



Cabinet Social Wellbeing Committee

Minute of Decision

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Ancillary Changes to Regulations to Support the Oranga Tamariki Operating Model

Portfolio **Children**

On 23 October 2019, the Cabinet Social Wellbeing Committee:

- 1 **noted** that on 1 July 2019, significant legislative changes to the Oranga Tamariki Act 1989 came into effect;
- 2 **noted** that Oranga Tamariki–Ministry for Children (Oranga Tamariki) is continuing to implement its new operating model, which aims to improve the outcomes of children and young people;
- 3 **noted** that during this implementation, Oranga Tamariki have identified some ancillary changes to regulations needed to support its operating model in five areas:
 - 3.1 making new regulations for the appointment and payment of youth advocates;
 - 3.2 minor and technical amendments to the Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018;
 - 3.3 exempting transition support payments from being considered income for the Student Allowances Regulations 1998;
 - 3.4 adjusting the definition of ‘parent’ in the Student Allowances Regulations 1998 to exempt previous or current caregivers from being considered to be ‘acting in the place of a parent’ to prevent young people’s Student Allowance entitlements from being affected by their caregiver’s income;
 - 3.5 consequential amendments to the Family Court Rules 2002 and the Oranga Tamariki Rules 1989, to reflect changes to the Oranga Tamariki Act 1989;

Youth advocates

- 4 **noted** that recent changes to the Oranga Tamariki Act 1989 require the chief executive of Oranga Tamariki to appoint youth advocates to represent some children and young people, where New Zealand Police have indicated an intention to file charges in relation to offending punishable by imprisonment of 10 years or longer;
- 5 **noted** that regulations are required to prescribe the process for the appointment of youth advocates by the chief executive of Oranga Tamariki;

- 6 **agreed** to align the process for the appointment of youth advocates by the chief executive of Oranga Tamariki with the process for the appointment of youth advocates by the Youth Court, specifically:
- 6.1 that youth advocates appointed by the chief executive of Oranga Tamariki to represent a child or young person will be required to be suitably qualified to represent the child or young person by way of personality, cultural background, training, and experience;
- 6.2 that, where possible, youth advocates be re-appointed to the same young person they have represented in previous youth justice matters;
- 7 **noted** that regulations are required to prescribe the amounts payable to youth advocates appointed by both the chief executive of Oranga Tamariki and the Youth Court;
- 8 **noted** that prescribing amounts payable to youth advocates in regulations will not have any financial impact as they are already used operationally;
- 9 **noted** that prescribing amounts payable to youth advocates in regulations will mean these amounts are less flexible to change, but the payment of youth advocates will be more consistent and transparent;
- 10 **agreed** to set an hourly rate of pay for youth advocates, at the same rate as the current rate of pay for youth advocates used operationally;
- 11 **agreed** to prescribe travel costs as the only disbursement payable to youth advocates, at the same rate as for lawyers doing Legal Aid work;

National Care Standards

- 12 **noted** that minor and technical amendments are required to the Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018 to ensure the regulations are able to be implemented in line with the original policy intent;
- 13 **noted** that new policy decisions are not required for these amendments as they are consistent with the previous policy decisions agreed to by Cabinet on 5 March 2018 [SWC-18-MIN-0010];
- 14 **agreed** that amendments to the Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018 will be made to:
- 14.1 ensure that marae is referred to consistently across regulations relating to identifying, planning and supporting connections with culture and identity and family, whānau, hapū, iwi and family group;
- 14.2 ensure that requirements set out the chief executive's responsibilities for ensuring children and young people are enrolled in school are consistent with the Education Act 1989 by inserting references to relevant enrolment exemptions under that Act into the regulations;
- 14.3 clarify the scope of a search of Oranga Tamariki records required as part of suitability checks of prospective caregivers;
- 14.4 clarify the information that must be taken into account in a risk assessment as part of the overall assessment of prospective caregivers;

- 14.5 specify that the term ‘care transition’ for the purposes of Part 5 of the regulations includes transfers from one residence to another;

Treatment of Transition Support Payments for Student Allowances

- 15 **noted** that transition support payments made by Oranga Tamariki are exempt from being considered as income for calculating benefit assistance, but there is no similar income exemption for the purpose of eligibility and entitlement to student allowances;
- 16 **agreed** to amend the Student Allowances Regulations 1998 to exempt payments from the transition support system from being considered income for eligibility and entitlement to student allowances;

Treatment of caregiver income for Student Allowances

- 17 **noted** that young people who were in state-funded care can receive a lower or no Student Allowance based on income-testing of their previous state-funded caregiver or current transition support caregiver;
- 18 **noted** that young people’s previous or current caregivers are those who:
- 18.1 have been supported to care for a child who is not their own through either the Foster Care Allowance (for state care) or the Orphan’s Benefit or Unsupported Child’s Benefit (for care arrangements supported through the welfare system);
 - 18.2 are providing, or have provided, a living arrangement for a care-experienced young person facilitated through the transition support services under section 386AAD of the Oranga Tamariki Act 1989;
- 19 **agreed** to amend the Student Allowances Regulations 1998 so that the caregivers referred to in paragraph 18 above are exempt from the definition of ‘parent’, so that their income does not affect a young person’s entitlement to Student Allowance;
- 20 **noted** that an exemption from the 28-day rule will be sought for the changes to the Student Allowances Regulations 1998 to ensure care-experienced young people can fully benefit from them in time for the 2020 study year;

Family Court Rules 2002 and Oranga Tamariki Rules 1989

- 21 **agreed** to amend the Family Court Rules 2002 and Oranga Tamariki Rules 1989 to ensure consistency with recent legislative changes made to the Oranga Tamariki Act 1989;

Next steps

- 22 **invited** the Minister for Children to issue drafting instructions to the Parliamentary Counsel Office to draft regulations, to give effect to the decisions in the paper under SWC-19-SUB-0149;

- 23 **authorised** the Minister for Children, in consultation with Ministers responsible for relevant regulations, to make any minor or technical policy changes that are not inconsistent with the decisions in the paper under SWC-19-SUB-0149 to finalise the drafting of the regulations.

Vivien Meek
Committee Secretary

Secretary's note: This minute has been revised to include paragraph 20 which was inadvertently omitted.

Present:

Rt Hon Jacinda Ardern
Hon Kelvin Davis
Hon Grant Robertson
Hon Dr Megan Woods
Hon Chris Hipkins
Hon Andrew Little
Hon Carmel Sepuloni (Chair)
Hon Dr David Clark
Hon David Parker
Hon Nanaia Mahuta
Hon Stuart Nash
Hon Jenny Salesa
Hon Kris Faafoi
Hon Ron Mark
Hon Tracey Martin
Hon Peeni Henare
Hon Willie Jackson
Hon Poto Williams
Hon Julie Anne Genter

Officials present from:

Office of the Prime Minister
Officials Committee for SWC
Office of the SWC Chair

Hard-copy distribution:

Minister for Children