

Oversight of Oranga Tamariki System Legislation Amendment Bill

Government Bill

As reported from the Social Services and Community Committee

Commentary

Recommendation

The Social Services and Community Committee has examined the Oversight of Oranga Tamariki System Legislation Amendment Bill and recommends that it be passed. We recommend all amendments unanimously.

Introduction

The bill is an omnibus bill that aims to enhance the oversight and monitoring of the Oranga Tamariki system by making structural changes to the Independent Children's Monitor | Aroturuki Tamariki and the Children and Young People's Commission | Mana Mokopuna. It would amend the Oversight of Oranga Tamariki System Act 2022 and the Children and Young People's Commission Act 2022.

The Independent Children's Monitor is currently a departmental agency within the Education Review Office. The bill would reestablish it as an independent Crown entity. This change is intended to strengthen the Monitor's status as an independent entity. The Monitor's current chief executive would remain the chief executive of the new entity until one year after the bill's commencement.

The Commission currently has a board of five children's commissioners, which includes a Chief Children's Commissioner. This bill would disestablish the Commission's current board model and revert it to an independent Crown entity with a single Children's Commissioner. The bill provides that the current Chief Children's Commissioner will be deemed to have been appointed as the first Children's Commissioner for one year after the bill's commencement.

The bill also provides for a number of consequential and transitional arrangements to ensure there is a smooth transition of functions for both organisations.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

Proposed amendments

We recommend three minor drafting corrections to the bill as introduced. They are to:

- clarify that “Commission” and “Children and Young People’s Commission” in Schedule 3 of the bill both refer to the Commission established by the Children and Young People’s Commission Act 2022
- correct a misspelling of the “Oversight of Oranga Tamariki System Act 2022” in Schedule 5 of the bill, by inserting the word “System”
- insert a missing “of” into Schedule 3 of the bill.

New Zealand Labour Party differing view

The New Zealand Labour Party wishes to raise three points of difference regarding the select committee’s final position on the Oversight of Oranga Tamariki System Legislation Amendment Bill.

First, we are concerned with the loss of representative diversity with the disestablishment of the Children’s Commission’s board and reversion to the single Children’s Commissioner. We had hoped the benefits of this diverse representation would have been given an opportunity to be embedded and for the benefits to then be seen, but sadly this is not the case. In saying that, we recognise that the simplified version of one single commissioner appealed to some submitters.

Second, we believe that the current Independent Children’s Monitor’s situation as a departmental agency within the Education Review Office had adequate independence, and the feedback on their performance to date has been positive. However, we recognise that there was a perception that the Independent Children’s Monitor was not independent enough. If the reestablishment of the Independent Children’s Monitor as an independent Crown entity strengthens the perception of independence, then this is positive.

Third, we wish to acknowledge survivors of abuse in care and the Royal Commission into Abuse in Care’s final recommendations regarding independent oversight and monitoring (recommendations 85 to 87). We believe this bill was a lost opportunity to advance the Royal Commission’s recommendations to ensure that oversight and monitoring of the care system is coherent and well-resourced.

Te Pāti Māori differing view

Te Pāti Māori opposes the Oversight of Oranga Tamariki System Legislation Amendment Bill. Our initial support for the bill stemmed from our position in allowing our people the opportunity to make a submission. In isolation of the coalition Government’s overall policy agenda, this bill may appear as a slight improvement to the cur-

rent state of Aotearoa's care system. Yet, in retrospect of a wider policy agenda, this bill will do little to improve outcomes for the lives of mokopuna Māori in state care.

This bill risks exacerbating systemic inequities, ineffective care for our mokopuna Māori, and undermines the voices of Te Whare Mōrehu. Additionally, this bill continues to neglect the Crown's obligation under Te Tiriti o Waitangi.

From a tikanga Māori perspective:

- **Mana Motuhake:** The Treaty provisions in the legislation it is amending remain untouched. This could be an opportunity for Iwi membership on the Independent Monitoring board. However, the opportunity for representation within a Pākehā system is not Mana Motuhake.
- **Mana Ōrite:** Mokopuna Māori make up 70 percent of tamariki in state care. This bill does not provide for equitable power sharing. The lack of consultation with Māori communities is a failure of partnership under Te Tiriti. This bill disproportionately impacts Māori by ignoring our voices and perpetuating inequities in public safety.
- **Mana Mokopuna:** This will slightly increase the independent monitoring of mokopuna Māori in state care, and overall, lead to less harm (when taken in isolation) yet Māori communities deserve policies that empower and protect them.

Whanaketia: Te Whare Mōrehu voice

This bill represents a significant misuse of trust when it comes to the voices of Te Whare Mōrehu, and blatant disregard to the recommendations made within Whanaketia. It is the view of Te Whare Mōrehu that the current monitoring bodies with whom ensure culture and the inherent rights of tamariki and mokopuna Māori are adequately addressed, do in fact not achieve in this. This bill will not contribute to addressing these factors. We support this view.

Mana Mokopuna and Aroturuki Tamariki do not, under this bill, maintain the right to effectively enact the true intent of Te Tiriti o Waitangi. Affording greater powers to a single centralised monitoring body will only further discriminate against our mokopuna Māori, especially when these entities are not obligated to address Te Tiriti o Waitangi. Without meaningful engagement and the embedding of Te Tiriti o Waitangi into this bill, our mokopuna and tamariki Māori are at risk of continued and unmonitored abuse.

The recommendations in Whanaketia highlight the need for significant structural changes in the child protection system. In its current form, the bill will repeal the regular review of oversight arrangements for Oranga Tamariki. This directly contradicts the voices of Te Whare Mōrehu and findings within Whanaketia.

It is our understanding that this bill will not recognise the Whanaketia recommendation that would review independent monitoring and oversight entities to address duplication and combine existing care and protection and youth justice monitoring and oversight entities into a singular body. Greater collaboration between these exist-

ing entities is necessary for tamariki and mokopuna Māori to access the resources they need. Our tamariki deserve clear and direct pathways for help. This bill will not make any significant headway in achieving this for our tamariki.

To combat these concerns, the bill should mandate for collaboration between Māori and Te Whare Mōrehu in the development of the oversight system while also indicating a clear commitment to the implementation of the Royal Commission's recommendations for monitoring and oversight.

Additionally, Government should await the review of the Oranga Tamariki System Act 2022 prior to any redevelopment of the independent monitoring and oversight systems currently in effect. Despite this Government's haste in progressing legislation, it is critical that bills such as these are informed in their entirety before any lasting decisions are made.

Te Tiriti o Waitangi

Failure to address Te Tiriti o Waitangi is highlighted in the fact that this bill overrides the recommendations made within Whanaketia and has been pushed forward despite the review of the Oranga Tamariki System Act 2022 not having yet been released.

A lack of meaningful consultation and engagement with the above reports and associated entities demonstrates a failure to honour Te Tiriti provided that Māori are overrepresented as survivors of abuse in state care, as highlighted in Whanaketia. A failure of honouring Te Tiriti o Waitangi is particularly evident in the engagement with Māori whānau, hapū, iwi and kaupapa Māori organisations. This bill is reflective of a government attempting to fast-track accountability in a way that serves their interests best.

To remedy these failures and to work in accordance with Te Tiriti o Waitangi obligations, amendments that include reference to Te Tiriti o Waitangi should be made. Reference to Te Tiriti o Waitangi is made within requirements for the Children's Commissioner and so should also be included in this bill's amendments. Additionally, the voices of Te Whare Mōrehu should be included in conjunction with this.

Without purposeful and distinct recognition of Te Tiriti o Waitangi within the amendments to these bills, monitoring bodies will not be empowered to abide by Te Tiriti o Waitangi. Another recommendation that would address these issues is establishing an Independent Māori Monitor. This appointment would be an individual responsible for services transferred from Oranga Tamariki to iwi and Māori organisations.

Closing statement

This bill is only a slight improvement to a disappointing system of care for our tamariki and mokopuna Māori. Greater discussion is needed with appropriate groups, including Māori and survivors of abuse in state care, in order to develop comprehensive amendments that serve the communities that this bill will impact most. Te Pāti Māori calls on Parliament to halt the progression of this legislation until the latter occurs and the recommendations within Whanaketia are recognised. Additionally,

amendments must include recognition and obligation to upholding Te Tiriti o Waitangi before this bill progresses any further.

Appendix

Committee process

The Oversight of Oranga Tamariki System Legislation Amendment Bill was referred to the committee on 5 November 2024. The House instructed us to report the bill back no later than 6 March 2025. We invited the Minister for Social Development and Employment to provide an initial briefing on the bill. She did so on 18 December 2024.

We called for submissions on the bill with a closing date of 8 December 2024. We received and considered submissions from 45 interested groups and individuals. We heard oral evidence from 12 submitters at hearings in Wellington and via videoconference.

Advice on the bill was provided by the Ministry of Social Development. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

Joseph Mooney (Chairperson)

Paulo Garcia

Takutai Tarsh Kemp

Ricardo Menéndez March

Laura McClure

Hon Willow-Jean Prime

Maureen Pugh

Hon Carmel Sepuloni

Tanya Unkovich

Kahurangi Carter and Mariameno Kapa-Kingi participated in our consideration of this bill.

Related resources

The documents we received as advice and evidence are available on the Parliament website.

**Oversight of Oranga Tamariki System Legislation
Amendment Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Louise Upston

Oversight of Oranga Tamariki System Legislation Amendment Bill

Government Bill

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**Oversight of Oranga Tamariki System Legislation
Amendment Bill**

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Schedule 1 10

**New Part 2 inserted into Schedule 1 of Oversight of Oranga
Tamariki System Act 2022**

Schedule 2 16

Amendments to other legislation

Schedule 3 17

**New Part 2 inserted into Schedule 1 of Children and Young
People's Commission Act 2022**

Schedule 4 22

**Consequential amendments to Children and Young People's
Commission Act 2022**

Schedule 5 26

Consequential amendments to other legislation

Schedule 6
**New Part 2 inserted into Schedule 1 of Children and Young
People's Commission (Relevant Agencies) Regulations 2023**

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Oversight of Oranga Tamariki System Legislation Amendment Act **2024**.

2 Commencement

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This Act comes into force on **1 July 2025**.

Part 1

Amendments to Oversight of Oranga Tamariki System Act 2022

3 Principal Act

This Part amends the Oversight of Oranga Tamariki System Act 2022. 10

4 Section 8 amended (Interpretation)

- (1) In section 8(1), replace the definition of **Independent Monitor of the Oranga Tamariki System** or **Monitor** with:

Independent Monitor of the Oranga Tamariki System or **Monitor** means the Independent Monitor of the Oranga Tamariki System established under **section 12** 15

- (2) In section 8(1), repeal the definition of **Independent Monitoring Agency of the Oranga Tamariki System** or **Monitoring Agency**.

- (3) In section 8(1), insert in their appropriate alphabetical order:

board means the board of the Monitor 20
board member means a member of the board

5 Section 12 replaced (Independent Monitor of Oranga Tamariki System established)

Replace section 12 with:

12 Independent Monitor of Oranga Tamariki System established 25

- (1) This section establishes the Independent Monitor of the Oranga Tamariki System (the **Monitor**).
(2) The Monitor is a Crown entity for the purposes of the Crown Entities Act 2004.

- (3) The Crown Entities Act 2004 applies to the Monitor except to the extent that this Act expressly provides otherwise.

12A Monitor’s board

- (1) The board must consist of 3 members.
- (2) Board members are the board for the purposes of the Crown Entities Act 2004. 5

12B Experience and knowledge of board members

- (1) When recommending a person for membership of the board, the Minister must have regard to the need for board members to collectively have knowledge of, and experience in relation to,—
- (a) the Oranga Tamariki system; and 10
- (b) quality assurance; and
- (c) data governance.
- (2) This section does not limit sections 29 and 30 of the Crown Entities Act 2004.

12C Appointment of Judge as board member

- (1) The appointment of a Judge as a board member does not affect the tenure of their judicial office or the Judge’s rank, title, status, precedence, salary, annual or other allowances, or other rights or privileges as a Judge (including those in relation to superannuation). 15
- (2) For all purposes, the Judge’s service as a board member is taken to be service as a Judge. 20

Compare: 2003 No 121 s 7(5); 2022 No 44 s 16

6 Section 16 replaced (Duty to act independently)

Replace section 16 with:

16 Independence of Monitor

Except as expressly provided otherwise in this or another Act, the Monitor must act independently when performing its functions and duties or exercising powers under— 25

- (a) this Act; and
- (b) any other legislation that provides for the functions of the Monitor (other than the Crown Entities Act 2004). 30

Compare: 2022 No 44 s 18

16A Exemption from income tax

The income of the Monitor is exempt from income tax.

Compare: 2003 No 121 Schedule 1 cl 23; 2022 No 44 s 19

7 Section 58 repealed (Review of Act)

Repeal section 58.

8 Schedule 1 amended

In Schedule 1,—

- (a) insert the **Part 2** set out in **Schedule 1** of this Act as the last Part; and 5
- (b) make all necessary consequential amendments.

Amendments to other legislation and revocations

9 Amendments to other legislation

Amend the legislation specified in **Schedule 2** as set out in that schedule.

10 Revocations 10

The following orders are revoked:

- (a) Public Service (Aroturuki Tamariki—Independent Children’s Monitor)
Order 2023 (LI 2023/32):
- (b) Ombudsmen (Aroturuki Tamariki—Independent Children’s Monitor)
Order 2023 (LI 2023/33). 15

Part 2

Amendments to Children and Young People’s Commission Act 2022

11 Principal Act

This Part amends the Act that was previously called the Children and Young People’s Commission Act 2022. 20

12 Title of principal Act changed

In section 1, replace “Children and Young People’s Commission Act 2022” with “Children’s Commissioner Act 2022”.

13 Section 6 amended (Tiriti o Waitangi/Treaty of Waitangi)

Replace section 6(a) with: 25

- (a) **section 12(2)(a)** requires the Minister, when recommending a candidate for appointment as the Children’s Commissioner, to have regard to the candidate’s knowledge and understanding of te Tiriti o Waitangi/the Treaty of Waitangi, Māori knowledge, and knowledge of, and experience in, tikanga Māori; and 30

14 Section 7 amended (Interpretation)

- (1) In section 7, repeal the definitions of **board**, **board member**, and **Children and Young People’s Commission** or **Commission**.

- (2) In section 7, insert in their appropriate alphabetical order:

Commissioner means the Children’s Commissioner holding office under **section 11** and appointed in accordance with **sections 12 and 13**

Deputy Commissioner means the Deputy Children’s Commissioner appointed under **section 14**

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15 Sections 11 to 14 replaced

Replace sections 11 to 14 with:

11 Children’s Commissioner

- (1) This section establishes the Children’s Commissioner.

- (2) The Commissioner is—

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- (a) a corporation sole; and
- (b) a Crown entity for the purposes of section 7 of the Crown Entities Act 2004; and
- (c) the board for the purposes of the Crown Entities Act 2004.

- (3) The Crown Entities Act 2004 applies to the Children’s Commissioner except to the extent that this Act expressly provides otherwise.

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12 Recommendation and endorsement of Commissioner

- (1) This section applies when the Minister is making a recommendation under section 28(1)(b) of the Crown Entities Act 2004 relating to—

- (a) a candidate who has applied to be appointed as Commissioner; or
- (b) the reappointment of a Commissioner who has had continuous service of 6 years or more.

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- (2) The Minister must have regard to—

- (a) the candidate’s—
 - (i) knowledge of, and experience in, children’s and young people’s rights and issues; and
 - (ii) knowledge and understanding of te Tiriti o Waitangi/the Treaty of Waitangi; and
 - (iii) Māori knowledge; and
 - (iv) knowledge of, and experience in, tikanga Māori; and
- (b) the required skills and leadership expertise to carry out the role of Commissioner; and
- (c) the recommendation from a nominations panel convened under **section 13**.

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- (3) A candidate applying to be the Commissioner must also have the endorsement of a relevant agency specified in regulations made under section 37(1)(a).

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(4) This section does not limit sections 29 and 30 of the Crown Entities Act 2004.

13 Nominations panel

(1) The chief executive of the Ministry must convene a nominations panel to—

(a) assess candidates for appointment as the Children’s Commissioner or the reappointment of a Children’s Commissioner who has had continuous service of 6 years or more; and

(b) make a recommendation to the Minister relating to that appointment.

(2) A nominations panel may only recommend a candidate for appointment who has been endorsed by a relevant agency specified in regulations made under section 37(1)(a).

(3) A nominations panel must consist of persons who have, on a collective basis, the following expertise and experience:

(a) Māori leadership:

(b) working with children and young people:

(c) governance:

(d) appointment and recruitment.

14 Deputy Commissioner

(1) The Governor-General may, on the recommendation of the Minister, appoint a Deputy Children’s Commissioner.

(2) The Minister must consult the Commissioner before making a recommendation under **subsection (1)**.

(3) Part 2 of the Crown Entities Act 2004, except section 46, applies to the appointment and removal of a Deputy Commissioner in the same manner as it applies to the appointment and removal of the Commissioner.

(4) Subject to the control of the Commissioner, the Deputy Commissioner may perform or exercise all the functions, duties, and powers of the Commissioner.

(5) If there is a vacancy in the position of Commissioner or the Commissioner is absent from duty (for whatever reason), the Deputy Commissioner may perform or exercise all the functions, duties, and powers of the Commissioner.

(6) The Deputy Commissioner is entitled to all the protections, privileges, and immunities of the Commissioner.

Compare: 1993 No 28 s 15; 2020 No 31 s 14

16 Section 15 repealed (Nominations panel)

Repeal section 15.

17 Section 38 repealed (Review of Act)

Repeal section 38.

18 Schedule 1 amended

In Schedule 1,—

- (a) insert the **Part 2** set out in **Schedule 3** of this Act as the last Part; and
- (b) make all necessary consequential amendments.

Consequential amendments 5

19 Consequential amendments to principal Act

Amend the principal Act as set out in **Schedule 4**.

20 Consequential amendments to other legislation

Amend the enactments specified in **Schedule 5** as set out in that schedule.

Amendments to Children and Young People’s Commission (Relevant Agencies) Regulations 2023 10

21 Principal regulations

Sections 22 to 26 amend the regulations that were previously called the Children and Young People’s Commission (Relevant Agencies) Regulations 2023.

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22 Enacting statement amended

In the enacting statement, replace “Children and Young People’s Commission Act 2022” with “Children’s Commissioner Act 2022”.

23 Title of principal regulations changed

In regulation 1, replace “Children and Young People’s Commission” with “Children’s Commissioner”. 20

24 Regulation 3 amended (Interpretation)

In regulation 3, replace “Children and Young People’s Commission Act 2022” with “Children’s Commissioner Act 2022”.

25 Regulation 5 amended (Relevant agencies that may endorse candidate applying to be board member) 25

(1) In the heading to regulation 5, replace “board member” with “Children’s Commissioner”.

(2) In regulation 5, replace—

- (a) “section 14(2)” with “**section 13(2)**”; and 30
- (b) “a board member of the Children and Young People’s Commission” with “the Children’s Commissioner”.

26 Schedule 1 amended

In Schedule 1,—

- (a) insert the **Part 2** set out in **Schedule 6** of this Act as the last Part; and
- (b) make all necessary consequential amendments.

Schedule 1
New Part 2 inserted into Schedule 1 of Oversight of Oranga
Tamariki System Act 2022

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	Part 2	5
	Provisions relating to Oversight of Oranga Tamariki System Legislation Amendment Act 2024	
4	Interpretation	
	In this Part, unless the context otherwise requires,—	
	amendment Act means Part 1 of the Oversight of Oranga Tamariki System Legislation Amendment Act 2024	10
	Aroturuki Tamariki—Independent Children’s Monitor or Aroturuki Tamariki means the Independent Monitoring Agency of the Oranga Tamariki System established under section 23 of the Public Service Act 2020	
	commencement date means the date on which the amendment Act comes into force	15
	former Monitor means the person holding office as the chief executive of Aroturuki Tamariki immediately before the commencement date	
	Monitor means the Independent Monitor of the Oranga Tamariki System established by section 12 (as replaced by section 5 of the amendment Act)	20
	relevant legislation means—	
	(a) this Act;	
	(b) any other legislation under which the Independent Monitor of the Oranga Tamariki System has functions, duties, or powers.	
5	Disestablishment of Aroturuki Tamariki	25
	Aroturuki Tamariki is disestablished on the commencement date.	
6	Consequences of disestablishment	
(1)	On the commencement date,—	
	(a) all assets belonging to Aroturuki Tamariki vest in the Monitor; and	
	(b) all information and documents held by Aroturuki Tamariki are held by the Monitor; and	30
	(c) all money payable to or by Aroturuki Tamariki becomes payable to or by the Monitor; and	

- (d) all rights, liabilities, contracts, entitlements, and engagements of Aroturuki Tamariki become the rights, liabilities, contracts, entitlements, and engagements of the Monitor; and

(e) subject to **clause 7**, every employee of Aroturuki Tamariki becomes an employee of the Monitor on the same terms and conditions that applied to the employee immediately before they became an employee of the Monitor; and

(f) anything done, or omitted to be done, or that is to be done, by or in relation to the former Monitor or Aroturuki Tamariki is to be treated as having been done, or having been omitted to be done, or to be done, by or in relation to the Monitor; and

(g) proceedings that may be commenced, continued, or enforced by or against the former Monitor or Aroturuki Tamariki may instead be commenced, continued, or enforced by or against the Monitor without amendment to the proceedings; and

(h) a matter or thing that could, but for this clause, have been completed by Aroturuki Tamariki may be completed by the Monitor.

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- (2) The transfer of information from Aroturuki Tamariki to the Monitor under **subclause (1)** does not constitute an action that is a breach of information privacy principle 8 or 11 (as set out in section 22 of the Privacy Act 2020).

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- (3) For the purposes of the Inland Revenue Acts (as defined in section 3(1) of the Tax Administration Act 1994), Aroturuki Tamariki and the Monitor are treated as the same person.
- (4) The disestablishment of Aroturuki Tamariki does not, by itself, affect any of the following matters:

 - (a) any decision made, or anything done or omitted to be done, by the former Monitor in relation to the performance or exercise of the former Monitor's functions, powers, or duties under the relevant legislation:
 - (b) any proceedings commenced by or against the former Monitor or Aroturuki Tamariki:
 - (c) any other matter or thing arising out of the former Monitor's performance or exercise, or purported performance or exercise, of their functions, powers, or duties under the relevant legislation.

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- (5) Nothing in **subclause (1)(e)** applies to the former Monitor (for which **clause 9** provides).

Compare: 2019 No 50 Schedule 1 cl 3; 2022 No 30 Schedule 1 cl 36

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- 7 Transfer of employees from Aroturuki Tamariki to Monitor**
- (1) This clause applies to a person who becomes an employee of the Monitor under **clause 6(1)(e)** (a transferred employee).

- (2) The terms and conditions of employment of a transferred employee immediately before the commencement date continue to apply in relation to that employee until—
 - (a) those terms and conditions are varied by agreement between the transferred employee and the Monitor; or 5
 - (b) the transferred employee accepts a subsequent appointment with the Monitor.
- (3) For the purposes of all legislation and every law, determination, contract, and agreement relating to the employment of a transferred employee,—
 - (a) the employment agreement of that employee is to be treated as unbroken; and 10
 - (b) the employee's period of service with Aroturuki Tamariki, and every other period of service of that employee that is recognised by Aroturuki Tamariki as continuous service, is to be treated as a period of service with the Monitor. 15
- (4) To avoid doubt, the employment of a transferred employee by the Monitor does not—
 - (a) constitute new employment for the purposes of the Holidays Act 2003 or the KiwiSaver Act 2006 or any service-related benefits (whether legislative or otherwise): 20
 - (b) treat the transferred employee as a new employee for the purposes of the Employment Relations Act 2000.
- (5) A transferred employee is not entitled to receive any payment or benefit from Aroturuki Tamariki or the Monitor on the grounds that the person's position in Aroturuki Tamariki has ceased to exist or the person has ceased to be an employee of Aroturuki Tamariki as a result of their transfer to the Monitor. 25
- (6) This clause overrides—
 - (a) Part 6A of the Employment Relations Act 2000; and
 - (b) any employment protection provision in any relevant employment agreement. 30
- 8 Government Superannuation Fund**
- (1) This clause applies to a person who, immediately before becoming an employee of the Monitor, was a contributor to the Government Superannuation Fund under Part 2 or 2A of the Government Superannuation Fund Act 1956.
- (2) For the purposes of the Government Superannuation Fund Act 1956, the person is treated as being employed in the Government service as long as the person continues to be an employee of the Monitor. 35
- (3) The Government Superannuation Fund Act 1956 applies in all respects as if the person's service as an employee of Monitor were Government service.

- (4) **Subclause (1)** does not entitle a person to become a contributor to the Government Superannuation Fund if the person has ceased to be a contributor.
- (5) For the purpose of applying the Government Superannuation Fund Act 1956, the Monitor is the controlling authority.
- Compare: 2013 No 94 s 14; 2020 No 38 Schedule 1 cl 30

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Chief executive of Monitor

9 First chief executive of Monitor

- (1) On the commencement date, the person who held office as the chief executive of Aroturuki Tamariki immediately before that date is taken to have been appointed as the first chief executive of the Monitor—
- (a) for a term starting on 1 July 2025 and ending with the close of 30 June 2026; and
- (b) on the same terms and conditions of employment that applied to the person immediately before the commencement date.
- (2) For the purposes of all legislation and every law, determination, contract, and agreement relating to the person's employment with the Monitor,—
- (a) the employment agreement of that person is to be treated as unbroken; and
- (b) the person's period of service with the Public Service Commissioner, and every other period of service of that person that is recognised by the Public Service Commissioner as continuous service, is to be treated as a period of service with the Monitor.
- (3) To avoid doubt, the appointment of the person as the first chief executive of the Monitor does not—
- (a) constitute new employment for the purposes of the Holidays Act 2003 or the KiwiSaver Act 2006 or any service-related benefits (whether legislative or otherwise);
- (b) treat the person as a new employee for the purposes of the Employment Relations Act 2000.
- (4) The person is not entitled to receive any payment or benefit from the Public Service Commissioner or the Monitor on the grounds that the person's position in Aroturuki Tamariki has ceased to exist or the person has ceased to be an employee of the Public Service Commissioner as a result of their transfer to the Monitor.
- (5) This clause overrides—
- (a) section 117 of the Crown Entities Act 2004; and
- (b) Part 6A of the Employment Relations Act 2000; and
- (c) any employment protection provision in any relevant employment agreement.

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*References to former Monitor and Aroturuki Tamariki***10 References to former Monitor and Aroturuki Tamariki**

- (1) On and after the commencement date, a reference to the former Monitor or Aroturuki Tamariki in any legislation, notice, instrument, contract, or other document must be read as a reference to the Monitor. 5
- (2) This clause applies unless the context otherwise requires.
Compare: 2019 No 50 Schedule 1 cl 7; 2022 No 30 Schedule 1 cl 38

*Reviews and reports of former Monitor***11 Continuation or completion of reviews and reports by former Monitor**

- (1) This clause applies to any review or report started by the former Monitor under this Act before the commencement date but not completed by the close of the day before the commencement date. 10
- (2) On and after the commencement date, the review or report may be continued or completed by the Monitor.
- (3) Nothing in this clause limits **clause 6(1)(h)**. 15

*Review of Act***12 Continuation and completion of review of Act**

- (1) This clause applies to the review of this Act under section 58 that was in progress immediately before the commencement date.
- (2) Despite the repeal of section 58, the review must be continued and completed on and after the commencement date as if the amendment Act had not been enacted. 20

*Review of amendments to Act***13 Review of amendments made by amendment Act**

- (1) The Minister must arrange for an independent review of the operation and effectiveness of this Act as amended by the amendment Act, including the operation and effectiveness of the Monitor established by **section 12** (as replaced by the amendment Act). 25
- (2) The review must consider—
- (a) whether the functions, duties, and powers set out in this Act are supporting the Monitor to give effect to the purpose of this Act; and
 - (b) whether the Monitor is—
 - (i) working effectively with Ombudsmen and hapū, iwi, and Māori organisations; and
- 30

- (ii) being effectively supported by agencies and its contracted partners in the Oranga Tamariki system, and whether there is any evidence that the Monitor is being obstructed in performing their functions, duties, or powers under this Act; and
 - (iii) appropriately resourced to efficiently and effectively discharge its functions, duties, or powers under this Act and to support the resilience of the Oranga Tamariki system; and 5
 - (c) whether any amendments to this Act are necessary or desirable; and
 - (d) any other matters that the Minister considers appropriate, after consulting the Monitor, the Chief Ombudsman, and other Ministers of the Crown with relevant portfolios, as necessary. 10
- (3) The review must begin no later than 5 years after the commencement date.
- (4) The findings of the review must be reported to the Minister.
- (5) The Minister must present a copy of the report on the review to the House of Representatives as soon as practicable after receiving the report. 15

Schedule 2

Amendments to other legislation

s 9

Crown Entities Act 2004 (2004 No 115)

In Schedule 1, Part 3, insert in its appropriate alphabetical order:

5

Independent Monitor of the Oranga Tamariki System

Ombudsmen Act 1975 (1975 No 9)

In Schedule 1, Part 1A, repeal the item relating to Aroturuki Tamariki—Independent Children’s Monitor.

In Schedule 1, Part 2, insert in its appropriate alphabetical order:

10

Independent Monitor of the Oranga Tamariki System

Public Service Act 2020 (2020 No 40)

In Schedule 2, Part 2, repeal the item relating to Aroturuki Tamariki—Independent Children’s Monitor.

Remuneration Authority Act 1977 (1977 No 110)

15

In Schedule 4, insert in its appropriate alphabetical order:

The board members of the Independent Monitor of the Oranga Tamariki System

Schedule 3
**New Part 2 inserted into Schedule 1 of Children and Young People's
Commission Act 2022**

s 18

Part 2	5
Provisions relating to Oversight of Oranga Tamariki System Legislation Amendment Act 2024	
11 Interpretation	
In this Part, unless the context otherwise requires,—	
amendment Act means Part 2 of the Oversight of Oranga Tamariki System Legislation Amendment Act 2024	10
Children and Young People's Commission or Commission means the Chil- dren and Young People's Commission established by section 11 of the Act (as it read immediately before the commencement date)	
Children's Commissioner means the Children's Commissioner established by section 11 (as replaced by the amendment Act)	15
commencement date means the date on which the amendment Act comes into force,	
Commission means the Children and Young People's Commission established by section 11 of the Act (as it read immediately before the commencement date).	20
12 Children and Young People's Commission dissolved	
(1) The Children and Young People's Commission is dissolved on the commence- ment date.	
(2) The board members of the Children and Young People's Commission cease to hold office at the close of the day before the commencement date.	25
13 Consequences of dissolution	
(1) On the commencement date,—	
(a) all assets belonging to the Commission vest in the Children's Commis- sioner; and	30
(b) all information and documents held by the Commission are held by the Children's Commissioner; and	
(c) all money payable to or by the Commission becomes payable to or by the Children's Commissioner; and	
(d) all rights, liabilities, contracts, entitlements, undertakings, and engage- ments of the Commission become the rights, liabilities, contracts, entitle-	35

	ments, undertakings, and engagements of the Children’s Commissioner; and	
	(e) subject to clause 14 , every employee of the Commission becomes an employee of the Children’s Commissioner on the same terms and conditions as applied immediately before they became an employee of the Children’s Commissioner; and	5
	(f) anything done, or omitted to be done, or that is to be done, by or in relation to the Commission is to be treated as having been done, or having been omitted to be done, or to be done, by or in relation to the Children’s Commissioner; and	10
	(g) proceedings, inquiries, and investigations under any enactment that may be commenced, continued, or enforced by or against the Commission or in relation to the Commission may instead be commenced, continued, or enforced by or against or in relation to the Children’s Commissioner without amendment to the proceedings; and	15
	(h) a matter or thing that could, but for this clause, have been done or completed by the Commission may be done or completed by the Children’s Commissioner.	
(2)	The transfer of information from the Commission to the Children’s Commissioner under subclause (1) does not constitute an action that is a breach of information privacy principle 8 or 11 (as set out in section 22 of the Privacy Act 2020).	20
(3)	For the purposes of the Inland Revenue Acts (as defined in section 3(1) of the Tax Administration Act 1994), the Commission and the Children’s Commissioner are treated as the same person.	25
(4)	The dissolution of the Commission does not, by itself, affect any of the following matters:	
	(a) any decision made, or anything done or omitted to be done, by the Commission in relation to the performance or exercise of its functions, powers, or duties under any enactment:	30
	(b) any proceedings commenced by or against the Commission:	
	(c) any other matter or thing arising out of the Commission’s performance or exercise, or purported performance or exercise, of its functions, powers, or duties under any enactment.	
14	Transfer of employees from Commission to Children’s Commissioner	35
(1)	This clause applies to a person who becomes an employee of the Children’s Commissioner under clause 13(1)(e) (a transferred employee).	
(2)	The terms and conditions of employment of a transferred employee immediately before the commencement date continue to apply in relation to that employee until—	40

- (a) those terms and conditions are varied by agreement between the transferred employee and the Children’s Commissioner; or
 - (b) the transferred employee accepts a subsequent appointment with the Children’s Commissioner.
- (3) For the purposes of all legislation, and every law, determination, contract, and agreement relating to the employment of a transferred employee,— 5

 - (a) the employment agreement of that employee is to be treated as unbroken; and
 - (b) the employee’s period of service with the Commission, and every other period of service of that employee that is recognised by the Commission as continuous service, is to be treated as a period of service with the Children’s Commissioner. 10
- (4) To avoid doubt, the employment of a transferred employee by the Children’s Commissioner does not—

 - (a) constitute new employment for the purposes of the Holidays Act 2003 or the KiwiSaver Act 2006 or any service-related benefits (whether legislative or otherwise): 15
 - (b) treat the transferred employee as a new employee for the purposes of the Employment Relations Act 2000.
- (5) A transferred employee is not entitled to receive any payment or benefit from the Commission or the Children’s Commissioner on the grounds that the person’s position in the Commission has ceased to exist or the person has ceased to be an employee of the Commission as a result of their transfer to the Children’s Commissioner. 20
- (6) This clause overrides— 25

 - (a) Part 6A of the Employment Relations Act 2000; and
 - (b) any employment protection provision in any relevant employment agreement.

Children’s Commissioner

- 15 First Children’s Commissioner** 30
- (1) On the commencement date, the person who held office as the Chief Children’s Commissioner under section 12(1)(a) (as it read immediately before the commencement date) is to be taken to have been appointed as the first Children’s Commissioner under **section 11** (as replaced by the amendment Act)—

 - (a) for a term starting on 1 July 2025 and ending with the close of 30 June 2026; and 35
 - (b) subject to the terms and conditions of employment that applied to the person immediately before the commencement date.
- (2) This clause overrides **sections 11 to 13** (as replaced by the amendment Act).

References to previous Title and Commission

16 References to previous Title

Every reference in any legislation and in any document to the Children and Young People's Commission Act 2022 must, unless the context otherwise provides, be read as a reference to the Children's Commissioner Act 2022.

5

17 References to Commission

(1) On and after the commencement date, a reference to the Children and Young People's Commission in any legislation, notice, instrument, contract, or other document must be read as a reference to the Children's Commissioner.

(2) This clause applies unless the context otherwise requires.

10

Compare: 2019 No 50 Schedule 1 cl 7; 2022 No 30 Schedule 1 cl 38

Inquiries, reviews, and investigations by Commission

18 Continuation or completion of inquiries, reviews, and investigations by Commission

(1) This clause applies to any inquiry, review, or investigation started or continued by the Commission under this Act before the commencement date but not completed by the close of the day immediately before the commencement date.

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(2) On and after the commencement date, the inquiry, review, or investigation may be continued or completed by the Children's Commissioner.

(3) Nothing in this clause limits **clause 13(1)(g)**.

20

Review of Act

19 Continuation and completion of review of Act

(1) This clause applies to the review of this Act under section 38 that was in progress immediately before the commencement date.

(2) Despite the repeal of section 38, the review must be continued and completed on and after the commencement date as if the amendment Act had not been enacted.

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Review of amendments to Act

20 Review of amendments made by amendment Act

(1) The Minister must arrange for an independent review of the operation and effectiveness of this Act as amended by the amendment Act, including the operation and effectiveness of the Children's Commissioner established by **section 11** (as replaced by the amendment Act).

30

(2) The review must consider—

- | | | |
|-----|--|----|
| (a) | whether the functions, duties, and powers set out in this Act are supporting the Children's Commissioner to give effect to the purpose of this Act; and | |
| (b) | whether the Children's Commissioner is working effectively with hapū, iwi, and Māori organisations; and | 5 |
| (c) | whether any amendments to this Act are necessary or desirable; and | |
| (d) | any other matters that the Minister considers appropriate, after consulting the Children's Commissioner and other Ministers of the Crown with relevant portfolios, as necessary. | |
| (3) | The review must begin no later than 5 years after the commencement date. | 10 |
| (4) | The findings of the review must be reported to the Minister. | |
| (5) | The Minister must present a copy of the report on the review to the House of Representatives as soon as practicable after receiving the report. | |

Schedule 4

Consequential amendments to Children and Young People's Commission Act 2022

s 19

Section 3 5

Replace section 3(3) with:

- (3) Part 2 establishes the Children's Commissioner (the **Commissioner**) and contains provisions relating to the Commissioner's governance, function, duties, and powers.

In section 3(4), replace "Commission, referrals by the Commission" with "Commissioner, referrals by the Commissioner". 10

Section 4

In section 4, replace "Children and Young People's Commission" with "office of the Children's Commissioner".

Section 5 15

In section 5, replace—

- (a) "Commission" with "Commissioner"; and
- (b) "its functions" with "their functions".

Section 6

Repeal section 6(b). 20

In section 6(c), replace—

- (a) "section 15" with "**section 14**"; and
- (b) "a vacancy on the board" with "assessing candidates for appointment as the Commissioner".

In section 6(d), replace "board" with "Commissioner". 25

In section 6(d)(iii), replace "its" with "their".

In section 6(e) and (g), replace "Commission" with "Commissioner".

In section 6(f), replace—

- (a) "chief executive of the Commission" with "Commissioner"; and
- (b) "Commission" with "Commissioner". 30

Section 7

In the definition of **Independent Monitor of the Oranga Tamariki System** or **Monitor**, replace "person referred to in section 12(2)" with "Monitor established by **section 12(1)**".

Heading to Part 2

Replace the heading to Part 2 with:

Part 2 **Children's Commissioner**

Section 16

5

In the heading to section 16, replace “**to Commission**” with “**as Commissioner**”.

In section 16, replace “as a board member” with “as the Children's Commissioner” in each place.

Section 17

In the heading to section 17, replace “**of board**” with “**of Commissioner**”.

10

In section 17, replace “the board” with “the Commissioner” in each place.

In section 17(1)(a)(ii), replace “its” with “their”.

In section 17(2), delete “collective” in each place.

Section 18

In the heading to section 18, replace “**Commission**” with “**Commissioner**”.

15

In section 18, replace—

(a) “Commission” with “Commissioner” in each place; and

(b) “its” with “their”.

Section 19

In section 19, replace “Commission” with “Commissioner”.

20

Cross-heading above section 20

In the cross-heading above section 20, replace “*Commission's*” with “*Commissioner's*”.

Section 20

In section 20, replace “Commission” with “Commissioner”.

25

Section 21

In section 21, replace “Commission” with “Commissioner”.

Section 22

In section 22, replace “Commission” with “Commissioner” in each place.

In section 22(b) and (c), replace “Commission's” with “Commissioner's”.

30

Section 23

In section 23(1), replace—

- (a) “Commission” with “Commissioner”; and
- (b) “it” with “them”.

In section 23(2), replace “Commission when it is” with “Commissioner when the Commissioner is”. 5

Section 24

In the heading to section 24, replace “**Commission**” with “**Commissioner**”.

In section 24, replace—

- (a) “Commission” with “Commissioner”; and 10
- (b) “its” with “their”.

Section 25

In the heading to section 25, replace “**Commission**” with “**Commissioner**”.

In section 25, replace “Commission” with “Commissioner” in each place.

Section 26 15

In the heading to section 26, replace “**Commission’s**” with “**Commissioner’s**”.

In section 26(1), (3)(b), (4), and (5), replace “Commission” with “Commissioner” in each place.

In section 26(1), replace “Commission’s” with “Commissioner’s”.

Cross heading above section 27 20

In the cross heading above section 27, replace “*Commission*” with “*Commissioner*”.

Section 27

In section 27, replace “Commission” with “Commissioner” in each place.

Section 29

In the heading to section 29, replace “**Commission**” with “**Commissioner**”. 25

In section 29(1), (2), and (3)(c), replace “Commission” with “Commissioner” in each place.

In section 29(2) and (2)(b), replace “Commission’s” with “Commissioner’s”.

Section 30

In section 30, replace “Commission” with “Commissioner” in each place. 30

Section 31

In section 31(1) and (3), replace “Commission” with “Commissioner” in each place.

In section 31(2), replace “Commission’s” with “Commissioner’s”.

Section 32

In section 32, replace “Commission” with “Commissioner” in each place.

Section 33

In section 33, replace “Commission” with “Commissioner” in each place.

In section 33(2)(a), replace “its” with “their”.

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Section 34

In the heading to section 34, replace “**Commission**” with “**Commissioner**”.

In section 34, replace “Commission” with “Commissioner” in each place.

In section 34(1)(a), replace “Commission’s” with “Commissioner’s”.

Section 35

10

In section 35, replace “Commission” with “Commissioner” in each place.

In section 35(3)(b), replace “Commission’s” with “Commissioner’s”.

Section 36

In section 36, replace “Commission” with “Commissioner” in each place.

In section 36(9), replace the definition of **officeholder** with:

15

officeholder means the Commissioner or the Deputy Commissioner.

Section 37

In section 37, replace “Commission” with “Commissioner” in each place.

In section 37(1)(a), replace “a board member” with “the Commissioner”.

In section 37(1)(b), replace “Commission’s” with “Commissioner’s”.

20

In section 37(1)(c) and (d), replace “its” with “their”.

Section 39 and cross-heading above section 39

Repeal section 39 and the cross-heading over section 39.

Section 40

Repeal section 40.

25

Schedule 1, clause 10 and cross-heading above clause 10

Repeal Schedule 1, clause 10 and the cross-heading above clause 10.

Schedule 5 Consequential amendments to other legislation

s 20

Part 1 Amendments to Acts

5

Children's Act 2014 (2014 No 40)

In section 5(1), repeal the definition of **Children and Young People's Commission**.

In section 5(1), insert in its appropriate alphabetical order:

Children's Commissioner means the Commissioner holding that office under **section 11** of the Children's Commissioner Act 2022

10

In section 5(1), definition of **UNCROC**, replace "Children and Young People's Commission Act 2022" with "Children's Commissioner Act 2022".

In section 6D(1)(b), replace "Children and Young People's Commission" with "Children's Commissioner".

Crimes of Torture Act 1989 (1989 No 106)

15

In section 16, definition of **National Preventive Mechanism**, paragraph (c), replace "Children and Young People's Commission" with "Children's Commissioner".

Crown Entities Act 2004 (2004 No 115)

In Schedule 1, Part 3, repeal the item relating to the Children and Young People's Commission.

20

In Schedule 1, Part 3, insert in its appropriate alphabetical order:

Children's Commissioner

Health and Disability Commissioner Act 1994 (1994 No 88)

In section 14(2)(b), replace "Children and Young People's Commission" with "Children's Commissioner".

25

In section 23(b), replace "Children and Young People's Commission" with "Children's Commissioner".

Human Assisted Reproductive Technology Act 2004 (2004 No 92)

In section 34(5), replace "be a board member, representative, or employee of the Children and Young People's Commission" with "hold the office of Children's Commissioner or be a representative or employee of the person who holds that office".

30

Ombudsmen Act 1975 (1975 No 9)

In Schedule 1, Part 2, repeal the item relating to the Children and Young People's Commission.

Ombudsmen Act 1975 (1975 No 9)—continued

In Schedule 1, Part 2, insert in its appropriate alphabetical order:

Children’s Commissioner

Oranga Tamariki Act 1989 (1989 No 24)

In section 2(1), repeal the definition of **Children and Young People’s Commission**.

In section 2(1), insert in its appropriate alphabetical order:

5

Children’s Commissioner means the Commissioner holding that office under **section 11** of the Children’s Commissioner Act 2022

In section 66M(1)(b), replace “Children and Young People’s Commission” with “Children’s Commissioner”.

In section 447(1)(ga), replace “Children and Young People’s Commission” with “Children’s Commissioner”. 10

Oversight of Oranga Tamariki System Act 2022 (2022 No 43)

In section 7, replace “Children and Young People’s Commission” with “Children’s Commissioner” in each place.

In section 8(1), repeal the definition of **Children and Young People’s Commission**.

15

In section 8(1), insert in its appropriate alphabetical order:

Children’s Commissioner means the Commissioner holding that office under **section 11** of the Children’s Commissioner Act 2022

In section 28(e), replace “Children and Young People’s Commission” with “Children’s Commissioner”. 20

In section 48(1)(i), replace “Children and Young People’s Commission Act 2022” with “Children’s Commissioner Act 2022”.

In section 56(5)(b), replace “Children and Young People’s Commission” with “Children’s Commissioner”.

Public Safety (Public Protection Orders) Act 2014 (2014 No 68)

25

Replace section 53(2)(c)(vii) with:

(vii) the Children’s Commissioner; or

Remuneration Authority Act 1977 (1977 No 110)

In Schedule 4, repeal the item relating to the board members of the Children and Young People’s Commission. 30

In Schedule 4, insert in its appropriate alphabetical order:

The Children’s Commissioner and the Deputy Children’s Commissioner

Substance Addiction (Compulsory Assessment and Treatment) Act 2017 (2017 No 4)

In section 63(2)(g), replace “a board member of the Children and Young People’s Commission” with “the Children’s Commissioner”.

5

Part 2
Amendments to secondary legislation

Education (Hostels) Regulations 2005 (SR 2005/332)

In regulation 70(2), replace “Children and Young People’s Commission” with “Children’s Commissioner”.

Oranga Tamariki (Residential Care) Regulations 1996 (SR 1996/354) 10

In regulation 10(1)(l), replace “a board member of the Children and Young People’s Commission” with “the Children’s Commissioner”.

Replace regulation 29(2)(c) with:

(c) the Children’s Commissioner.

Replace regulation 31(5)(d) with:

(d) the Children’s Commissioner; and

In regulation 37(6), replace “Children and Young People’s Commission” with “Children’s Commissioner”.

15

Schedule 6

**New Part 2 inserted into Schedule 1 of Children and Young People's
Commission (Relevant Agencies) Regulations 2023**

s 26

Part 2

5

**Provision relating to Oversight of Oranga Tamariki System
Legislation Amendment Act 2024**

1 References to previous Title

Every reference in any legislation and in any document to the Children and Young People's Commission (Relevant Agencies) Regulations 2023 must, unless the context otherwise requires, be read as a reference to the **Children's Commissioner (Relevant Agencies) Regulations 2023**.

10

Legislative history

31 October 2024
5 November 2024

Introduction (Bill 92–1)
First reading and referral to Social Services and Community
Committee