Te Mana Whakamaru Tamariki Motuhake | Independent Children's Monitor

Privacy, Human Rights and Ethics Assessment Report

Phase 2 – Monitoring Compliance with all National Care

Standards Regulations – Expansion of Activities

17 March 2021

Contents

Purpose of the PHRAE assessment

1. The purpose of this report is to enable the Independent Children's Monitor ('Monitor') to move into the next phase of monitoring, which focusses on compliance with all aspects of the National Care Standards and Related Matters Regulations 2018 (NCS Regulations)[1], in a way that reflects sound privacy, human rights and ethical standards.

2. This report is called a Privacy, Human Rights and Ethics ('PHRaE') assessment because it considers the privacy, human rights and ethics impacts of the Monitor's use of personal information while fulfilling its objectives and functions. This report builds on, and should be read in conjunction with, the PHRaE assessment completed for Phase 1 of the monitoring programme.

3. The information that the Monitor will be collecting, holding and sharing relates to an unusually vulnerable group of people: tamariki or rangatahi who are in the Oranga Tamariki system[2], and who have a higher than usual risk of having experienced trauma. The combination of these factors means that maximum care is required when handling their information.

4. The information that the Monitor will be collecting, holding and sharing is taonga. The Monitor is the kaitiaki (guardian) responsible for making sure it is cared for, protected, and respected appropriately. A privacy breach could open the Monitor to legal consequences via the mechanisms of the Office of the Privacy Commissioner and Human Rights Review Tribunal. In addition, and potentially most significantly, a breach would have serious consequences in terms of reputational damage and loss of trust in the Monitor's ability to safeguard the extremely sensitive information and data that it cares for. This would be detrimental to its overall goals and its authority to perform its role effectively. Alternatively, a reputation for good privacy practice and a strong privacy culture will increase its mana and the willingness of tamariki and rangatahi to share their stories and lived experiences.

5. The report will identify privacy, human rights and ethical risks and options to mitigate those risks. Privacy issues are assessed by applying the Information Privacy Principles from the Privacy Act 2020, as well as considering broader privacy risks. The report:
   - Presents the core findings of the assessment.
   - Brings together all the recommendations into a table.
   - Sets out a separate risk table, showing how the inherent level of risk will be reduced if the controls are implemented.

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[1] The National Care Standard Regulations can be viewed at: https://www.orangatamariki.govt.nz/children-in-our-care/national-care-standards/

[2] In the new Act, unless the context otherwise requires, the Oranga Tamariki system means the system that is responsible for the support and services provided to children, young people and their whānau under, or in connection with, the Oranga Tamariki Act 1989; by agencies or their contracted partners.

6. As noted above, separate PHRaE reports have been completed for Phase 1, which focused on the framework to monitor how reports of abuse and neglect of tamariki and rangatahi in care are managed, and for the Children and Young People's Commission and Oversight of Oranga Tamariki System Bill ('Bill'), which will inform the new legislation ('Act').

7. This PHRaE report is a living document. It recognises that the Monitor, as an emergent agency, has yet to make some operational decisions, and that it will be learning and developing from the monitoring experience. It is likely that processes will evolve over time as monitoring practice matures. Therefore, this PHRaE report should be reviewed periodically and updated as there are changes to the Monitor's activities during Phase 2. A further PHRaE assessment will be required as the Monitor's activities expand again in Phase 3.

Background

8. The Monitor is a new function and has not existed in this form prior to 1 July 2019. The Ministry of Social Development ('MSD') was appointed under section 447A of the Oranga Tamariki Act as the Monitor and to establish and operate the monitoring function. For the purposes of developing the Monitor's identity, MSD has chosen to brand the unit the Independent Children's Monitor – *Te Mana Whakamaru Tamariki Motuhake*.

9. The organisations that the Monitor is responsible for monitoring are:
   • Oranga Tamariki.
   • Any organisations that are approved under section 396 of the Oranga Tamariki Act to provide services or exercise certain functions.

10. The Monitor will monitor the Oranga Tamariki system to ensure that the agencies that support tamariki and rangatahi and their whānau are doing what they need to do. The Monitor will gather information from those agencies and listen to the voices of tamariki, rangatahi, whānau and communities, as well as the agencies which provide services, to understand what is working well and what needs improvement. The Monitor will then report its findings to the Minister for Children, supporting monitored agencies to learn and improve by reviewing, measuring, and comparing findings each year, and supporting accountability through making reports publicly available. It will also publish agencies' responses to its findings. The Monitor's primary objectives are to:
    • Assess the extent to which the Oranga Tamariki system supports the rights, interests, and wellbeing of children, young people, and whānua.
    • Assess whether the coercive powers exercised under the Oranga Tamariki Act are being exercised appropriately and consistently.
    • Maintain and build public trust and confidence.
    • Support continuous improvement within the Oranga Tamariki system.
    • Support an understanding of specific aspects of the Oranga Tamariki system or issues of interest or concern.
    • Support informed decision-making and public discussion.

11. In developing its work programme, the Monitor must ensure that it has as a key priority the need to support improved outcomes for Māori tamariki and rangatahi.

12. MSD's involvement is intended to be an interim arrangement. Cabinet has signalled the in-principle intention for the monitoring function to move to the Office of the Children's Commissioner ('Commission') once a robust monitoring function is established and the new legislative framework is in place.

13. In the meantime, the Monitor's role is to:
    • Establish a robust framework to monitor compliance with the NCS Regulations.
    • Undertake and develop those monitoring functions.
    • Report to the Minister for Children on compliance.

Phased approach to monitoring

14. Developing and implementing a new monitoring and assessment framework is a complex exercise. The NCS Regulations cover several vastly different topics, and a range of agencies have to comply with them.

15. Rather than trying to establish a complete assessment framework at the outset, Cabinet agreed that the Monitor should take a phased approach to provide confidence that the new function is robust and delivers what is intended. There are three phases:
    - Phase 1 started on 1 July 2019 when the Monitor became responsible for monitoring four agencies: Oranga Tamariki, the Open Home Foundation, Barnardos, and Dingwall Trust. Phase 1 concentrated on developing a framework to monitor how reports of abuse and neglect of tamariki or rangatahi in care or custody of these agencies were managed (regulation 69 of the NCS regulations). More specifically, it considered:
        o How the four monitored agencies respond to information received on abuse or neglect of tamariki or rangatahi in care.
        o How Oranga Tamariki complied with self-monitoring obligations under regulation 86 in relation to those reports of concern.
    - Phase 2 started on 1 January 2021 when the Monitor expanded its focus to oversee and monitor *all* the requirements of the NCS Regulations. The same four monitored agencies will be the focus of the Monitor's activities during this phase. Phase 2 is the focus of this PHRaE report.
    - Phase 3 depends on the enactment of the new legislation. Once legislation commences (date to be determined) the Monitor will be undertaking broader monitoring of the Oranga Tamariki Act and associated regulations. It will be required to report on the performance of all agencies that provide services to tamariki and rangatahi in the Oranga Tamariki system. This will include early intervention, statutory care, protection, youth justice and transition support systems.

16. Since July 2019, the Monitor has:
    - Produced three monitoring reports[3] for the Minister for Children in relation to agency compliance with regulations 69 and 85 (January 2020, August 2020, and December 2020).
    - Developed individual Memoranda of Understanding with each monitored agency which will be updated to ensure they remain fit for purpose as the Monitor moves into the next phase of work.
    - Held 19 hui around the country to provide a greater understanding of the how the Monitor, the Commission and Office of the Ombudsman ('Ombudsman') are strengthening oversight of the Oranga Tamariki systems and each agency's role.
    - Compiled a report[4] (May 2020) from feedback gathered during 22 hui with Māori that were held in mid-2019. The engagements were organised by MSD to talk with Māori

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[3] Monitoring reports can be viewed at: https://www.icm.org.nz/reports/

[4] The report can be viewed at: https://www.icm.org.nz/assets/Uploads/Documents/What-the-Monitors-doing/Engagement-hui-with-Maori-on-the-independent-oversight-of-the-Oranga-Tamariki-System-.pdf

about what a strengthened independent oversight system might look like. The feedback will be used to ensure that the oversight system responds to the needs of tamariki, rangatahi and whānau leading to improved outcomes for them.

- Developed the Outcomes Framework, which represents the Monitor's perspective of what matters for tamariki, rangatahi, and whānau in the Oranga Tamariki system and helps guide the work of the Monitor.
- Established its Monitoring Assessment Framework, which is the overarching framework that the Monitor will use to fulfil it monitoring function, and includes the monitoring programme, monitoring requirements, operational policies, and processes.
- Piloted its tools and assessment approach in three communities across New Zealand: Taranaki, Horowhenua and Hauraki. The purpose of the pilot was to prepare for the extension of the Monitor's work monitoring all the NCS Regulations from 1 January 2021. The pilot teams met with a range of stakeholders, including tamariki and rangatahi, caregivers, iwi, Māori providers and staff from the agencies being monitored, including Oranga Tamariki and Open Home Foundation.
- Increased the size of its Operations Team in preparation for the commencement of Phase 2 monitoring. The Monitor has three new operational teams based in Auckland, Wellington and Christchurch.

Core elements of the Monitoring and Assessment framework

NCS Regulations

17. The NCS Regulations came into force on 1 July 2019. These were an important first step in the development of the oversight framework and introduced new mechanisms to support clear and transparent expectations and improved accountability for the quality of care.

18. The NCS Regulations prescribe the actions or steps that must be taken to help ensure tamariki and rangatahi in care or custody receive an appropriate standard of care that is consistent with the principles in the Oranga Tamariki Act. The NCS Regulations articulate the things that are important for tamariki and rangatahi in care, such as supporting them to express their views and develop a life plan, keeping them connected to their family and whānau, giving them opportunities to participate in their culture, and ensuring their education, health and recreation needs are met. Oranga Tamariki is responsible for administering the NCS Regulations, along with the Oranga Tamariki Act. The NCS Regulations help ensure greater accountability and improved quality of care, by placing a clear duty on the Chief Executive of Oranga Tamariki (or the Chief Executive's delegates, bodies or organisations approved under the Oranga Tamariki Act).

19. The NCS Regulations have six component parts:
    i. **Assessment, planning and monitoring to support children and young people in care** - this regulation requires that every tamariki and rangatahi in care has a holistic needs assessment and support plan that reflects their views, wishes, aspirations and strengths. The views of whānau, hapū and iwi must also be heard and considered.
    ii. **Support to address the children's and young people's needs** - this is about meeting the needs of tamariki and rangatahi while they are in care, as set out in their support plans. This will include financial and specialist support to maintain their whānau connections, and to meet their cultural, recreational, education and health needs.
    iii. **Caregiver and care place assessment and support** – this ensures that every caregiver has an assessment and support plan to help them meet the needs of tamariki and rangatahi in their care. The plan needs to cover things like information about the child coming into their care; training, resources and financial support; keeping young people connected to their whānau and culture; and supporting children and young people to stay healthy and do well at school.
    iv. **Supporting children and young people to have a greater voice in their experience** – this ensures that every tamariki and rangatahi in care receives child-friendly information about what they are entitled to under the regulations, and be supported to speak up if they are not getting the care they are entitled to.
    v. **Supporting children and young people during care transitions** – this makes sure that tamariki and rangatahi are well supported during care transitions. This includes when they are moving between different care arrangements, when they are returning home after being in care, and when they leave care and transition into adulthood.
    vi. **Monitoring and reporting on compliance with the regulations** – this establishes an Independent Monitor to monitor and report to the Minister for Children on compliance with the NCS Regulations.

20. During Phase 1, the Monitor focused on compliance with part four of the regulations only, specifically how reports of abuse and neglect for tamariki and rangatahi in care were managed in accordance with regulation 69. Assessment of compliance with regulation 69 will now roll into the business-as-usual work of Phase 2.

21. During the pilot, which was undertaken between September and December 2020, there was a limited extension of the Monitor's focus to compliance with parts one and two.

22. In Phase 2, the Monitor will be assessing compliance with all six parts of the NCS Regulations.

Outcomes Framework

23. The Outcomes Framework[5] ('Framework') represents the Monitor's perspective of what matters for tamariki, rangatahi and whānau in the Oranga Tamariki system, now and into the future. The Framework provides:
    - Assurance that tamariki and rangatahi in the care and custody of the State are being appropriately cared for against the NCS Regulations.
    - An indication that positive outcomes for tamariki, rangatahi and whānau wellbeing are being achieved.

24. The Monitor has taken an outcomes-based approach and holistic te ao Māori lens towards the development of the Framework. It draws upon the Government's six wellbeing outcomes from the Child and Youth Wellbeing Strategy and each of the NCS Regulations has been mapped to one of them. For example, regulation 69, which was the focus of monitoring during Phase 1, has been mapped to Aroha. The outcome of Aroha is defined as tamariki and rangatahi feel loved, supported, safe and cared for, and are capable of receiving kindness through love and give love to others. How allegations of abuse of tamariki and rangatahi are handled is relevant to how they can feel loved, supported and safe.

25. The Framework is supported by the Assessment Approach.

Assessment Approach

26. The Assessment Approach[6] is the overarching framework that the Monitor will use to fulfil its monitoring function. It includes:
    - The Monitoring Programme – the national schedule of monitoring to be undertaken, including the locations and communities the Monitor expects to cover within a given period.
    - Monitoring Requirements – how each of the outcomes and system dimensions will be monitored, assessed and reported against.

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[5] The Framework can be found at: https://www.icm.org.nz/nga-kete-rauemi/

[6] Documents in relation tro the Assessment Approach can be found at: https://www.icm.org.nz/nga-kete-rauemi/

- Assessment Plans – developed for each community engagement outlining any data and information required from relevant monitored agencies and the planned engagement approach, including who will be visited and for what purpose.
- An Assessment Matrix – uses the outcomes and key system elements against which monitored agencies will be monitored to inform the various reporting products required of the Monitor and will be tailored to the relevant areas of focus and for each type of stakeholder involved.
- Operational policies and processes – for example, the Ethics Code and Interim Information Rules (discussed later in the report).
- Other tools and resources – for example, the Monitoring and Assessment Phases, an eight-stage iterative approach to monitoring and assessment activity designed to assist the Monitor to continuously learn, adapt and improve its practices.

27. The Assessment Approach encompasses:
- All stakeholder lenses, for example, tamariki and rangatahi, family and whānau, whānau and non-whānau caregivers, care providers, iwi and Māori organisations, and other government and community agencies.
- The Monitor's reporting activities – which are required under the NCS Regulations and the new Act.

Information and Data

28. As an independent monitor, looking from the outside into the Oranga Tamariki system, the Monitor is heavily reliant on information. Indeed, without the insights provided by the information it collects, the Monitor would be acutely disadvantaged and largely ineffectual. Therefore, the collection and analysis of information and data will have a pivotal role in the Monitor's activities.

29. During Phase 2, information will be collected in three ways:
    - An annual information request consisting of high-level questions designed to elicit aggregated, statistical level data and some qualitative information from the monitored agencies in relation to their compliance with all six parts of the NCS Regulations. The request focuses on self-monitoring data, analysis, identification of areas requiring improvement, and planned actions to address compliance.
    - Regular information requests timed to support the Monitor's programme of community engagement. The questions are designed to elicit aggregated, statistical level data and some qualitative information at the level of a specific site or community. The responses will assist the Monitor to understand the community it is visiting and enable it to determine what questions to ask during the engagement.
    - Direct engagement with tamariki, rangatahi, whānau, caregivers, social workers and other professionals providing services within the Oranga Tamariki system. This will principally take the form of focus-groups and workshops. It is not intended that the Monitor will engage with people on a one-to-one basis. However, that may occur if a group environment is not suitable for the participant. The engagement with tamariki and rangatahi, and potentially whānau, will often be facilitated by other agencies that already have relationships with people or can provide support before and after a visit, for example, Voyce Whakarongo Mai (Voyce). The qualitative information collected from the community engagement is used to understand whether the system is supporting positive outcomes for tamariki, rangatahi and whānua, and as a way of validating the data provided via the information requests.

Information Requirements of the Monitor

30. Regulation 84(1)(b) of the NCS Regulations requires the monitored agencies to give the Monitor any information that it requests, if that information is reasonably required to assess compliance with the regulations.

Sources of Information

31. The Monitor's purpose and functions reflect a broad spectrum of monitoring, from compliance and practice quality, though to monitoring outcomes being achieved for tamariki and whānau. The Monitor will need to engage with a wide range of individuals and agencies when discharging these monitoring duties. Accordingly, regulation 79 sets out a list of information that the Monitor is expected to refer to when assessing compliance with the regulations. This includes:
    - Information obtained directly from tamariki and rangatahi.
    - Chief Executives' and service providers' practice guidelines, policies, documents, reports and service feedback.

- Needs assessments and plans[7].
- Site assessments.
- Feedback, interviews, and participation from tamariki, rangatahi, their families, whānau, hapū, and iwi and family group, the Chief Executive, any approved organisation, and caregivers.
- Stakeholder feedback, including advocacy services.
- Chief Executives' and service providers' self-assessments.
- Data collected by service providers or through other mechanisms.
- Information from complaints and reviews.

Personal Information

32. The Monitor is an overseer of the 'system' and is not required to evaluate the care of individual tamariki or rangatahi. Therefore, it will largely be collecting information relating to organisational policies and processes, aggregated statistical level information, non-personal qualitative information and de-identified data.

33. However, to gain better insights into the quality of monitored agencies' compliance and the quality of practice, the Monitor will need to check the responses provided by monitored agencies by undertaking quality assurance and interviewing staff and other participants in the system, including tamariki and rangatahi. While this may seem inconsistent with the role of a system monitor, one of the purposes of the Monitor is to provide the Government and New Zealand public with assurance over the performance of the system and its impact on outcomes for tamariki, rangatahi and whānau. Without talking to individual participants and validating agencies' information, it will be difficult for the Monitor to provide the required assurance as it would be relying on information provided by the monitored agencies only. The artefacts resulting from these interactions will contain as few identifiers as feasible.

34. Where the Monitor may hold identifiable information, such as a consent form, it will be kept separate from other de-identified information which the consent form could render identifiable.

35. The Monitor will not publish any information that identifies, or could identify, individuals.

36. Even though much of the information held by the Monitor will be de-identified, it will still need to be treated with care. It is therefore best to manage it as if it were personal information, even though identifiers have largely been removed.

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[7] A needs assessment and support plan reflects a young person's views, wishes, aspirations and strengths. The views of their whānau, hapū, and iwi must also be captured and taken into account. The plan must be maintained and reviewed regularly.

Scope and Assumptions

37. The PHRaE report for Phase 1 was largely focused on the Monitor's development of the framework to oversee how reports of abuse and neglect of tamariki and rangatahi in care and custody were managed in relation to regulations 69 and 85 of the NCS Regulations.

38. Phase 2 expands the Monitor's focus to oversee and monitor *all* the requirements of the NCS Regulations. Fundamentally, the Monitor will be attempting to answer the following primary question: 'To what extent is the Oranga Tamariki system meeting its obligations and supporting positive outcomes for tamariki and their whānau, including Māori and disabled tamariki and their whānau?' This PHRaE assessment will consider the privacy, human rights and ethics impacts on personal information as the Monitor transitions to Phase 2 and attempts to answer that question.

39. There is a separate PHRaE assessment for the Bill. This is the proposed legislation which establishes and sets out the roles, functions and powers of the three oversight bodies: the Monitor, the Ombudsman, and the Commissioner.

40. The safeguards that are needed to protect personal information will not alter significantly between the different PHRaEs, but the assessments serve slightly different purposes and it is preferable to keep them in separate documents.

Technical Information Security Matters not Addressed

41. This PHRaE report only makes general comments about matters that need to be considered to ensure that information is transmitted and held securely. The security of the transfer mechanisms will need to be assessed and approved by MSD's Chief Information Security Officer.

Findings

42. This section sets out the main points identified by the PHRaE assessment.

Purpose for which Information to be Collected, Accessed, Disclosed and Used

43. The Monitor must only collect, access, disclose and use information for a purpose that is necessary to enable it to fulfil its objectives and perform its functions.

44. This is consistent with Information Privacy Principles 1, 10 and 11 of the Privacy Act which state that organisations must only collect personal information if it is for a lawful purpose connected with their functions or activities, and the information is necessary for that purpose; and that the information must then only be used or disclosed for that purpose (unless an exception applies).

45. These principles are particularly important in a field such as this, where the information relates to highly vulnerable people, and where there is an element of trust implicit in the exchange of information. For example, when tamariki and rangatahi are revealing their lived experiences they are putting faith in the Monitor that it will not misuse the information. The Monitor has a valuable and lawful role to fulfil, but it must continue to design its activities in a way that creates as few risks as possible to the privacy of the people whose information it holds.

46. As the Monitor transitions into Phase 2, it must continue to challenge itself to fully understand what information it needs to collect to carry out its wider monitoring functions, and what it is going to do with it. This should be a dynamic process as both the Monitor and the monitored agencies will evolve during the monitoring process: the Monitor will gain a better appreciation of what information and data affords the best insights; and, the monitored agencies will improve their capability in extracting and compiling information for their own self-monitoring and for provision to the Monitor.

47. Understanding what information is required and what it is going to be used for is essential because:
    - It will ensure the Monitor is only collecting information it lawfully requires and is using and disclosing it appropriately.
    - It can accurately inform people what it is collecting and what it is going to do with it. This is required by Information Privacy Principle 3, which states that organisations should be open about what personal information they are collecting, why they are collecting it, and what they will do with it.

48. Until Phase 3, when the Bill is enacted, the Monitor does not have an individual legal personality. Rather, it is MSD that remains subject to the Privacy Act. However, that

should not prevent the Monitor from establishing its own privacy notice[8] and policy[9], and schedule of privacy training.

49. The Monitor's website has a privacy notice, but it focuses primarily on the information collected while visiting the website. The Monitor should create a layered notice which reflects how personal information will be collected, used, and disclosed in relation to its monitoring functions. The notice should incorporate the Interim Information Rules, which are discussed in the next section.

50. The Monitor should also develop a privacy policy to instruct employees on the collection and use of information, as well as the rights of the individuals to whom the information pertains. This could include the following subject areas:
   - Collection, access, correction, use, disclosure and storage of information.
   - Incident management.
   - Data analysis and insight development.
   - External reporting.
   - Privacy assessments for new initiatives.
   - Training.
   - Staff information.
   - Accountabilities and responsibilities.

51. For transparency, the privacy policy may also be published on the Monitor's website.

52. The Monitor should develop privacy training that can be delivered to permanent staff and used for the induction of new staff. This should not be a one-off occurrence and reminder training should be accessed by staff at least annually. Bespoke training can be delivered if any privacy issues or training deficits emerge. While this does not need to be Information Privacy Principle-based, it should cover off the fundamentals of collection, storage, use and disclosure.

53. After the production of its first annual report, the Monitor should re-evaluate all the data that it has received and collected in the preceding year to determine whether any of it was superfluous. If any information is not used or adds no value to the Monitor's assessment activities, the associated question should be amended or omitted.

Information Rules

54. The Act will require the Monitor to make rules regarding the sharing, use, and disclosure of information that supports the performance of their functions under the Act. The content of the rules may include a range of requirements, including the methods of collection, for example, whether information is to be provided on a regular, automated basis or on an ad-

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[8] A notice is an external communication of an organisation's privacy policies to individuals about how their personal information is being handled. Typically, notices are published on an organisation's website.

[9] A privacy policy is an internal communication that governs how an organisation handles personal information. A policy is directed at the users of information.

hoc basis, and the use of information, for example, that information may only be used by approved staff.

55. The Monitor has already developed a set of Interim Information Rules[10] as it recognised that it was desirable for the rules contemplated by the Bill to be prepared and implemented before Phase 2 commenced. The Interim Information Rules will be finalised when the Bill is enacted.

56. The Interim Information Rules largely mirror the 13 Information Privacy Principles of the Privacy Act, however, the following should be noted:
    - The Interim Information Rules affect or limit the application of Information Privacy Principles in a small number of ways, for example, the Monitor will not, in reliance on Information Privacy Principle11(1)(h), allow researchers or analysts from other agencies to access the information it holds for research purposes. Otherwise, the principles continue to apply, and the Monitor needs to comply with them.
    - They apply to both personal and non-personal information. In this context personal information means information about an identifiable individual, in the form of information that itself identifies, or can identify, an individual. For example, a young person's name or their account of an incidence of abuse. Non-personal information means information that is not personal information, and which cannot identify an individual. For example, personal information that has had identifiers removed, information in the form of aggregated, statistical level data or information about an agency's organisational policies and processes.

57. The Interim Information Rules put privacy and the safeguarding of tamariki and rangatahi information at the centre of the Monitor's activities. The overarching principles that will guide decisions, actions, and the exercising of the Monitor's powers are as follows:
    - The safety and wellbeing of tamariki and rangatahi are paramount.
    - The privacy of tamariki and rangatahi and their families, whānau and caregivers needs to be protected.
    - The Crown has a unique relationship with Māori and needs to both meets its obligations under Te Tiriti o Waitangi and reduce disparities affecting Māori tamariki and rangatahi in the Oranga Tamariki system.
    - Family, whānau and culture play important roles in tamariki's and rangatahi's lives.
    - When considering the method of collecting, using, storing or sharing information, consideration should be given, where relevant, to:
        o whether the method could promote or adversely affect the relationship of tamariki and rangatahi with their families, whānau, hapū, iwi, family groups, caregivers and/or community, and
        o tikanga Māori, mana tamaiti (tamariki), the whakapapa of Māori, tamariki and rangatahi, and the whanaungatanga responsibilities of their whānau, hapū and iwi.

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[10] The Interim Information Rules can be viewed at: https://www.icm.org.nz/

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58. The Monitor consulted the Office of the Privacy Commissioner during the drafting of the Interim Information Rules and considered the Algorithm Charter for Aotearoa New Zealand and the Data Protection and Use Policy.

59. The Monitor has also developed a Caring for Data and Information Handbook which complements the Information Rules. This document sets out for its staff the Monitor's values, the different types of data and information the Monitor cares for, collecting information during the monitoring phases, and ways of sharing. The Handbook also reflects the Data Protection and Use Policy.

Data Minimisation

60. As mentioned earlier, the Monitor has a broad ability to compel the production of information. However, this does not mean that the Monitor can request any information it decides it wants. In every case, the Monitor must follow its Information Rules and must be able to justify why certain types or levels of information are relevant. It must also operate on the principle of data minimisation. That is, it must only request the minimum amount of information needed to fulfil its objectives and perform its functions.

61. In addition, it is implicit in Information Privacy Principle 1 that if an agency can fulfil its lawful functions by not collecting an individual's identifying information[11], for example, a person's name – then it must do so. The Monitor can successfully undertake most of its functions by not collecting identifiable information. Therefore, it should strictly apply this principle to all information collection.

Monitored Agencies Must De-Identify Information Before Providing

62. Both information requests (the annual and the regular) issued by the Monitor during Phase 2 will stipulate that information is to be provided in a de-identified form. It is imperative this message is reinforced at the point of collection and that all inbound material is carefully scrutinised to ensure that it contains no identifiers. Where identifiers are noted, the information should be destroyed or returned safely, and a new set of information required.

Omitting the CYRAS Number

63. A CYRAS number refers to the Care and Protection, Youth Justice, Residential and Adoption Services case management system that is used by Oranga Tamariki.

64. Some of the information provided by monitored agencies, mainly Oranga Tamariki, may be in a structured format as a result of the way it was extracted, for example, a single line with a number of information elements, such as an unnamed person's ethnicity and whether they have a disability (which is required for the Monitor's reporting). Often, that data line is preceded by the CYRAS number. Where possible, the CYRAS number must be

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[11] Identifying information means personal identifiers, such as name and residential address, from which a person can be or is likely to be able to be identified.

omitted by the monitored agencies from any structured (or unstructured) data it transmits to the Monitor.

65. This matter was covered off in significant detail in the first PHRaE report and Oranga Tamariki are currently developing a bespoke reference number.

Why a Bespoke Reference Number?

66. A bespoke reference number will enable the Monitor to determine when an individual tamariki or rangatahi appears in reporting that is received in different cycles, or when they appear in relation to different parts of the NCS Regulations, for example, a single tamariki having issues in relation to section 69 (an instance of harm or abuse in care or custody) *and* section 33 (not able to have access to their own personal belongings and somewhere to store them). While the Monitor does not need to know the identity of the specific tamariki or rangatahi, the reference number will enable it to track the monitored agency's response to the reported issues and may act as a prompt to ask further questions of the site or facility. In future, if the Monitor chooses to start accessing individual case files and determines that viewing some pertinent information is required (particularly if there is a concern it might conflict with the high-level information received), a bespoke reference number will enable the monitored agency to pinpoint the individual involved.

Re-Identification Risks

67. The information held by the Monitor will largely contain as few identifiers as feasible.

68. The Monitor has developed a range of artefacts, such as its annual and regular information request supporting material (still in draft), the Information Rules, the Caring for Data and Information Handbook, and other operational guidelines, which reinforce its focus on collecting the minimum information it needs and mandate the provision of de-identified information only.

69. Information that the Monitor currently holds on individuals that is identifiable – the consent forms used in the pilots – is to be kept separate from any other information that the consent forms could render identifiable.

70. Practically, it would be extremely difficult for Monitor staff to re-identify individuals from the information assets it holds. That said, the Monitor must be mindful that de-identifying reduces privacy risks but does not eliminate them entirely. Any de-identified information can be re-identified if it is aligned with associated data sets or other contextual information. Therefore, the Monitor should manage its information assets as personal information. Furthermore, its Code of Conduct should be updated to specifically prohibit deliberate re-identification.

Safeguarding Information

71. As mentioned above, the tamariki and rangatahi interacting with the Monitor are unusually vulnerable not only because of their age but also because of their circumstances. Significant harm could result if their information were lost, stolen, or accidentally misdirected to unauthorised people, particularly if it relates to allegations of abuse in relation to regulation 69.

72. Therefore, it is essential that the Monitor puts in place appropriate safeguards to ensure that information, regardless of whether is non-personal or de-identified, is safeguarded.

Transmission of Information to the Monitor

73. Oranga Tamariki has been responding to information requests via email to a named recipient within the Monitor. While the information being provided to the Monitor is not identifiable and is protected by SEEMail, there would be significant reputational consequences if the email were misdirected to a third party. It should be noted that email-related errors continue to a major source of privacy breaches within New Zealand. In the year ended 30 June 2020[12], the Privacy Commissioner received 205 breach notifications and 'email error' was the most common type of breach reported.

74. It is the Monitor's aim that the next information exchange with Oranga Tamariki will be carried out via EightWire's Data Exchange. This is a cloud-based data transfer platform facilitated by the Social Wellbeing Agency to ensure a safe and easy method for government and other service providers to exchange data. Data Exchange can be used for information classified as sensitive and restricted and has been certified and accredited for use by MSD. If for any reason the Data Exchange is not ready for use, an alternative secure method of transfer must be used, such as IronKey.

75. The smaller monitored agencies have been using Citrix Sharefile, a secure file sharing and transfer system, for responding to the Monitor. The use of Citrix Sharefile has been certified and accredited for general use by MSD, however, MSD's Chief Information Security Officer is to confirm this particular use.

System Requirements

76. The Monitor currently has two core systems which have been certified and accredited for use by MSD:
    - Objective: document management system.
    - Tupu: learning management system.

77. Objective is the Monitor's primary storage system, and holds the responses to information requests, the artefacts from community engagement, and its reporting. This is completely separated from MSD's environment and a unique Objective tree has been created for this purpose. Tupu and the Monitor's instances of Outlook have also been segregated from MSD.

78. The Monitor will be introducing several other systems in the next 12 months. These are:
    - Nvivo: a qualitative data analysis tool.
    - A Data Warehouse: to be used as repository for quantitative data.

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[12] The Privacy Commissioner Annual Report 2020 can be viewed at: https://www.privacy.org.nz/assets/Privacy-Commissioner-Annual-Report-20.pdf

- A Customer Relationship Management (CRM) tool: to help manage the monitoring lifecycle and stakeholder management, and for holding the contact information relating to all the people and organisations the Monitor engages with.

79. The Monitor will need to ensure that these systems are certified and accredited by MSD before they are deployed.

80. The PHRaE report for Phase 1 stated that all appropriate recommendations from security risk assessments and certification and accreditation undertaken by MSD must be implemented. These are still valid requirements. At a minimum:
- Any channel used to transmit information is encrypted and certified to SENSITIVE.
- Information is transmitted directly to the Monitor and not MSD.
- Other facets of transmission and storage do not undermine segregation rules between MSD and the Monitor.
- Information will not be visible to unauthorised people (including making sure transmission channels and storage systems are configured in a way that prevents monitored agencies from seeing information that relates to other agencies).
- Only authorised people can receive, view and use the information.
- Access permissions are kept up to date, for example, when staff change roles.
- There is an audit programme to detect and address any unauthorised access or use of Monitor information.

Offsite Information Handling

81. Community engagement is a central part of the Monitor's work and requires staff to visit sites and collect information to validate the monitored agencies' responses to information requests. Staff will use plane travel, hire cars, and stay in hotels when travelling. Staff will carry a range of information and technology as they travel between sessions. This may include:
- Information about the site they are visiting.
- Monitor-issued devices, such as the Dragonfly (computer tablet) and cell phones.
- Notebooks.
- Information and artefacts gathered during workshops or focus-groups. This may be digital or physical, for example, butcher paper.

82. The Monitor has developed guidance for staff to assist them during engagements. This sets out the following expectations:
- Information that would usually be recorded into a notebook, for example, the content of a one-to-one engagement, must be recorded directly into a Dragonfly (using the tablet and stylus function) unless there is a good reason not to.
- When engaging with tamariki, rangatahi, their whānau, caregivers and agency professionals, only first names should be taken.
- Where consent is collected in written form, it should only record their first name.
- Where there is a written consent, it is to be kept separate from other artefacts.
- Names or initials should not be recorded on workshop or focus-group artefacts, for example, workbooks or butcher paper.
- Artefacts from workshops or focus-groups should be scanned to Objective on return to the office and the hard copy securely destroyed.

- Summaries from workshops or focus-groups must be uploaded to a password protected excel spreadsheet/word document on return to the office.

83. The Monitor should augment these expectations with specific instructions on how to handle information while offsite. This should include guidance such as:
   - Bags should never be left unattended, for example, checked in for a flight, or in the hold of a bus, or left on view in a hire car (should be in a locked boot).
   - While staff are offsite, they should not be looking at information where third parties can shoulder surf, for example, on a plane.
   - If staff take information home between engagements, that is, they cannot get back to the office, then they should take additional precautions (in addition to normal measures) to protect the information, for example, put documents in a lockable cabinet or in a locked bag in a wardrobe.
   - If staff take information to a hotel/motel, they should take additional information (in additional to normal measures) to protect the information, for example, keep the documents in a locked bag in a wardrobe or the room safe.

Protect Information During Reporting

84. To grow public trust and confidence in the Oranga Tamariki system, it is vital that there is transparency and accountability in the Monitor's role and in the Oranga Tamariki system. This will be developed and enhanced through a regular programme of reporting.

85. The Monitor is required to produce a range of reports on its findings. These include:
   - A State of the Oranga Tamariki system report. This is an overall assessment of the state of care provided under the Oranga Tamariki Act and NCS Regulations and is prepared every three years. Regulation 81(2) states it should include the following:
     o The number of tamariki and rangatahi in care or custody, the length of time spent in care or custody, and a summary of reasons why they are in care or custody.
     o A profile of the characteristics of tamariki and rangatahi in care or custody, including ethnicity, age, disability, and health needs.
     o Information on the numbers of complaints and identified incidents of abuse and neglect found to have occurred in care or custody, and the procedures followed to resolve them.
     o Identification of areas of good practice as well as areas recommended as a focus for improvement.
     o Separate information or results for Māori tamariki and rangatahi.
     o Separate information or results for tamariki and rangatahi with disabilities.
     o The state of the systems of self-monitoring and continuous improvement operated by Oranga Tamariki and other approved organisations.
   - An annual report on compliance with the NCS Regulations and the operations of the Oranga Tamariki system.
   - An annual report on the performance of the Oranga Tamariki system in respect of outcomes being achieved for Māori tamariki, rangatahi and whānau. This may be a separate report or part of the annual NCS Regulations compliance report.

86. As mentioned, the Monitor has already produced three monitoring reports for the Minister for Children in relation to agency compliance with regulations 69 and 85, which relate to

reports of abuse and neglect of tamariki and rangatahi in care, and regulation 86, which requires agencies to monitor their own compliance. The final report was published in January 2021 and covered findings for the 12-month period from 1 July 2019 to 30 June 2020.

87. From 1 January 2021 the Monitor will be monitoring and reporting on all NCS Regulations. The Monitor's next annual report will cover the period 1 July 2020 to 30 June 2021 and compliance with regulations 69, 85, and 69 will be an ongoing area of focus.

88. Communicating assessment findings to the Minister, public and other parties will grow to be an integral part of the Monitor's work as it moves into Phases 2 and 3, but it must take care to not publish any information, in either reports or reviews, that is reasonably capable of identifying an individual, either alone or in conjunction with other readily accessible information. In addition, the Monitor must take reasonable steps to minimise the risk of individuals identifying themselves from apparently de-identified information that is to be published in a report or other material. If significant risk remains, the Monitor is required to obtain the individual's consent before including the information in the report or other material.

89. Information about tamariki and rangatahi or caregivers must be aggregated in such a way as to ensure that they cannot be identified, for instance by comparing information in the report against information in the public domain or other information that is held by the recipient of the report. Particular attention is needed with any small cohorts in its aggregated or statistical information. Any case studies or other examples must also be fully anonymised.

Managing Privacy Breaches

90. The Privacy Act now requires mandatory reporting for serious data breaches[13]. Technically, the responsibility for reporting and ensuing liability still sits with MSD. However, the Monitor should take responsibility for following the voluntary reporting guidelines issued by the Privacy Commissioner. If necessary, the Monitor may accept assistance from MSD in the management of a breach if required.

Maintain Confidentiality and Limit Disclosure

91. Information supplied to the Monitor must be kept strictly confidential, except in the limited and clearly defined situations outlined in the Bill. If the Monitor reasonably believes that there is a serious threat to public safety or the safety of a child or other person, it may notify Oranga Tamariki or the Police in the usual way. However, it should be slow to consider disclosing to other agencies such as the Police, whether on their own initiative or

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[13] Section 112 of the Privacy Act requires agencies to notify the Privacy Commissioner and affected individuals when a privacy breach occurs that causes serious harm or is likely to, e.g., the sensitivity of the information lost, actions taken to reduce the risk of harm, the nature of the harm that could arise.

Section 118 makes failure to notify an offence and agencie are liable, on conviction, to a fine not exceeding $10,000.

a request. While disclosure is technically permitted by Principle 11(e)(1)[14] of the Privacy Act, a decision to disclose could create a risk of serious breach of trust.

92. It should be noted that the Monitor will not, in reliance on the relevant exceptions in Information Privacy Principle 11 (which limits the disclosure of personal information), allow researchers or analysts to access personal information about its stakeholders for research purposes. This is regardless of whether the information is for statistical or research purposes and will not be published in a form that could reasonably identify the individuals concerned.

Ensure Interactions with Tamariki and Rangatahi are Ethical and Safe

93. It is important to ensure that tamariki and rangatahi in the Oranga Tamariki system have a say in decisions that are made about them. Even when they are too young to make decisions about their lives, it is important to listen to them. Any monitoring system that purports to put the child at its centre should create opportunities for tamariki and rangatahi to express their views. Indeed, as previously stated, the NCS Regulations encourage direct engagement with tamariki and rangatahi in care or custody.

94. In practice, interviewing tamariki and rangatahi who have a higher than usual risk of having experienced trauma, can be problematic. Therefore, it will be important to approach tamariki and rangatahi only where it is safe to do so, where the value of talking to them is sufficiently strong, and to use interview methodology that is age appropriate and safe. It is also important to respect any objection that they may express to being interviewed.

95. In line with a requirement under the Act, the Monitor has developed an Ethics Code[15] ('Code') that describes how it will ethically and safely engage with tamariki, rangatahi, whānau and caregivers. The Code recognises the vulnerability of participants in sharing their stories, and it provides guidance and standards, including appropriate consent processes, that will be followed during engagements.

96. The Code was developed by the Monitor following consultation with key agencies, including Oranga Tamariki, MSD, the Commission and Professor Tim Dare of the University of Auckland.

97. The Monitor has also established a set of values[16] which complement the Code and informs its relationships and how it works with stakeholders. They are:
   - Kia Māia – Courageous
   - Manaaki – Respectful
   - Kia Pono, Kia Tika – Trustworthy

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[14] Disclosure is permitted if the agency believes on reasonable grounds that it is necessary to avoid prejudice to the maintenance of the law by any public sector agency, including prejudice to the prevention, detection, investigation, prosecution and punishment of offences.

[15] The Code can be viewed at: https://www.icm.org.nz/nga-kete-rauemi

[16] The Monitor's values can be viewed at: https://www.icm.org.nz/about-us/

- Kia Huritao – Reflective.

98. At this point, the Monitor has not directly engaged with tamariki or rangatahi. During the pilot in Phase 1 it used a 'connector' - Voyce - which is an independent advocate for children in care. Voyce and the Monitor developed workbooks to capture the stories and lived experiences of the rangatahi, and these were completed by the rangatahi in collaboration with Voyce Youth Workers over several sessions. In the future, the Monitor may use connectors other than Voyce.

99. It is not anticipated that the Monitor's approach to using a connector to engage with tamariki or rangatahi will change in the next 12 months. If the approach does change, then this PHRaE report should be updated or a new one completed.

Consent

100. The Act will require the Monitor to obtain informed consent[17], before gathering information directly from a child or young person, in accordance with its code. The consent may be provided by either of the following:
    - The child or young person.
    - The child or young person's caregiver, if the child or young person does not have the capacity to consent.

101. Consent issues when talking to tamariki and rangatahi are complex. For example, it will not always be appropriate to require a guardian/caregiver to consent to an interview with the child. Above all, consent requirements should not expose a child to harm or put them in a difficult position. Consent processes should also not be able to be used in a way that silences the child or blocks the valid scrutiny of the conditions of their care and welfare. There is also a natural imbalance of power which means that tamariki and rangatahi can be subject to coercion – either forcing them into an interview that they do not want or deterring them from engaging in an interview where they might contribute information that puts either their care agency, or caregiver, in a negative or unflattering light.

102. There is privacy as well as ethical implications when engaging directly with tamariki and rangatahi. Principle 4 of the Privacy Act, which governs how personal information should be collected, has an explicit reference to the collection of information from children. It states that collection must be by lawful means and in the case of collection from children and young persons, by means that are fair and do not intrude to an unreasonable extent upon the personal affairs of the individual concerned.

103. The Monitor developed a consent form for its pilot which seeks the participant's agreement to talk to the Monitor and provides clarification on the Monitor's role, why it wants to talk with them, and whether participation is mandatory or voluntary. Previously, the form collected the person's name and signature. However, the Monitor has now reduced this to just first name. This form is not intended to be used with professionals, such as Social Workers.

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[17] In this context informed consent means that permission is granted by an individual in full knowledge of the possible consequences.

Te Mana
Whakamaru
Tamariki
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104. The Bill does not state whether the consent needs to be in writing or not. Therefore, the Monitor should consider whether there is a robust and effective way to capture participants' agreement without the generation of a form, for example, a verbal consent process. In addition, if there are circumstances where it is considered appropriate to complete a form, the Monitor should consider whether this can be captured digitally, for example, directly to a tablet.

Accessing Information from a File

105. As stated, the NCS Regulations permit the Monitor to view and consult individual-level data about tamariki and rangatahi, such as a needs assessment. This might be necessary to validate the information already provided by the monitored agency.

106. The Monitor has not, at this point, taken this approach and it is not anticipated that this will change in the next 12 months. If it does change, this PHRaE report will need to be updated, or a new one completed. It is suggested that the Monitor develops a clear plan for all access to individual files to show what it is doing, and why the information is needed. It must also only collect the minimum information needed to perform its monitoring function.

Using Data to Develop Insights

107. The Monitor will need to exercise caution when developing insights based on the data and information it collects during its monitoring activities. This is because those insights may inadvertently reflect either bias in the data (because of biases that already exist in the system being monitored) or bias in the humans doing the collection.

108. The Monitor has engaged a Principal Advisor Research and Evaluation to plan and lead its research and evaluation activities. The Principal Advisor will have several responsibilities, particularly in relation to the integrity and reliability of the data collected by the Monitor and the insights generated from it. They will:
- Ensure that all research and evaluation methodologies are robust.
- Ensure that Treaty of Waitangi ('Treaty'), Human Rights and equity considerations are addressed in research or evaluation.
- Research emerging practices and assessment tools, processes, methodologies, and indigenous models to inform improvement opportunities.
- Assess the provenance of all the data received by the Monitor.
- Categorise all the information received by the Monitor to understand its limitations.
- Provide peer review support to other staff.
- Work with monitored agencies to build better apparatus to provide themselves (in relation to self-monitoring) and the Monitor with a better view of the Oranga Tamariki system.

109. The Monitor's testing and validation activities, which introduces qualitative data and the voices of lived experience, will complement the Principal Advisor's work.

Develop Arrangements with Māori

110. Māori tamariki and rangatahi are over-represented in the care system[18]. This leads to wider and significant impacts for the wellbeing of many within Māori society. One of the drivers behind the re-development of the oversight system is the need to support improved outcomes for tamariki and rangatahi, and to develop a greater focus on their needs and interests, and those of their whānau, hapū and iwi.

111. It is imperative that any monitoring system gives effective representation to the population disproportionately affected by the care system, and provides a practical commitment to the principles of the Treaty. To this end, MSD engaged externally with Māori individuals, groups and organisations on the development of the legislative proposals and approaches to monitoring. The Māori individuals and groups engaged represented a range of interests and expertise, such as the Ministry for Māori Development, The Office for Māori Crown Relations, strategic Treaty/iwi partners, medical professionals, providers, care-experienced individuals, caregivers and other relevant stakeholders. The Kāhui Group[19] has overseen this work.

112. The Monitor will need to make a pragmatic commitment to the Treaty by:
    - Having a key priority of supporting improved outcomes for Māori tamariki and rangatahi when setting strategic priorities and developing a work programme.
    - Ensuring that Māori participation informs the discharge of its duties.
    - Having regard to tikanga, mana tamaiti (tamariki), whakapapa of Māori tamariki and rangatahi, and the whanaungatanga responsibilities of their whānau, hapū, and iwi in its engagement approaches, policies, procedures, employment, and other practices.
    - Giving effect to mātauranga Māori and te ao Māori approaches in the development and implementation of its functions.

113. The Monitor may also enter arrangements with iwi and Māori to provide opportunities and invite proposals on how to improve oversight of the Oranga Tamariki system. Māori engagement in reviewing and critiquing the care system will be a critical element in reducing the disproportionate number of Māori tamariki and rangatahi in the care system. The arrangements are also designed to enable robust and regular exchange of information. This information must be de-identified to prevent the identification of individuals.

114. While there is a special relationship with Māori resulting from Treaty obligations, other ethnic groups such as Pacific peoples are also over-represented in the system. Arrangements with those groups will also be important.

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[18] Of the 5,750 children and young people in care at 30 September 2020, 58% were Māori; 10% were Māori and Pacific; 6% were Pacific; and, 26% were NZ European and Other.

[19] The Kāhui Group was established in May 2019 to assist MSD in achieving engagement and collaboration goals, as well as to provide ongoing advice and support on the independent oversight work. The Group consists of Sir Mark Solomon, Druis Barrett, Katie Murray, Eugene Ryder and Donna Mahaere-Atariki. Group members were appointed for their expertise, leadership, and mana in the area of health and social services for Māori and will be providing feedback throughout the independent oversight work programme.

Recommendations

115. The following recommendations are designed to address the risks identified by this PHRaE assessment.

Rec #	Recommendation	Accepted Y/N
R01	The Monitor must only collect information that it genuinely needs to fulfil its objectives and perform its functions.	Yes
R02	The Monitor must update its public-facing privacy notice to reflect how personal information will be collected, used, and disclosed in relation to its monitoring functions.	Yes
R03	The monitored agencies should also update their public-facing privacy notices if they do not sufficiently indicate they will be providing information to the Monitor.	Yes, to the extent that we can control
R04	The Monitor should develop a privacy policy to instruct employees on the collection and use of information, as well as the rights of the individuals to whom the information pertains.	Yes
R05	The Monitor should develop privacy training that can be delivered to permanent staff and used for the induction of new staff.	Yes
R06	After the publication of its first annual report, the Monitor should re-evaluate the information collected during the previous year to determine whether any of it was superfluous. Associated questions should be amended or omitted if required.	Yes
R07	The Monitor must operate on the principle of data minimisation, that is, it must only collect the minimum amount of information need to fulfil its objectives and perform its functions.	Yes
R08	The Monitor must only collect an individual's identifying information to fulfil its objectives and perform its functions. If it can do that without identifying information, it should.	Yes

Rec #	Recommendation	Accepted Y/N
R09	All information sent to the Monitor in response to an information request must be de-identified. This requirement must be reinforced at the point of collection and inbound material must be scrutinised to ensure it contains no identifiers.	Yes
R10	The CYRAS number must be omitted from information sent to the Monitor where possible. This should be replaced by the bespoke number currently being developed by Oranga Tamariki.	Yes, dependent on OT being able to do this
R11	All information held by the Monitor, regardless of whether it is non-personal or de-identified, must be safeguarded as if it were personal information.	Yes
R12	The Monitor should update its Code of Conduct to specifically prohibit deliberate re-identification.	We currently rely on the MSD Code of Conduct, but can reflect requirement in our Kawa and tikanga
R13	Information provided to the Monitor must be transmitted in a secure way, such as Data Exchange or IronKey, rather than email.	Yes
R14	The Monitor must ensure certification and accreditation of Nvivo, its data warehouse and CRM tool, before deployment.	Yes
R15	All appropriate recommendations from security risk assessments and certification and accreditation undertaken by MSD and outlined in the PHRaE report for Phase 1 must still be implemented.	Yes
R16	Guidelines developed by the Monitor for handling information during community engagements must be augmented with specific offsite information handling instructions: • Bags should never be left unattended, for example, checked in for a flight, or in the hold of a bus, or left on view in a hire car (should be in a locked boot). • While staff are offsite, they should not be looking at information where third parties can shoulder surf, for example, on a plane. • If staff take information home between engagements, that is, they cannot get back to the office, then they should take additional precautions (in	Yes

Rec #	Recommendation	Accepted Y/N
	addition to normal measures) to protect the information, for example, put documents in a lockable cabinet or in a locked bag in a wardrobe. • If staff take information to a hotel/motel, they should take additional information (in additional to normal measures) to protect the information, for example, keep documents in a locked bag in a wardrobe or the room safe.	
R17	The Monitor should consider providing staff with lockable briefcases or bags (for example, with a built-in combination code) for transporting engagement artefacts.	Yes
R18	During engagements, consent forms - even where they do not fully name an individual - must be transported separately from other information which they could render identifiable.	Yes
R19	Consent forms – even where they do not fully name an individual – must be stored separately on Objective from other information which they could render identifiable. This also applies to the consent forms acquired during the pilot.	Yes
R20	The Monitor must not publish any reports that are reasonably capable of identifying an individual, either alone or in conjunction with other readily accessible information.	Yes
R21	The Monitor must have a breach management plan and understand the notification requirements of the Privacy Act.	Yes
R22	Information held by the Monitor must be regarded as confidential. Disclosures should be limited to situations such as: • Notifications of safety concerns to Oranga Tamariki or Police. • Legislation expressly requires disclosure. • Disclosure to the individual concerned, provided it does not create or increase a safety risk. • Where Police (or another agency) has a production order or warrant.	Yes
R23	The Monitor should consider whether there is a robust and effective way to capture participants' agreement without the generation of a form, for example, a verbal consent process. In addition, if there are circumstances where it is considered appropriate to complete a form, the Monitor should consider whether this can be captured digitally, for example, directly to a tablet.	Yes
R24	When the Monitor analyses the information it receives, it must identify and consider any limitations of the data and ensure that inherent biases are managed.	Yes

Rec #	Recommendation	Accepted Y/N
R25	The Monitor must develop effective arrangements with Māori to ensure their participation informs all aspects of its work. Ways of working should embed tikanga, mana tamaiti (tamariki), whakapapa of Māori tamariki and rangatahi, and the whanaungatanga responsibilities of their whānau, hapū, and iwi.	Yes
R26	The Monitor must take all reasonable steps to ensure that the information shared with Māori and iwi is fully de-identified, or confidentialised, with aim of preventing people being identifiable from the information, either alone or in conjunction with other readily accessible information.	Yes
R27	This PHRaE report should be amended if changes are made to processes during Phase 2 or when further operational decisions are made in respect of direct engagement with tamariki and rangatahi, and direct access of case file information.	Yes

Approvals

116. I confirm that this report accurately represents the privacy risks of the Monitor's activities during Phase 2, and I confirm that the controls documented in this report will be implemented as designed or that a decision to accept the risk has been taken.

Signature	Date
Arran Jones, Director	

Detailed risk assessment

Description of risk	Level	Control (with recommendation number)	Residual Risk
The Monitor collects information that is not relevant for the purposes of fulfilling its objectives and performing its functions.	Major/likely.	R01 – Information collection is necessary and justified. R06 – Evaluate information collection after the first annual report.	Moderate/possible.
Individuals are unaware what information is being collected and how it is being used, and are distressed when they find out.	Major/likely.	R02 – Monitor to update privacy notice. R03 – Monitored agencies to update privacy notices.	Moderate/possible.
The requirements of the Privacy Act are not adhered to and there is a breach of one of the Information Privacy Principles.	Severe/almost certain.	R04 – Monitor to develop privacy policy. R05 – Monitor to develop privacy training.	Moderate/possible.
The Monitor obtains personal information when de-identified information would suffice.	Major/likely.	R07 – Collect only minimal information. R08 – Collect identifying information only where necessary.	Moderate/unlikely.
The monitored agencies send identifiable information to the Monitor.	Major/likely.	R09 – Monitored agencies to only provide de-identified information. R10 – CYRAS number to be omitted where possible and development of bespoke number.	Minor/unlikely.
The Monitor re-identifies individuals from de-identified data sets.	Major/unlikely.	R12 – Monitor to update its Code of Conduct.	Moderate/rare.

Description of risk	Level	Control (with recommendation number)	Residual Risk
Information is insecure in transit or at rest, resulting in privacy breaches.	Severe/almost certain.	R11 – Monitor to treat all information as personal information. R13 – Monitor to exchange information with Oranga Tamariki by Data Exchange or IronKey. R14 – Certification and accreditation of Nvivo, data warehouse and CRM tool before deployment. R15 – All security recommendations from PHRaE 1 report to be implemented if not done already. R16 – Monitor to augment information handling guidelines with specific offsite information handling instructions. R17 – Monitor should consider providing staff with lockable briefcases or bags. R18 – Consent forms to be carried separately from other information they could render identifiable. R19 – Consent forms to be stored separately from other information they could render identifiable. R23 – Consider verbal or digital collection of consent.	Moderate/possible.
The Monitor's reports include information that identifies, or is capable of identifying, individuals.	Major/unlikely.	R20 – Reports do not identify individuals. R26 – Information shared with Māori and iwi is fully de-identified or confidentialised.	Minor/unlikely.
The Monitor fails to respond appropriately to a privacy breach, leading to harm to individuals.	Major/possible.	R21 – Breach management plan.	Moderate/possible.

Description of risk	Level	Control (with recommendation number)	Residual Risk
The Monitor discloses information in a way that breaches trust and confidentiality.	Major/likely.	R22 – Limited exceptions to confidentiality requirements.	Moderate/possible.
The Monitor's analysis methodology creates or perpetuates biases in the data leading to inaccurate or discriminatory results.	Major/likely.	R24 – Consider limitations and bias in data.	Moderate/unlikely.
The Monitor fails to develop arrangements with Maori or comply with Treaty obligations.	Major/possible.	R25 – Develop effective arrangements with Māori.	Moderate/unlikely.
The Monitor makes changes to systems and processes during Phase 2 that are not re-assessed for privacy, human rights or ethics implications.	Major/possible.	R27 – Review PHRaE report and update accordingly.	Minor/unlikely.