



Terms of Reference

Systemic Improvement Investigation: Oranga Tamariki – newborn removal

18 July 2019

Introduction

This document updates the terms of reference for the Chief Ombudsman’s self-initiated investigation into the role of Oranga Tamariki–Ministry for Children in connection with the removal of newborns.¹

The Initial Terms of Reference dated 6 June 2019 was provided to Oranga Tamariki when it was notified of the investigation. On 19 June 2019 a supplementary document was published alongside the media statement announcing the investigation.

This Updated Terms of Reference refines the purpose and scope of the investigation.

Purpose of the investigation

The purpose of this investigation is to identify whether systemic issues exist in relation to Oranga Tamariki’s current policies, practices and procedures connected with the removal of newborns. Newborns are defined as children aged 0-30 days old.

The investigation will identify areas working well and make suggestions for improvement if any areas of concern are identified.²

¹ The investigation is conducted pursuant to the functions of ombudsmen pursuant to section 13(1) and 13(3) of the Ombudsmen Act 1975 (OA).

² Formal recommendations under the Ombudsmen Act will only be made if the Chief Ombudsman forms an opinion that a decision, recommendation, act, or omission by Oranga Tamariki was unreasonable or contrary to law under section 22 of the Act.

Focus/scope of the investigation

Two specific aspects of Oranga Tamariki's process will be examined:³

1. Oranga Tamariki's decision making around applications to the Court for section 78 interim custody orders (without notice) for newborns and unborn children; and
2. Oranga Tamariki's removal of newborns, after section 78 interim custody orders (without notice) have been granted by the Court.

The investigation will examine the application of Oranga Tamariki's policies and procedures at selected locations (known as 'sites'). This will not involve case studies but an examination of how policies and procedures are applied by Oranga Tamariki staff. It will also consider Oranga Tamariki's interactions with third parties operating within the sector (including Police, DHBs, iwi and the courts). A comparative analysis will be completed on whether there are variable practices across Oranga Tamariki sites/regions.

The investigation will take into account the explicit obligations for Oranga Tamariki to recognise and provide a practical commitment to the principles of the Treaty of Waitangi/te Tiriti o Waitangi, the UN Convention on the Rights of the Child, the International Covenant on Economic, Social and Cultural Rights, and the UN Convention on the Rights of Persons with Disabilities.

Investigation process

The Manager Systemic Improvement Investigations will work with a team of Investigators and Advisors to assist the Chief Ombudsman to conduct the investigation. The investigation team will liaise with Oranga Tamariki's nominated contact officials during the investigation. Information will be gathered through the processes set out below.

Information gathering

General

The information for the investigation will be gathered through research, a review of relevant documentation held by Oranga Tamariki, meetings and/or interviews with key staff, and engagement with relevant third parties.

Any requests for information are subject to the confidentiality and secrecy provisions in the Ombudsmen Act. Under section 18(2) of the Act, every investigation by an Ombudsman must be conducted in private. Under section 21(2) of the Act, an Ombudsman and staff must maintain secrecy and only:

³ Oranga Tamariki operates under the legislative framework of Oranga Tamariki Act 1989; section 78 refers to the provision under that Act.

... disclose such matters as in the Ombudsman's opinion ought to be disclosed for the purposes of an investigation or in order to establish grounds for the Ombudsman's conclusions and recommendations.

Under section 19 of the Act, an Ombudsman can require any person to provide information relating to any matter under investigation. This empowers the Ombudsman to gather evidence, from both Oranga Tamariki and third parties, including by way of interview.

Scheduling of meetings

There will be an initial meeting with Oranga Tamariki shortly after the investigation is notified to discuss the Terms of Reference. The investigation team will also seek an overview of the information Oranga Tamariki holds in relation to the matters under investigation. Shortly after the initial meeting, a request for relevant information held by Oranga Tamariki will be made. Any further meetings will be scheduled after Oranga Tamariki has provided the information requested and it has been analysed by the investigation team.

Interviews

The investigation team may decide to interview certain Oranga Tamariki staff, in order to obtain as much relevant information as possible about the matters under investigation. These interviews will be digitally (audio) recorded. Oranga Tamariki will be advised which staff members are to be interviewed. The investigation team will then contact the interviewees direct to schedule the interview. Any Oranga Tamariki staff selected as interviewees will be provided with information about the interview process, including the legal framework and the purpose of the interview. It is envisaged that interviews will take around 1 to 2 hours. Again, information obtained during the interviews is subject to the secrecy requirements of section 21 of the Ombudsmen Act and will not be disclosed except in accordance with that section.

Third party information

The investigation team will also gather relevant information from third parties connected with the matters under investigation, in order to add context to the information provided by Oranga Tamariki. For the avoidance of any doubt, Oranga Tamariki is the only agency under investigation by the Chief Ombudsman. However, third parties will be also advised of the investigation.

Reporting

Draft report

The draft report will outline the Chief Ombudsman's provisional opinion, including the evidence relied on and the analysis undertaken in forming that opinion. Where relevant, the draft report will identify any suggestions and/or recommendations that may be made to improve Oranga Tamariki's policies, procedures and practices. The draft will be provided to the Chief Executive of Oranga Tamariki for comment. The Chief Ombudsman may also seek

comment from third parties who are referred to in the report. Third parties will be given an opportunity to comment if it appears that they may be adversely affected by, or the subject of adverse comment in, an Ombudsman's opinion or recommendations.⁴

Final report

Comments received on the draft report will be considered for amendment of, or incorporation into, the final report. The Chief Ombudsman will provide the final report to the Chief Executive of Oranga Tamariki, and if any recommendations are made a copy must also be provided to the relevant Minister(s). The final report will be published on the Ombudsman's website and tabled in Parliament.

After the investigation

Following completion of the investigation, there will be ongoing monitoring of actions taken by Oranga Tamariki in response to any suggestions or recommendations by the Chief Ombudsman. The Chief Ombudsman will also conduct a review exercise as part of his Continuous Practice Improvement programme. The Chief Ombudsman will seek the views of Oranga Tamariki's senior managers on their experience of this systemic improvement investigation, its value and relevance to improving their work practices, and how future investigations may be improved when applied to other agencies.

⁴ Sections 18(3) and 22(7) of the Ombudsmen Act 1975.