

IN CONFIDENCE

Office of the Minister for Children

Chair, Cabinet Legislation Committee

## **REGULATIONS TO SUPPORT THE ORANGA TAMARIKI OPERATING MODEL**

### **Proposal**

1. This paper seeks authorisation for the following regulations and rules to be submitted to the Executive Council for approval:
  - 1.1. Oranga Tamariki (Youth Advocates) Regulations 2020
  - 1.2. Oranga Tamariki (National Care Standards and Related Matters) Amendment Regulations 2020
  - 1.3. Family Court Amendment Rules (No 2) 2020
  - 1.4. Oranga Tamariki Amendment Rules 2020.

### **Executive summary**

2. This paper seeks authorisation for attached regulations and rules for which policy decisions have already been made. On 23 October 2019, the Cabinet Social Wellbeing Committee agreed to a series of ancillary changes to regulations needed to support the Oranga Tamariki operating model [SWC-19-MIN-0149 refers]. These decisions were confirmed by Cabinet on 4 November 2019 [CAB-19-MIN-0559]. This included:
  - 2.1. making new regulations for the appointment and payment of youth advocates
  - 2.2. minor and technical amendments to the Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018 (the National Care Standards)
  - 2.3. consequential amendments to the Family Court Rules 2002 and Oranga Tamariki Rules 1989 to reflect changes to the Oranga Tamariki Act 1989 (the Act).
3. The attached regulations and rules have been drafted to give effect to these decisions. They will come into effect on 13 August 2020, subject to approval by the Executive Council.

## Policy

### *New regulations for the appointment and payment of youth advocates*

4. Since 1 July 2019, Oranga Tamariki has been required to appoint youth advocates when Police indicate they intend to file charges against a child or young person for offending punishable by imprisonment of 10 years or more (section 248A in the Act). Regulations are required to set out how youth advocates are appointed in these circumstances.
5. Regulations are also required to prescribe the amounts payable to youth advocates appointed by the chief executive of Oranga Tamariki, under section 248A of the Act, and by the Youth Court, under section 323 of the Act.

### *Minor and technical amendments to the Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018*

6. The National Care Standards came into force on 1 July 2019. These regulations set out the key actions to ensure children and young people in the care or custody of the chief executive of Oranga Tamariki receive an appropriate base standard of care, consistent with the principles of the Act.
7. Some minor and technical drafting matters need to be corrected to ensure the National Care Standards can be implemented in line with policy decisions made by Cabinet when the regulations were made [SWC-18-MIN-0010; CAB-18-MIN-0065 refer]. The changes already agreed to are listed in recommendation 1.2.
8. The decision to amend the National Care Standards to ensure that ‘marae’ is referred to consistently and appropriately has been applied by adding ‘their connection with places (whenua) relevant to their culture and identity (such as their marae)’ to the definition of ‘identity and cultural needs’ in the interpretation section (regulation 5(1)).<sup>1</sup> This will ensure that connections to marae and other important whenua are considered whenever identity and cultural needs are raised throughout the National Care Standards.<sup>2</sup> The amendments also add reference to connections to the child or young person’s marae to National Care Standards regulations 32 and 65 related to the provision of support for cultural and identity needs. These amendments reflect the importance of marae as a place for learning, connecting, and strengthening the cultural identity and whakapapa of tamariki Māori.

### *Amendments to the Family Court Rules 2002 and the Oranga Tamariki Rules 1989 to reflect changes to the Act*

9. The Family Court Rules 2002 and the Oranga Tamariki Rules 1989 are regulatory instruments that regulate aspects of the practice and procedure of the Youth Court and the Family Court. These changes will:

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<sup>1</sup> The word ‘marae’ is already referred to in the National Care Standards regulation 20 relating to planning.

<sup>2</sup> Most notably in regulation 10(1)(a), where it is listed as a matter to be identified in the needs assessment.

- 9.1. amend the Family Court Rules 2002 to bring them into line with amendments to the Act that took effect on 1 July 2019
  - 9.2. make further minor and technical changes to ensure the Family Court Rules and Oranga Tamariki Rules are consistent with contemporary court filing systems by changing the way file numbers are referred to in their forms to allow for easier adaptability with Court referencing
  - 9.3. amend the Oranga Tamariki Rules 1989 to bring them into line with amendments to the Act, for example, replacing references to Child, Youth and Family Services with references to Oranga Tamariki–Ministry for Children
  - 9.4. revise the names of the forms listed in the schedules to both sets of the Rules to reflect the name Oranga Tamariki–Ministry for Children.
10. The Ministry of Justice has been consulted on these changes, as it is the agency responsible for the administration of the Family Court Rules 2002.

### **Timing and 28-day rule**

11. As part of the legislative requirements, the regulations will be notified in the *New Zealand Gazette* and come into effect 28 days after publication.
12. The rules and regulations will come into effect on 13 August 2020, subject to approval by the Executive Council.

### **Compliance**

13. The regulations comply with:
  - 13.1. the principles of the Treaty of Waitangi
  - 13.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993
  - 13.3. the principles and guidelines set out in the Privacy Act 1993
  - 13.4. relevant international standards and obligations
  - 13.5. the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

### **Regulations Review Committee**

14. There are no anticipated grounds for the Regulations Review Committee to draw the regulations or rule changes to the attention of the House of Representatives under Standing Order 319.

### **Certification by Parliamentary Counsel**

15. The following regulations and rules have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet:

- 15.1. Oranga Tamariki (Youth Advocates) Regulations 2020
- 15.2. Oranga Tamariki (National Care Standards and Related Matters) Amendment Regulations 2020
- 15.3. Family Court Amendment Rules (No 2) 2020
- 15.4. Oranga Tamariki Amendment Rules 2020.

### **Impact analysis**

16. The Treasury Regulatory Quality Team determined that the decisions sought in this paper are exempt from the Regulatory Impact Analysis requirements on the basis of no or minor impacts on businesses, individuals, or not-for-profit entities.

### **Publicity**

17. Public announcements about the regulations will be co-ordinated by my Office.

### **Proactive release**

18. To align with our commitment to the proactive release of Cabinet papers, I intend to release this paper after the regulations are notified in the *New Zealand Gazette*.

### **Consultation**

19. This paper was prepared by Oranga Tamariki—Ministry for Children. The following agencies have been consulted: Ministry of Education, Ministry of Justice, Ministry of Social Development, Te Puni Kōkiri, Ministry for Pacific Peoples, New Zealand Police, the Ministry of Health, Department of Corrections, Te Arawhiti, and the Treasury. The Department of the Prime Minister and Cabinet was also informed.

### **Recommendations**

20. I recommend that the Cabinet Legislation Committee:

- 1 **note** that on 4 November 2019 Cabinet agreed to the following decisions [SWC-19-MIN-0149; CAB-19-MIN-0559 refers]:

#### ***Youth Advocates***

- 1.1. making new regulations for the appointment and payment of youth advocates to:
  - 1.1.1. align the process for the appointment of youth advocates by the chief executive of Oranga Tamariki with the process for the appointment of youth advocates by the Youth Court
  - 1.1.2. set an hourly rate of pay for youth advocates, at the current rate of pay for youth advocates used operationally

- 1.1.3. prescribe travel costs as the only disbursement payable to youth advocates, at the same rate as for lawyers doing Legal Aid work

### ***National Care Standards***

- 1.2. amend the Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018 to:
  - 1.2.1. ensure that marae is referred to consistently across regulations relating to identifying, planning and supporting connections with culture and identity and family, whānau, hapū, iwi and family groups
  - 1.2.2. ensure that requirements which set out the chief executive's responsibilities for ensuring children and young people are enrolled in school are consistent with the Education Act 1989 by inserting references to relevant enrolment exemptions under that Act
  - 1.2.3. clarify the scope of a search of Oranga Tamariki records required as part of suitability checks of prospective caregivers
  - 1.2.4. clarify the information that must be taken into account in a risk assessment as part of the overall assessment of prospective caregivers
  - 1.2.5. specify that the term 'care transition' for the purposes of Part 5 includes transfers from one residence to another

### ***Family Court Rules 2002 and Oranga Tamariki Rules 1989***

- 1.3. amend the Family Court Rules 2002 and Oranga Tamariki Rules 1989 to ensure consistency with recent legislative changes made to the Oranga Tamariki Act 1989

2 **note** that the following regulations and rules will give effect to the decisions noted in recommendations 1.1 to 1.3:

- Oranga Tamariki (Youth Advocates) Regulations 2020
- Oranga Tamariki (National Care Standards and Related Matters) Amendment Regulations 2020
- Family Court Amendment Rules (No 2) 2020
- Oranga Tamariki Amendment Rules 2020

3 **authorise** the submission to the Executive Council of the:

- Oranga Tamariki (Youth Advocates) Regulations 2020
- Oranga Tamariki (National Care Standards and Related Matters) Amendment Regulations 2020
- Family Court Amendment Rules (No 2) 2020
- Oranga Tamariki Amendment Rules 2020

4 **note** that the rules and regulations will come into effect on 13 August 2020, subject to approval by the Executive Council.

Authorised for lodgement

Hon Tracey Martin  
Minister for Children