11.2 whether any amendments to legislation, or government policies or other arrangements are necessary or desirable in order to ensure the needs of the children and young persons, or particular groups of children and young persons (as referred to in 11.1.1 and 11.1.2) are met.
- 12 The five year period between the 2017 legislative change and the 2022 section 448B report was intended to allow for implementation of those 2017

legislative changes, and for identifying whether further enhancements and changes were needed.

There have been a number of reviews of Oranga Tamariki since section 448B was introduced

- 13 Since section 448B was introduced, there have been a number of internal and external reviews into aspects of how Oranga Tamariki operates, including the internal Hawke's Bay Practice Review and those of the Waitangi Tribunal (WAI 2915), the Children's Commissioner, the Ombudsman, and the Māori-led inquiry.
- 14 These reviews all recommended changes to aspects of Oranga Tamariki policy and practice, and have cast doubt about the ability of Oranga Tamariki to fulfil its role in its current form.
- 15 I therefore established the Ministerial Advisory Board in February 2021, to provide me with specific advice and assurance across three key areas of Oranga Tamariki operations and performance:
- 15.1 relationships with families, whānau and Māori
 - 15.2 professional social work practices
 - 15.3 organisational culture.
- 16 The Board's report, *Te Kahu Aroha*, was released in September 2021. The Board was unable to provide me with the assurance I sought and recommended fundamental changes to the system and how Oranga Tamariki functions and operates.
- 17 Separately, there is the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions. The inquiry is investigating what happened to children, young people, and vulnerable adults in care between 1950 and 1999. While the inquiry is historic in nature, the Commission's recommendations will impact how Oranga Tamariki operates when it reports back in 2023.

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

- 18 *Te Kahu Aroha* makes for a confronting, but compelling read. On this basis (and supported by the findings of other reports), I conclude, that:
- 18.1 the existing arrangements of Oranga Tamariki **do not meet** the needs of the children and young people with whom it is concerned – in particular, the needs of tamariki and rangatahi Māori.
 - 18.2 **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. I note that while *Te Kahu Aroha* did not specifically address legislative change, legislative change will be needed to implement some of its recommendations.

- 19 We need to transform the way Oranga Tamariki works so that the needs of the children and young people with the greatest needs, in particular tamariki and rangatahi Māori, are met.
- 20 While there will always need to be a state care and protection agency, there needs to be a fundamental and significant shift in the approach, operating model, and practice of Oranga Tamariki to be truly child and whānau centred.
- 21 While the recent section 7AA report indicates that Oranga Tamariki has established the foundations that can lead to improved outcomes for tamariki and rangatahi Māori, there is more work needed to achieve the transformation we need.

The section 448B report provides a brief outline of work currently proposed or underway to transform Oranga Tamariki

- 22 *Te Kahu Aroha* was largely focused on the care and protection system. However, work to transform Oranga Tamariki is likely to impact on other functions and roles of Oranga Tamariki, including its role as a youth justice agency.
- 23 The Ministerial Advisory Board is also currently looking at other aspects of Oranga Tamariki, including, youth justice outcomes.
- 24 Given this, I considered the section 448B report should be short and set out the answers to the specific questions posed by section 448B, and provide an outline of the work proposed or currently underway to transform Oranga Tamariki. These changes will impact on policy, practice, and outcomes across both the care and protection and youth justice systems.
- 25 Mechanisms outlined in the section 448B report to achieve and underpin this transformation include:
 - 25.1 the Future Direction Plan
 - 25.2 the Oranga Tamariki Action Plan
 - 25.3 legislative amendments.
- 26 The Future Direction Plan draws together recommendations from *Te Kahu Aroha*, as well as the Waitangi Tribunal and previous reviews. The Future Direction Plan will have a fundamental impact on Oranga Tamariki and will:
 - 26.1 rebuild trust and confidence in Oranga Tamariki
 - 26.2 strengthen engagement to embed the perspectives of Māori, Pacific peoples, disabled people, and front-line kaimahi

- 26.3 deliver complex transformational change alongside significant organisational and structural changes.
- 27 The Ministerial Advisory Board will provide ongoing oversight to ensure the delivery of the Future Direction Plan.
- 28 The Oranga Tamariki Action Plan will also shortly be published. Sitting beneath the Child and Youth Wellbeing Strategy, it sets out the steps chief executives will take to work together to improve outcomes for the core populations of interest to Oranga Tamariki.¹
- 29 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 a statutory response.
- 30 The section 448B report also draws attention to forthcoming amendments to the Oranga Tamariki Act 1989 that will underpin the new direction for the department; and to the new roles established in the Oversight of Oranga Tamariki System and Children and Young People’s Commission Bill (the Oversight Bill) to provide greater independent oversight of Oranga Tamariki and the Oranga Tamariki system.

Future changes and reporting obligations may influence the shape of future section 448B reports

- 31 The Oranga Tamariki Act 1989 requires the Minister for Children to report to Parliament under section 448B on at least one occasion, every three years. This means that the second section 448B report will be due, no later than 1 July 2025.
- 32 There is no specific format required for the section 448B report, and the form and shape of the report will largely reflect the style of the responsible Minister and Government, and the context in which it is developed.
- 33 Future changes and reporting obligations may influence the shape of future section 448B reports. In particular, changes proposed in the Oversight Bill will result in increased public reporting on matters relating to Oranga Tamariki. This would include three-yearly reporting by the newly established Monitor on the ‘State of the Oranga Tamariki system’, and annual reporting on compliance with national care standards regulations and outcomes for tamariki and rangatahi Māori and their families and whānau.

Financial Implications

- 34 There are no financial implications associated with the section 448B report.

¹ These are the children and young people with the greatest needs. This includes children who have early risk factors for future involvement in the statutory care, protection, and youth justice systems, along with those who are already receiving assistance through Oranga Tamariki or who are subject to a custody or other order. There are nearly 120,000 children and young people in this cohort.

Legislative Implications

- 35 There are no legislative implications associated with the section 448B report.
- 36 Legislative options to address actions in the Future Direction Plan will be assessed through the normal policy process.

Impact Analysis

Regulatory Impact Statement

- 37 There are no regulatory proposals in this paper, and therefore Cabinet's impact analysis requirements do not apply.

Climate Implications of Policy Assessment

- 38 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Te Tiriti o Waitangi Implications

- 39 The Treaty of Waitangi / Te Tiriti o Waitangi is a partnership between Māori and the Crown. When considering the principles and articles of the Treaty, officials note that:
- 39.1 *Kāwanatanga / governance*: the direction and actions set out in Future Direction Plan and Oranga Tamariki Action Plan will support the Crown to meet its legislative obligations in a way that reflects the Treaty partnership.
- 39.2 *Rangatiratanga / chieftainship*: the direction and actions set out in the Future Direction Plan and Oranga Tamariki Action Plan seek to enable Māori to have more ownership of the care and protection system.
- 39.3 *Oritetanga / equity*: the direction and actions set out in the Future Direction Plan and Oranga Tamariki Action Plan are aimed at reducing disparities for Māori.

Population Implications

- 40 There are no specific population implications arising out of the section 448B report.
- 41 The Oranga Tamariki Action Plan indicates there are approximately 120,000 children and young people in our priority population, as defined in section 5 of the Children's Act 2014; that is, they are at greatest risk of involvement, now or in the future, with the Oranga Tamariki care and protection and youth justice systems.

- 42 The majority of children and young people in the care and protection, and the youth justice system are Māori and / or Pacific, and a significant proportion have a diagnosed or suspected disability and / or mental health need.
- 43 The actions set out in the Future Direction Plan and the Oranga Tamariki Action Plan will help to improve outcomes for these groups of children and young people, and their families and whānau.
- 44 Separately, a significant proportion of caregivers are Māori. Women are also more likely than men to be the primary caregivers for children and young people. A number of caregivers are likely to be of pension age and / or have a disability who may encounter additional needs. The actions in the Future Direction Plan and Oranga Tamariki Action Plan will provide whānau (including caregivers), hapū, iwi, and communities with greater support and assistance.

Human Rights

- 45 There are no human rights implications arising from the section 448B report.
- 46 More generally, Oranga Tamariki, along with other Government agencies, has an obligation to uphold people's rights. This includes 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.

Consultation

- 47 The section 448B report has drawn on reviews into the operation of Oranga Tamariki including those of the Māori-led inquiry, the Children's Commissioner, the Ombudsman, the Waitangi Tribunal's urgent inquiry and most recently, the Ministerial Advisory Board. Together, these reviewers have engaged with a wide range of children, young people and whānau who have been involved with Oranga Tamariki; with service providers, hapū, iwi and communities; and with Oranga Tamariki staff, including social workers. The direction I am taking with Oranga Tamariki is consistent with what we have heard through these reviews.
- 48 The section 448B report and Cabinet paper have been shared with the Department of the Prime Minister and Cabinet, the Treasury, the Ministries for Women and Pacific People, the New Zealand Police, the Public Service Commission, Te Puni Kōkiri, the Accident Compensation Corporation, the Social Wellbeing Agency, Statistics New Zealand, and the Ministries of Social Development, Youth Development, Housing and Urban Development, Health, Corrections, Justice, and Education.
- 49 A draft version of the section 448B report was also shared with the Ministerial Advisory Board.

Communications

- 50 The attached section 448B report will be tabled in the House by Friday, 1 July 2022. The report will also be published on the Oranga Tamariki website later in July 2022.

Proactive Release

- 51 I intend to release this Cabinet paper, with appropriate redactions, following the tabling of the section 448B report.

Recommendations

The Minister for Children recommends that the Committee:

- 1 **note** that section 448B of the Oranga Tamariki Act 1989 places an obligation on the Minister for Children to table a report in the House by 1 July 2022, setting out:
 - 1.1 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—
 - 1.1.1 the needs of children and young persons with whom the department is concerned are met; and
 - 1.1.2 the needs of Māori children and young persons with whom the department is concerned are met;
 - 1.2 whether any amendments to legislation, or government policies or other arrangements are necessary or desirable in order to ensure the needs of the children and young persons, or particular groups of children and young persons (referred to in 1.1.1 and 1.1.2) are met;
- 2 **note** that there have been a number of reviews into aspects of the functioning of Oranga Tamariki over the last few years;
- 3 **note** that, as a result of these reviews, in particular the report from the Ministerial Advisory Board *Hipokingia ki te Kahu Aroha Hipokingia ki te Katoa (Te Kahu Aroha)*, I have concluded that:
 - 3.1 existing arrangements **do not meet** the needs of the children and young people with whom the department is concerned – in particular, the needs of tamariki and rangatahi Māori; and
 - 3.2 **changes are needed** to accountability settings (i.e. legislation, government policy and other arrangements);
- 4 **note** that the attached report under section 448B of the Oranga Tamariki Act 1989 is high-level and concise, and sets out the desired direction of travel for Oranga Tamariki, and work underway and proposed to achieve that direction;

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- 5 **endorse** the attached report under section 448B of the Oranga Tamariki Act 1989;
- 6 **note** that, if endorsed, I will table the attached report in the House by 1 July 2022;
- 7 **authorise** the Minister for Children to take decisions on any minor or technical changes to the section 448 report to ensure it is up to date before the report is tabled in the House;
- 8 **note** that the report will also subsequently be published on the Oranga Tamariki website;
- 9 **note** that a second section 448B report will be due no later than 1 July 2025.

Authorised for lodgement

Hon Kelvin Davis

Minister for Children