



Submission to the Social Services and Community Committee on the *Oversight of Oranga Tamariki System and Children and Young People's Commission Bill*

GENERAL COMMENTS

1. The Aotearoa New Zealand Association of Social Workers (ANZASW) welcomes the opportunity to submit on the Oversight of Oranga Tamariki System and Children and Young People's Commission Bill 2021 (the Bill).
2. We support the intent of the Bill given the justifiable concerns which exist about Oranga Tamariki and agree that strengthening the oversight of this system and ensuring robust and independent accountability is essential to achieving better outcomes for our tamariki and young people in Aotearoa New Zealand.
3. However, we do not support this Bill as drafted. Instead of strengthening current functions and empowering the existing Office of the Children's Commissioner (OCC) to achieve the policy objectives of this Bill, it instead proposes a fragmented oversight and monitoring system split across three entities. These functions are in fact complementary, our view is that having one organisation responsible for monitoring, overseeing complaints, and advocating for children will provide the best insights and outcomes for children and young people.
4. We are also disappointed with the consultation timeframe as scheduling over Christmas/ New Year makes it challenging for organisations to fully engage and many important voices in this space (including tamariki and rangatahi) will not have had the opportunity to be heard. We acknowledge the Committee intended to extend the timeframe for submissions and this was not supported by the Business Committee. We strongly recommend there is an extended period of consultation, including intentional consultation with children and young people, and their whānau.
5. Additionally, we suggest the timing of this Bill is short-sighted. Several reports have been recently released as part of the Royal Commission's Inquiry into Abuse in Care and late last year the Ministerial Advisory Report on Oranga Tamariki - Kahu Aroha was published, all of which should further inform this proposed legislative change. It is apparent that there has not been sufficient time to consider the relevant impacts of these findings on this Bill, particularly in relation to Te Tiriti commitments and the impact on Māori whānau who disproportionately have contact with the Oranga Tamariki system.

6. The Beatie Report¹ states that stakeholders engaged as part of the initial consultation process conveyed a “*sense of frustration that previous reports have not been sufficiently acted upon (p.7).*” Progressing this Bill without incorporating recommendations of recent findings risks further perpetuating this perception and eroding public (and survivor) trust in the ‘system’ contrary to the key objective of restoring public trust as named within the Bill.
7. Engagement and trust are fundamentally important aspects of child protection practice and achieving the best outcomes for tamariki and whānau. Aotearoa New Zealand requires a streamlined, accountable, trusted and transparent system which places our tamariki and whānau at the centre. We are concerned that the proposals contained within the Bill further complicate a system which in essence needs to be designed for tamariki and rangatahi, and their whānau, this means ensuring the system is understandable for them and whānau can navigate it seamlessly.
8. We have general concerns related to the impact of this Bill for Māori whānau and that such a fragmented system will place even more barriers to access, particularly in relation to complaints and further perpetuate inequities in outcomes for Māori tamariki and rangatahi.
9. We note the use of the Treaty of Waitangi (Te Tiriti o Waitangi) in the legislation. It is well established that Te Tiriti o Waitangi and the Treaty of Waitangi are different documents, with different meanings. Te Tiriti o Waitangi is the constitutionally preferred document. We recommend the Bill refers to Te Tiriti o Waitangi to ensure the correct document is being given effect to.
10. We strongly support comments made by VOYCE – Whakarongo Mai, Save the Children and the Joint Children’s Sector submission in relation to their concerns and recommendations for this Bill. We have several further specific comments and recommendations to make as detailed below.

SPECIFIC COMMENTS AND RECOMMENDATIONS

COMMITMENT TO TI TIRITI O WAITANGI

11. The practical application of Te Tiriti throughout the Bill is insufficient. We note that the Ombudsmen Act 1975 does not take into account Te Tiriti obligations; this Bill does not propose significant changes to that other than what could be considered a token clause 42 (1) directing the Chief Ombudsman to make ‘reasonable efforts’ with iwi and Māori organisations. The term ‘reasonable’ is highly subject to interpretation and difficult to demonstrate meaningfully.
12. We note the wording in clause 17 in relation to both the function and appointment of members of the Māori Advisory group by the Monitor. We consider the requirements cited for appointment to be a weak application of commitments under Te Tiriti. Whakapapa Māori representation should be core within the governance structure for any independent monitor and should a Māori Advisory Group be created a mechanism whereby the Māori Advisory Group is appointed by Māori established.
13. In order to ensure the Māori Advisory Group are central to the monitoring function and not just to support engagement, we recommend that they be given the appropriate mana and that the wording in clause 18(1) is changed to “must implement recommendations of” in place of the current wording which dilutes the significance of their contribution.

¹ Beatie.S. (August 2018). *Strengthening Independent Oversight of the Oranga Tamariki System and of Children’s Issues in New Zealand Ko te whakakaha i te tirohanga motuhake ki te pūnaha a Oranga Tamariki me ngā take tamariki i Aotearoa: Post Consultation Report*. <https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/information-releases/strengthening-independent-oversight/post-consultation-report-independent-oversight.pdf>

14. Additionally, we recommend that the monitor is required to demonstrate within their annual report how they have implemented or plan to implement the recommendations of the Māori Advisory Group in place of clause 18(2).
15. We also have concerns in relation to meeting Te Tiriti obligations in creation of the Children and Young People's Commission Board. At present clause 92(2) mirrors clause 17 which is insufficient to provide true representation for Māori. We support the board model but recommend that the Board is required to have at least half its members whakapapa Māori, as over half the whānau under the care of the Oranga Tamariki system are Māori².
16. We also strongly advocate for there to be a requirement for a specific monitoring approach for services to tamariki and whānau Māori. A one size fits all monitoring approach like we have now that has superficial Te Ao Māori standards and markers and should be addressed through this Bill.

INDEPENDENT MONITOR

17. The Bill proposes that the Independent Monitor will be established as a departmental government agency, located alongside the Education Review Office. We note the initial intention was for the Monitor to be placed within the Office of the Children's Commissioner.³ This decision was subsequently changed, with the reasoning being "there is an inherent tension in one organisation being both advocate and monitor. There is a conflicting policy objective for the organisation to be both a trusted advisor to Ministers and fulfil the independent role of the Children's Commissioner".⁴ We are concerned about this decision and the rationale for several reasons.
18. Firstly, the Cabinet paper suggests that positioning both the monitoring and advocacy functions within the OCC is considered a conflict of interest, however, we do not agree. The OCC is neither monitoring nor advocating for itself therefore there cannot be conflict between these two functions. The monitoring function would better suit the frameworks and principles under which the OCC already operates; as a child-focused rights body rather than a regulator.
19. Furthermore, the functions and objectives of the monitor, as outlined in clauses 13 and 14, are clear there must be objective, impartial, and evidence-based monitoring. In our view, a truly independent monitor who has public trust and confidence must be free from all perceived or real political influence. Establishing the monitoring function within a departmental government agency essentially removes independence as they will be subject to expectations set out in the Public Services Act 2020⁵. The Monitor must be able to provide free and frank commentary on the performance of the Oranga Tamariki system, without any regard for maintaining trust of Ministers.
20. The many reviews into Oranga Tamariki, and its predecessors, are clear that our child protection system has repeatedly failed tamariki and their whānau. We must have a truly independent monitor free from all political influence. If the Monitor must be a trusted advisor to Ministers this significantly undermines the very intention and independence of the Monitor. We strongly recommend that the Monitor is established as an operational arm of the OCC. In our view, this will ensure the much-needed independence of the monitor.

² Office of the Children's Commissioner. (2020). Statistical Snapshot: Pēpe Māori 0-3 Months and the Care and Protection System. <https://www.occ.org.nz/assets/Uploads/20200116-OCC-StatisticalSnapshot.pdf>

³ CAB-19-MIN-0113

⁴ <https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/information-releases/cabinet-papers/2021/paper-one-arrangements-for-the-monitor-of-the-oranga-tamariki-system.pdf>

⁵ Public Services Act 2020. <https://www.legislation.govt.nz/act/public/2020/0040/latest/LMS106159.html>

21. We note the limited powers of entry detailed in clause 32-35. We consider that these are likely to be ineffective given that written notice of the intent to enter must be provided by an authorised staff member 'within a reasonable timeframe' and the ability under subsection (1)(b) for the premises to deny entry. We recommend that authorised staff are given powers of entry under the parameters of clause 33 without the requirement to provide notice.
22. Establishing a monitoring process that is highly transparent and easily understandable is essential to building both public and agency trust in the monitoring system. It has been raised by ANZASW members that interim monitoring arrangements place a heavy reporting burden on agency staff and feels convoluted. We understand there has been no additional funding for non-governmental agencies who have an increased workload as a result of monitoring compliance. This must be urgently addressed to ensure the already underfunded social service sector is not further stretched.

COMPLAINTS OVERSIGHT BY THE OMBUDSMAN

23. We have concerns that the Ombudsman is not sufficiently informed around children's issues, given it has been long established as an adult complaints system. We have concerns regarding the ability of the Ombudsman to maintain a whānau and child-focused approach which requires specific expertise, competencies, and process design, much of which OCC is well experienced in (and has been doing until present). Delivering this function within a predominately adult system risks dampening down the voice of children during the complaints process and not placing the child's wellbeing as paramount.
24. There are also concerns that such a formal structure and process creates further barriers for whānau who wish to pursue a complaint, particularly for Māori whānau, whose lived experience of systemic racism by such structures acts as a significant deterrent. The Ombudsmen Act 1975 fails to consider Te Tiriti, therefore there is cause for concern as to how the Ombudsman will effectively engage with Māori whānau.
25. We recommend that complaints also sit within the OCC, facilitated via significant resource investment to manage the volume in a timely and transparent way. The Ombudsman could be required to provide advice or oversight of the OCC's complaints investigation, however, the actual process is undertaken by the OCC.
26. We also recommend that system and process recommendations made as result of complaints are required to be acted upon, overseen by the Monitor, to enable effective system-level change. This is contrary to the non-binding nature of recommendations currently made by the Ombudsman.

CHILDREN AND YOUNG PEOPLE'S COMMISSION

27. We support altering the governance of OCC from a commissioner sole model to a board model. A named Children's Commissioner should however be retained to provide a face for the organisation and recognition of the lead advocate for children. We also strongly recommend that a Māori Children's Commissioner be appointed given the inequities Māori tamariki face across the spectrum of social determinants.
28. We recommend that both the Children's Commissioner and the Māori Children's Commissioner retain the powers to report to the Prime Minister on matters affecting the rights of children, with or without request. The Children's Commissioner has played a vital role in highlighting significant issues and

system failings to successive governments and it is concerning that this power has not been carried over into the Bill and that the OCC's advocacy role has been substantially diluted.

29. As already mentioned, the Bill proposes a fragmented oversight system when appropriate investment, reorientation and extension of functions within the Children and Young People's Commission could offer a more cohesive and understandable model. We recommend that positioning the monitoring, advocacy and complaints functions within the OCC under separate operational arms with the required resources (both funding and personnel) to effectively carry out these functions is explored again as the preferred approach.

OTHER MATTERS

Consultation with children and young people and their whānau

30. There is no requirement for there to be consultation with children and young people or their whānau within the legislation. This is a significant oversight, and it is strongly recommended there are continuous mechanisms whereby children and young people and their whānau involved with the Oranga Tamariki system are consulted with to ensure the system is working for them.

Unintended consequences for community providers

31. Although outside of the scope of this Bill, it is important to note the exceptional work by community providers to safeguard and support our whānau and tamariki across Aotearoa New Zealand. This has ensured that the objective to provide options to whānau can be met under the Oranga Tamariki Act 1989, however under-resourcing and compliance costs have posed a serious challenge to providers in continuing this work. Consequently, many have 'opted out' resulting in less choice for whānau and higher workload demand for statutory agencies. This is an important unintended consequence to consider in the framework design and associated compliance costs of the oversight and monitoring system.

SUMMARY OF RECOMMENDATIONS

We recommend that:

1. this Bill is not progressed at this time so that findings from the Royal Commission's Inquiry into Abuse in Care and the views of tamariki, rangatahi and young adults who have been, or are in care about the oversight system be considered.
2. Significant work is undertaken to address the concerns identified within our submission and the submissions of other organisations.

Should the Bill continue to progress, we recommend that:

3. Positioning the monitoring, advocacy and complaints functions within the OCC under separate operational arms with the required resources (both funding and personnel) is explored again as the preferred approach.
4. At least 50% whakapapa Māori representation should be required on both the Māori Advisory Group and the Commission Board and a mechanism whereby the Māori members are appointed by Māori is established.

5. The wording in clause 18(1) is changed to “must implement recommendations of” in place of the current wording.
6. The monitor is required to demonstrate within their annual report how they have implemented or plan to implement the recommendations of the Māori Advisory Group.
7. We strongly recommend that the Monitor is established as an operational arm of the OCC.
8. The Monitor utilises a framework of rights-based system monitoring rather than a compliance approach.
9. That authorised staff are given powers of entry under the parameters of clause 33 without the requirement to provide notice.
10. There is a requirement for the monitoring process to be highly transparent and easily understandable.
11. That complaints also sit within the OCC, facilitated via significant resource investment to manage the volume in a timely and transparent way.
12. That system recommendations made as result of complaints are required to be acted upon, overseen by the Monitor.
13. A named Children’s Commissioner should be retained as lead advocate for children.
14. That a Māori Children’s Commissioner also be appointed.
15. That both the Children’s Commissioner and the Māori Children’s Commissioner retain the powers to report to the Prime Minister on matters affecting the rights of children, with or without request.
16. There are continuous mechanisms whereby children and young people and their whānau involved with the Oranga Tamariki system are consulted with to ensure the system is working for them.
17. That the compliance and resource costs of the oversight system are considered in relation to community providers.

CONCLUSION

32. We thank you for the opportunity to submit on the Oversight of Oranga Tamariki System and Children and Young People’s Commission Bill 2021.
33. As highlighted, we have significant concerns about this piece of legislation and the process that has been followed to date. We strongly recommend there is further consultation and considerable re-working of this Bill before it proceeds through the House. If the Committee proposes significant changes, as we suggest, then we recommend there should be further consultation with the Public, given the gravity of the concerns we currently hold.
34. We *would like* to be heard in support of this submission.

ABOUT ANZASW

The Aotearoa New Zealand Association of Social Workers (ANZASW) is the professional association for social work in Aotearoa New Zealand. We have over 3,600 members who work throughout the community in both statutory social work and community social work settings. We advocate on behalf of members for social change and justice.

Definition of social work

Social work is a practice-based profession and an academic discipline that promotes social change and development, social cohesion, and the empowerment and liberation of people. Principles of social justice, human rights, collective responsibility and respect for diversities are central to social work. Underpinned by theories of social work, social sciences, humanities and indigenous knowledges, social work engages people and structures to address life challenges and enhance wellbeing.⁶

Social work in Aotearoa New Zealand

Social workers in Aotearoa are required to be registered with the Social Workers Registration Board. Social workers are registered under the Social Workers Registration Act 2003 and are not included in the Health Practitioners Competence Assurance Act 2003.

CONTACT DETAILS

If you have any questions or require any clarification about this submission, please contact:

Braden Clark
Kaiwhakahaere Chief Executive
027 349 0190
bradenc@anzasw.nz

Bronwyn Larsen
Senior Policy Analyst
bronwynl@anzasw.nz

⁶ Global Definition of Social Work - International Federation of Social Workers and International Association of Schools of Social Work