

Under the Inquiries Act 2013
In the matter of the Royal Commission into Historical Abuse in State Care and in the Care of Faith-based Institutions

Ministry of Social Development: Brief of Evidence of Arran Scott Jones for Institutional Response Hearing

8 August 2022

Solicitor

Julia White

General Counsel, Crown Response to the Abuse in Care Inquiry
Julia.White@abuseinquiryresponse.govt.nz

Counsel

Rachael Schmidt-McCleave

Kate Sheppard Chambers
PO Box 5606, Wellington 6140
www.katesheppardchambers.co.nz
Rachael.Schmidt-McCleave@kschambers.co.nz

Max Clarke-Parker

Meredith Connell
PO Box 24546, Wellington 6140
Max.Clarke-Parker@mc.co.nz

Brief of evidence of Arran Scott Jones

I, **Arran Scott Jones** of Wellington, Executive Director of the Independent Children's Monitor state:

1 Introduction

- 1.1 I am the Executive Director of the Independent Children's Monitor (**the Monitor**) which is currently hosted at the Ministry of Social Development (**the Ministry**). I was appointed to this role in May 2020 for a term of two and a half years.
- 1.2 In this role, I am responsible for establishing and providing leadership for the Monitor, and leading the engagement with a wide range of key stakeholders.
- 1.3 Prior to becoming the Executive Director of the Monitor, I held the positions of:
 - (a) Senior solicitor in the Ministry's Legal Services team, providing operational and corporate advice to a range of Ministry business units;
 - (b) Deputy Chief Legal Advisor for the Ministry, where I led the operational and corporate teams;
 - (c) Several leadership roles at the Ministry, including working in the Office of the Chief Executive, and at Work and Income;
 - (d) Leading the Partnerships and Programmes workstream in the "Investing in Children" programme that established Oranga Tamariki-Ministry for Children (**Oranga Tamariki**); and
 - (e) Most recently, I was the Head of Privacy at Accident Compensation Corporation.
- 1.4 My experience and my current role means that I am well placed to answer the Royal Commission's (**the Commission**) questions about the Monitor.

2 The Monitor's position statement

- 2.1 Before addressing the role of the Monitor, I wish to make overarching comments about the Monitor and its future direction.
- 2.2 I would like to begin by acknowledging the work of the Commission, and in particular, those who have come forward to share their experiences. When tamariki and rangatahi are removed from whānau and brought into care, it must only be out of the utmost necessity. It must only be to improve their lives, and always with a view to their eventual return home. It is heart-breaking when this is not the case.
- 2.3 It is a privilege to lead the establishment of the Monitor, and make a contribution to improve the quality of care, and in time, the Oranga Tamariki system generally. Sustained monitoring, increased transparency, and the sharing of insights will influence change. Highlighting good practice will show others what can be done. Transparency over areas that demand improvement will help direct effort. Sustained and consistent monitoring will drive accountability.

- 2.4 It is my hope that the Monitor's work, in partnership with the Children's Commissioner and the Ombudsman, will improve the experience of care, so that tamariki and rangatahi can feel safe, be safe and have every opportunity to live their best lives.
- 2.5 It is important to note that the Oversight of Oranga Tamariki System and Children and Young People's Commission Bill (**Oversight Bill**) is the next stage in developing the functions of the Monitor and provides for independent monitoring and complaints oversight for Oranga Tamariki, and greater advocacy for children's and young people's issues generally through the creation of a new Children and Young People's Commission. The Oversight Bill had its second reading on 27 July 2022. I will address this Bill later in my evidence.

3 Scope of evidence

- 3.1 I understand that the Commission has identified that the focus of the Ministry's evidence is to be the accreditation of care providers, as well as the role of the Monitor. My evidence will be focused on the Monitor.
- 3.2 The Ministry has previously provided evidence to the Commission which relates to the Monitor, namely:
 - (a) The Monitor met with the Royal Commission on 29 April 2022 to discuss the Monitor's work to date, in particular outlining the Monitor's approach and how they connect with tamariki, caregivers and whānau as well as outlining the broader monitoring of the Oranga Tamariki system, as proposed under the Oversight Bill.
 - (b) The Ministry's response to NTP 418 dated 10 June 2022.

4 Establishment of the Monitor

- 4.1 Te Mana Whakamaru Tamariki Motuhake or the Independent Children's Monitor was formally established on 1 July 2019 by the Oranga Tamariki Act 1989 to monitor agency compliance with the National Care Standards (**NCS**) Regulations.¹ The NCS set out the standard of care every child and young person needs to do well and be well, and the support all caregivers can expect to receive.²
- 4.2 The Monitor was established following the 2015 Expert Advisory Panel report on Modernising Child, Youth and Family, which recommended the need for greater oversight of New Zealand's child protection system, and the subsequent 2017 review of independent oversight arrangements for the Oranga Tamariki system and children's issues (**the Beatie Report**).³

¹ Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018.

² Independent Children's Monitor "Who we are" <<https://www.icm.org.nz/who-we-are/>>; Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018.

³ Sandi Beatie *Strengthening independent oversight of the Oranga Tamariki system and of children's issues in New Zealand* (August 2018) <https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/information-releases/strengthening-independent-oversight/post-consultation-report-independent-oversight.pdf>.

- 4.3 The Beatie Report recommended that independent oversight into the care and protection system was required, including:
- (a) system-level advocacy for all New Zealand children and young people;
 - (b) oversight and investigation of complaints of matters related to the application of the Oranga Tamariki Act 1989 and/or children in the care or custody of the State; and
 - (c) independent monitoring and assurance of the operations and obligation delivered under the Oranga Tamariki Act 1989 and associated regulations.
- 4.4 The Government agreed to a phased approach to implementing the necessary changes to develop and establish the monitoring function. This is to be done in three stages:⁴
- (a) **First stage:** assessing compliance with NCS Regulations 69 and 85, which relate to allegations of harm or neglect for children in care. Cabinet agreed work should begin in this area first as it covers the area of highest risk and potential harm to tamariki and rangatahi. Under this first stage we published three reports covering allegations of harm and neglect made between 1 July 2019 and 30 June 2020.
 - (b) **Second stage:** We are currently in stage two which involves monitoring all NCS Regulations. Our first full report, which we presented to the Minister in November 2021 and published in early 2022, covered the period 1 July 2020 to 30 June 2021.
 - (c) **Third stage:** This will see the Monitor monitoring the whole of the Oranga Tamariki system. This third stage is dependent on the Oversight Bill being passed. This phase will involve monitoring beyond children in care, to any child that interacts with the system; for example, early intervention and youth justice.
- 4.5 As part of the first and second stage, the Monitor currently monitors the compliance of the three agencies with custody of children – Barnardos, Open Home Foundation and Oranga Tamariki. Dingwall Trust were also previously a monitored agency, however they no longer have any young people in their custody. We do not monitor individual cases or children but look at the systems and processes around their care, to ensure the agencies that look after our tamariki and rangatahi are enhancing their wellbeing and life outcomes.
- 4.6 The Monitor is supported by Te Kāhui,⁵ which is comprised of key Māori leaders, chaired by Donna Matahaere-Atariki. Te Kāhui was initially established to help achieve the engagement and collaboration goals for the policy and legislative phase. They continue to play a pivotal role in supporting the Monitor by providing advice and support on our monitoring assessment approach and how we work. The members of Te Kāhui have expertise, leadership and mana in health, justice and social services for Māori.

⁴ Independent Children's Monitor "What we do" <<https://www.icm.org.nz/what-we-do/>>.
⁵ Independent Children's Monitor "Who we are" <<https://www.icm.org.nz/who-we-are/>>.

5 Values of the Monitor

- 5.1 Underpinning our work are our principles of being child-centred (within the context of their whānau) and having te ao Māori focus across all that we do. We have four core values that influence how we engage with each other and those we work with:
- (a) **Kia Māia – Courageous:** We are brave, bold, capable and confident. This means we:
 - (i) stand up for what is right; and
 - (ii) tell the truth, even when it isn't popular.
 - (b) **Manaaki – Respectful:** We show respect and care for others. This means we:
 - (i) respect diversity of thought, action, and culture;
 - (ii) have a child-centred and te ao Māori perspective woven throughout our work; and
 - (iii) look out for each other and make work a safe place for our colleagues.
 - (c) **Kia Pono, Kia Tika – Trustworthy:** We are honest and genuine and do the right thing. This means we:
 - (i) admit when we don't know the answer;
 - (ii) cross-check our data; and
 - (iii) do what we say we will and communicate in a timely manner if we can't.
 - (d) **Kia Huritao – Reflective:** We are considered and reflective. This means we:
 - (i) learn from experience, value feedback, and always look for opportunities to improve;
 - (ii) take the necessary time to make the best decisions we can; and
 - (iii) never assume we know what is best.

6 Structure of the Monitor

- 6.1 The Monitor is housed within the Ministry on an interim basis. After the Oversight Bill is passed, the Monitor will become a departmental agency hosted by the Education Review Office (**ERO**).
- 6.2 The Monitor consists of four monitoring teams: one in our national office in Whanganui-ā-Tara (Wellington), two in Tāmaki Makaurau (Auckland) and one in Ōtautahi (Christchurch). Each of these teams have up to six monitors with support from practice leads and team coordinators. We also have a small

corporate team that supports the monitoring, including a data and insights function that helps with the analysis of information after visits and the data provided by monitored agencies.⁶ The corporate team also provides communications and operational policy support to evaluate and support our practice and ensure timely communications to our stakeholders.

- 6.3 Our people come from a range of backgrounds and areas of expertise including social work, psychology, education and law. They are trained in listening and speaking with children and young people and have experience in working with different communities, including Māori communities.⁷

7 Current practice of the Monitor – Guiding Documents

- 7.1 We have six guiding documents to inform our monitoring work. These documents lay a solid foundation for us to work with tamariki, rangatahi, and their whānau. They ensure our work is guided by a child-centred and whānau-led practice. A strong commitment to Māori is embedded in our engagement and monitoring approach.
- 7.2 The six guideline documents are:
- (a) **How we work:**⁸ This outlines the Monitor’s key focuses for the way in which it operates with the central message being that the Monitor will embed te ao Māori across the organisation, and includes our tikanga approach to live within the principles of Te Tiriti o Waitangi;
 - (b) **Outcomes Framework:**⁹ draws upon the Government’s six wellbeing outcomes from the Child and Youth Wellbeing Strategy and incorporates key dimensions from the Whānau Ora Outcomes Framework and the Oranga Tamariki Outcomes Framework. It represents our perspective of what matters for tamariki, rangatahi and whānau in the Oranga Tamariki system, now and in the future. We use the Framework to measure how the Oranga Tamariki system enhances wellbeing and life outcomes of tamariki and rangatahi in care, identifying high-performance as well as areas that need improvement.
 - (c) **Who we talk with:**¹⁰ outlines the key stakeholders who are engaged in the monitoring process, including ensuring that tamariki and rangatahi are at the centre of what we do.

⁶ Independent Children’s Monitor “Who we are” <<https://www.icm.org.nz/who-we-are/>>.

⁷ Independent Children’s Monitor “Who we are” <<https://www.icm.org.nz/who-we-are/>>.

⁸ How we work (24 September 2020) which can be located here:

<https://www.icm.org.nz/assets/Uploads/Documents/Nga-Kete-Rauemi/How-we-work-24-September-2020.pdf>

⁹ Outcomes Framework for the Independent Children’s Monitor (October 2021) which can be located here: <https://www.icm.org.nz/assets/Uploads/Documents/Nga-Kete-Rauemi/Outcomes-Framework-13-August-2020-final.pdf>

¹⁰ Who we talk with (August 2020) which can be located here:

<https://www.icm.org.nz/assets/Uploads/Documents/Nga-Kete-Rauemi/Who-we-talk-with-August-2020.pdf>

- (d) **Monitoring and Assessment Phases:**¹¹ details our approach to monitoring and assessment activity.
- (e) **Monitoring Practice:**¹² provides an overview of the core components of our monitoring practice. Our kawa and tikanga that describe our monitoring practice is available on our website;¹³ and
- (f) **The Assessment Matrix:** that applies a systems analysis framework to help us understand and determine what may be the root cause of some of the enablers or barriers to successful outcomes.¹⁴

8 Monitoring practice

- 8.1 As the Monitor, we are required to provide assurance to the Minister for Children on the degree of compliance with the NCS Regulations by monitored agencies as well as the quality of care.¹⁵ Our approach involves combining quantitative information with qualitative data so we can provide a rich picture of the quality of care. Looking at both quantitative and qualitative data helps balance the limitations of one type of data with the strengths of the other. For example, quantitative data can tell us how often the views of tamariki are included in plans for their care, but it is only through listening to them do we understand how this was done, and whether it was a meaningful and positive experience. Doing this means we visit communities to listen to the voices of experience, as well as requesting information directly from monitored agencies about their own self-monitoring processes.¹⁶

Information gathering

- 8.2 Each year, we ask the agencies for their self-monitoring information. These requests check compliance with the NCS Regulations as well as asking the agencies to provide their understanding of the quality of care being provided. In addition, we ask agencies to identify areas requiring improvement as well as areas of high performance. We also ask for updates on areas of improvement we have previously requested information on.¹⁷
- 8.3 Additionally, we gather information from the community to understand the experience of care.¹⁸ This involves the Monitor visiting communities, connecting and listening to those that have a role to play in the Oranga Tamariki system, including whānau, hapū, iwi, caregivers, providers and professionals. Most importantly, the Monitor engages directly with tamariki and rangatahi. Visiting

¹¹ <https://www.icm.org.nz/assets/Uploads/Documents/Nga-Kete-Rauemi/Monitoring-and-Assessment-Phases-24-August-2020.pdf>

¹² Monitoring and Assessment Phases (24 August 2020) which can be located here: <https://www.icm.org.nz/assets/Uploads/Documents/Nga-Kete-Rauemi/Overview-of-our-Monitoring-Practice-31-August-2020.pdf>

¹³ Independent Children's Monitor "What we do" <<https://www.icm.org.nz/what-we-do/>>.

¹⁴ Assessment Matrix (November 2020) which can be located here: <https://www.icm.org.nz/assets/Uploads/Documents/Nga-Kete-Rauemi/Assessment-matrix-November-2020.pdf>

¹⁵ Independent Children's Monitor "What we do" <<https://www.icm.org.nz/what-we-do/>>.

¹⁶ Independent Children's Monitor "Who we are" <<https://www.icm.org.nz/who-we-are/>>. <https://www.icm.org.nz/what-we-do/>

¹⁷ Independent Children's Monitor "What we do" <<https://www.icm.org.nz/what-we-do/>>.

communities also includes meeting with other government agencies such as health, education and Police.

- 8.4 Visiting communities also gives us the opportunity to validate data provided by agencies. It enables us to learn about why some things work well (enablers), and what gets in the way of good practice and positive experiences (barriers). Providing insights into why good things are happening, or why barriers are being experienced is how the Monitor can support continuous improvement in the system.
- 8.5 Our monitors use a systems analysis framework that looks at whether those delivering the services have the tools and resources to perform their role, do they work in a positive environment, including a positive culture, do services work together to meet the needs of tamariki and how does leadership support them to perform their role. This enables us to understand and determine what may be the root cause of some of the enablers or barriers.
- 8.6 After each visit, we share our feedback with each community.¹⁹ This is so that communities and service providers can begin making improvements, instead of waiting for the annual report.

9 Engagement with community, tamariki and rangatahi

- 9.1 Since January 2021, when the Monitor started monitoring all NCS Regulations, we have met with over 280 tamariki and rangatahi, 70 whānau, 260 caregivers and over 1,500 kaimahi from government agencies, Iwi and Māori partners, NGOs and professionals. Over a three-year period, the Monitor will visit every community in New Zealand. Its schedule can be viewed on the Monitor's website.²⁰ This schedule then repeats, with the Monitor returning to communities to hear what may have changed since it last visited.
- 9.2 The Monitor has open conversations with people on their experience of care. When its legislative power is broadened, it will continue to use this as a way of gathering information.

Engagement with tamariki and rangatahi

- 9.3 As part of our routine monitoring functions, the Monitor engages directly with tamariki and rangatahi.
- 9.4 The Monitor's website provides information on the role of the Monitor, and this includes an animation specifically for tamariki and rangatahi that explains what the Monitor does.
- 9.5 Furthermore, the Monitor works with agencies who already have relationships with rangatahi and tamariki and those agencies connect the Monitor with the rangatahi and tamariki. For example:

¹⁹ Independent Children's Monitor "What we do" <<https://www.icm.org.nz/what-we-do/>>. <https://www.icm.org.nz/assets/Uploads/Documents/About/Monitoring-schedule-for-website.pdf>

- (a) The Monitor has specifically built relationships with VOYCE Whakarongo mai and Caring Families Aotearoa, to support its engagement with rangatahi and caregivers.
 - (b) We work with the other monitored agencies, Open Home Foundation and Barnardos as well as Oranga Tamariki to engage with their tamariki and caregivers as well as all care partners.
 - (c) We work with iwi, Māori providers and other NGOs in communities to support us to engage with tamariki, rangatahi, whānau and caregivers.
- 9.6 By working with those who already know about the Monitor and who have trusted relationships, the Monitor can then safely engage with rangatahi and caregivers and their whānau.
- 9.7 The Monitor engages directly with tamariki and rangatahi either one-on-one or in a group setting. It has a code of ethics, as required by the Oversight Bill, and a consent form.
- 9.8 The Monitor handles the information it gathers with great care and limits the amount of personal information we hold. We have developed our monitoring approach so that it is consistent with the Data Protection and Use Policy, and this is visible in how we work with communities. For example, the Monitor provides feedback to tamariki and rangatahi on what it has heard. The Monitor provides this information to the agencies working with tamariki and rangatahi to use to enhance their practice. The information is also included in the Monitor's annual report, which is published and will be tabled in Parliament when the legislation is passed.

10 Reviews and reports conducted by the Monitor

- 10.1 Under the NCS Regulations,²¹ the Monitor is required to complete a three yearly report on agency compliance with the National Care Standards however the Monitor has decided to complete these reports annually, reflective of obligations contained in the Oversight Bill. These reports include a focus on tamariki Māori and those with disabilities.
- 10.2 The Oversight Bill extends the Monitor's reporting requirements to include:
- (a) Annual reports on agency compliance with the NCS Regulations;
 - (b) Annual reports on the performance of the Oranga Tamariki system in respect of outcomes being achieved for Māori tamariki and rangatahi and their whānau;
 - (c) A three-yearly report on the state of the Oranga Tamariki system.
- 10.3 The Oversight Bill also provides for the Monitor to carry out reviews on any topic within its monitoring function, at the request of the Minister responsible for the Monitor, at the request of the chief executive of Oranga Tamariki or the Monitor's own initiative.

²¹ Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018, regulation 87.

- 10.4 The Monitor’s reports are based on data and information it receives from agencies and also from meeting with tamariki, rangatahi, whānau and caregivers. This is a regular part of how it undertakes monitoring, with over half of the Monitor workforce focussed on engaging with communities.
- 10.5 The reports published to date include:
- (a) Initial monitoring report on allegations of abuse and neglect of tamariki in care – 1 July to 30 September 2019 (Regulations 69 and 85 of the RCS Regulations);
 - (b) Second monitoring report on allegations of abuse and neglect of tamariki in care – 1 October to 31 December 2019 (Regulations 69 and 85 of the RCS Regulations);
 - (c) Third monitoring report on allegations of abuse and neglect of tamariki in care – 1 July 2019 to 30 June 2020 (Regulations 69 and 85 of the RCS Regulations); and
 - (d) Experiences of Care in Aotearoa – 1 July 2020 to 30 June 2021 (agency compliance with the full NCS Regulations).

11 Future of the Monitor – Oversight Bill

- 11.1 The Oversight Bill, which had its second reading on 27 July 2022, does a number of things to strengthen the independent monitoring function of the Monitor, including:
- (a) Creating an “Independent Monitor” whose role is to focus on tracking how the system operates and how effectively the system provides support to those engaged with it.²²
 - (b) The Independent Monitor is to be appointed under the Public Service Act 2020 as the chief executive of the Independent Monitoring Agency of the Oranga Tamariki System.
 - (c) The Oversight Bill states that the Monitor must be independent of Oranga Tamariki,²³ and creates a duty for the Monitor to act independently when carrying out their monitoring functions and developing tools and monitoring approaches.²⁴
 - (d) Whilst the Monitor will operate as a departmental agency hosted by ERO, it will operate independently. This means that the Monitor is an operationally autonomous agency hosted by ERO. It is headed by its own chief executive who is directly responsible to a Minister for its clearly identified, ring-fenced activities and performance.
- 11.2 Under the Oversight Bill, the Monitor’s role focuses on assessing systemic issues. Its key objectives are to:²⁵

²² Oversight Bill, clause 12(1).

²³ Oversight Bill, clause 12(3).

²⁴ Oversight Bill, clause 16A.

²⁵ Oversight Bill, clause 13(1).

- (a) assess the extent to which the Oranga Tamariki system and its interface with other systems support the rights, interests, and well-being of children, young people, and their families and whānau who are receiving, or have previously received, services or support through the Oranga Tamariki system;
 - (b) assess whether the coercive powers exercised under the Oranga Tamariki Act 1989 are being exercised appropriately and consistently;
 - (c) support public trust and confidence in the Oranga Tamariki system;
 - (d) identify areas of high performance and areas for improvement in relation to the chief executive of Oranga Tamariki and approved providers to encourage them to work towards continuous improvement;
 - (e) support an understanding of specific aspects of the Oranga Tamariki system and its interface with other systems; and
 - (f) support informed decision making.
- 11.3 Under the Oversight Bill, the Monitor is one part of the Oversight system which includes the Ombudsman and the Children and Young People's Commission. The Ombudsman is responsible for investigating and resolving individual complaints on matters regarding the application of the Oranga Tamariki Act 1989. The Children and Young People's Commission is responsible for advocating for and promoting the interests and well-being of children and young persons.²⁶

Specific focus on Māori

- 11.4 The Oversight Bill makes it mandatory for the Monitor to ensure that it has as a key priority the need to support improved outcomes for children and young people, with particular attention to the need to support improved outcomes for Māori children and young people.²⁷ This includes ensuring that the Monitor incorporates tikanga Māori into its approaches.²⁸
- 11.5 The Monitor is also to appoint a Māori Advisory Group in order to support meaningful and effective engagement with Māori.²⁹ The Monitor must collaborate with, and have regard to the views of, the Māori Advisory Group when the Monitor is developing their priorities, work programmes, and monitoring approaches.³⁰

12 Concluding remarks

- 12.1 From the Monitor's initial establishment in 2019, we have worked to create an organisation that reflects its values in everything it does, and, to engage with tamariki, rangatahi, whānau and caregivers with great care, manaaki, and aroha.
- 12.2 As explained above, since January 2021, when we started monitoring the NCS Regulations, we have listened carefully to the voices of tamariki and rangatahi,

²⁶ Oversight Bill, clauses 100 and 101.

²⁷ Oversight Bill, clause 13(2).

²⁸ Oversight Bill, clause 16(2)(c).

²⁹ Oversight Bill, clause 17(1).

³⁰ Oversight Bill, clause 18(1).

whānau, caregivers and over 1500 kaimahi from iwi, Māori providers, government agencies, NGOs and professionals.

- 12.3 The opportunity to listen to these voices has been made possible through the assistance of partners in the community – iwi, Māori Providers, VOYCE Whakarongo Mai and Caring Families Aotearoa. This also includes the monitored agencies themselves and many NGO care partners.
- 12.4 I am immensely proud of our kaimahi and the work they do, and I look forward to the broader opportunities that the Oversight Bill will bring. I am confident that our programme of sustained, public reporting will provide transparency and insight into the Oranga Tamariki system and will drive greater accountability, support better decision making, and ultimately improved outcomes for tamariki, rangatahi and their whānau.

Signed:

Arran Scott Jones

Date: