



**National Council of
Women of New Zealand**

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**Submission to the Social Services Committee on the
Children, Young Persons, and Their Families
(Oranga Tamariki) Legislation Bill**

Introduction

- 0.1. The National Council of Women of New Zealand, Te Kaunihera Wahine O Aotearoa (NCWNZ) is an umbrella group representing 283 organisations affiliated at either national level or to one of our 21 branches. In addition, about 260 women are individual members of branches. Collectively our reach is over 290,000 with many of our membership organisations representing all genders. NCWNZ's vision is a gender equal New Zealand and research shows that New Zealand will be better off socially and economically if we were gender equal. Through research, discussion and action, NCWNZ in partnership with others, seeks to realise its vision of gender equality because it is a basic human right. This submission has been prepared by the NCWNZ Public Issues Standing Committee and the Parliamentary Watch Committee after consultation with the membership of NCWNZ.
- 0.2. NCWNZ has a long history of supporting legislation directed at improving outcomes for children and young persons. It has recently made related submissions on the Green Paper on Vulnerable Children (2012), the Vulnerable Children Bill 150-1 (2013) and the Children, Young Persons and Their Families (Advocacy, Workforce and Aging Settings) Amendment Bill 142-1 (2016).
- 0.3. This legislation is a wide-ranging omnibus Bill. This submission addresses particular provisions relating to children, young persons and their families:
 1. imposing certain duties on the chief executive of the Ministry for Vulnerable Children, Oranga Tamariki directed at improving outcomes for Māori, and requiring regular reporting about outcomes for Māori
 2. strengthening children and young people's participation in decisions that affect them
 3. making family group conferences available for those who need support, but who are not in need of care and protection
 4. improving agencies' sharing of information about children or young people.
 5. enabling young adults to live with their caregiver up to the age of 21, and to receive transition advice and assistance up to age 25
 6. extending the youth justice jurisdiction to cover those under 18 years old (apart from those charged with certain serious or repeat offences, who would be dealt with in the adult courts)

1. Treaty of Waitangi, Mana Tamaiti, Whakapapa and Whanauntanga

Part 1, Clause 8, Section 5 and Clause 12, Section 7A

Action to improve outcomes for Māori children

- 1.1. There was strong support for action in response to the over-representation of Māori children and young persons in the care, protection and justice systems among all NCWNZ branches, members and affiliated organisations who commented on this Bill. Some responders highlighted the documentation of abuse of Māori children and young persons within the justice and care systems in the past. This history demonstrated the need for regular monitoring and external evaluation of the operation of systems of institutional care for children and young people.
- 1.2. Responders considered that the most effective way to improve outcomes for Māori children and young persons would be to work in partnership with whānau, hapū and iwi. This would involve increased consultation with whānau and elders and appropriate sensitivity to cultural traditions and customs. Depending on their age, children and young persons should also be involved in decision-making.
- 1.3. Responders were particularly concerned that attention to the principles of the Treaty of Waitangi should be translated into action and be the focus for monitoring of outcomes of action by the Ministry for Vulnerable Children, Oranga Tamariki.

Monitoring of outcomes for Māori children

- 1.4. NCWNZ considers that it is important to make the Chief Executive of the Ministry for Vulnerable Children, Oranga Tamariki accountable for improving outcomes for Māori children and young persons.
- 1.5. NCWNZ considers that the UN Convention on the Rights of the Child should be used to provide the key principles for evaluation of progress with respect to outcomes for Māori. Key indicators should include:
 - Mortality data
 - Educational achievement
 - Health data – including physical and mental health
 - Employment data for those aged 18 – 21
- 1.6. Attention to gender is important when using these indicators to assess outcomes.
- 1.7. This information on a number of these indicators is included in the Integrated Data Infrastructure (IDI) managed by Statistics New Zealand. This data is based in part on tax data supplied by Inland Revenue to Statistics NZ under the Tax Administration Act 1994. The Analytical Paper 16/03 produced by Treasury for the Expert Panel on Modernising Child, Youth and Family in May 2016 relies on this data

and similar analyses can be done to assess indicators of success by the Ministry for Vulnerable Children – Oranga Tamariki.¹

- 1.8. Effectiveness of the Ministry for Vulnerable Children should be assessed in terms of improvements on these indices for all children and Māori children in particular. This will involve comparison of rates for Māori and children and young persons of other ethnicities.
- 1.9. Other important indicators identified by responders were:
 - Location on poverty indices
 - Rates of pregnancy for those under 18 years
 - Rates of offending
 - Rates of being a victim of crime
 - Iwi affiliation

From intention to action with relevant resources

- 1.10. NCWNZ Branches, affiliated organisations and individuals argued that attention to a range of external indicators was very important because systems and organisational structures might officially change, but processes and operations associated with the state’s interaction with children and young persons might not significantly change. That depended not just on principles and intent, but on action. And many of the actions anticipated in this legislation require significant increased resources to be effective.

Review period

- 1.11. There was support for yearly review and the provision of recommendations for action that could be implemented within an appointed Minister’s term of responsibility. Relevant updates on indicators should be included in the Ministry’s Annual Report to Parliament.
- 1.12. Some responders considered that a period of time (3-5 years) should be allocated for this legislation to be implemented before its operation was reviewed and any changes made as to how the Treaty of Waitangi was given effect in the operation of this Ministry.

2. Children and young people’s participation in decisions that affect them

Part 1, Clause 9, Section 5A

- 2.1. NCWNZ strongly supports the general principle of making the Children, Young Persons and their Families (Oranga Tamariki) Act child-centred and increasing children and young persons’ involvement in decisions affecting them.

¹ <http://www.treasury.govt.nz/publications/research-policy/ap/2016/16-03/ap16-03.pdf>

Children and young persons' participation in decision-making

- 2.2. NCWNZ welcomes processes that increase children and young persons' participation in decisions that affected their lives, but considered that their input should be a component of the information that shaped decisions, rather than the sole basis for decision-making. Branches, members and affiliated organisations considered that the type and complexity of information available to children and young persons, and how they were involved in decision-making, had to depend on age, maturity and emotional health.
- 2.3. They also advocated consultation with young persons about procedures that they thought would facilitate their participation. Options should be presented in forms that were accessible to children and young persons. One NCWNZ branch argued that, "It is not much use giving them a piece of paper that they cannot read."

Advocates, mediators, independent facilitators

- 2.4. NCWNZ considers that it is important that children and young persons have access at this time to independent professionals, skilled in working with children and young people, who can contribute to the best decisions being made and that children and young persons have input into these decisions. Children and young persons needed to be able to trust the adult who facilitates their input into decisions. They need to have some say in who would be their advocates or representatives at relevant meetings. There are best practice guidelines for engaging in this type of work with children and young persons. These processes would also need to be appropriately resourced if the goal of children's participation was to be achieved.
- 2.5. Responders stressed the need for skillful questioning of children and young people and highlighted the dangers of undermining their self-assertion and confidence through inexperienced interviewing. What was important was the exercise of skillful understanding of children and young persons' experience and concerns about their situations and ideas about what could be different. There were concerns expressed about how bureaucratic processes associated with the processing of 'cases' were sometimes not consistent with therapeutic interventions in the interests of particular children and young people. Comments on this topic also highlighted the need not just for appropriate legislation but the resources to implement principles such as the principle of participation.

3. Family group conferences

Part 1, Clause 18, Section 18AAA

- 3.1. NCWNZ supports the use of Family Group Conferences (FGC) in situations in which a child or young person is not in need of care or protection, but when FGCs can assist in formulating a plan to help them.
- 3.2. It offers these comments on this change in the legislation.

Extension of the operation of FGCs

- 3.3. Most responders agreed that Family Group Conferences (FGCs) should be extended to children and young people who are not in need of care and protection. The use of FGCs for prevention or mitigation of risk was supported. An organisation representing educators stressed the role that the education sector may play in identifying those children and whānau/families who need additional support. Some responders thought there should be more time devoted to communication, discussion and support for family members who were struggling to parent particular vulnerable children. An endeavour should be made to keep children in their current home if appropriate, and with other family members if that is possible.
- 3.4. The work of Family Group Conferences could be facilitated through collaboration with non-governmental organisations (NGOs) already in contact with the children and young people whose situation is being discussed in these meetings. The NGOs could prepare information and suggest procedures and processes that would be effective in FGCs. This could be carried out within the current privacy procedures of the NGOs.

Funding issues and resourcing

- 3.5. A high number of responders considered that adequate resourcing was crucial to sustain this model if it is to be successful. Increased resources will be necessary to support adequately trained staff including doctors, counsellors, state appointed caregivers, teachers and schools. Rural areas should also be adequately resourced. One branch commented:

Family Group Conferences (FGCs) are a powerful decision-making process and includes the wider whānau. The entry point is usually by agreement and this should protect privacy. Attendees/officials are there by invitation and with agreement from whānau. The process is a confidential one. It is crucial that FGCs are well resourced and there is respect for the ability of the family to make good decisions and not be rushed or pressured during these discussions. The FGC for youth offenders should follow the Strengthening Families model currently in use in CYF that is based on family consent and on agreed strengths and commonality.

- 3.6. There were concerns expressed by some responders that aspects of this legislation could lead to increased use of professional foster care providers and less support for whānau/family members who might support a child in their current home environment or provide care for children in their family.

4. Information sharing

Part 1, Clause 38 Sections 66 to 66O and Part 2, Subpart 4, Clause 132

- 4.1. NCWNZ supports processes that will encourage greater collaboration and information sharing among Government agencies about children and young persons when they may be in need of care or assistance. It has some concerns about threats to children and young persons' rights to privacy, but considers that the value of collaboration among agencies outweighs some of the risks of information sharing.

Privacy issues

- 4.2. The child's right to privacy as stated in the UN Convention on the Rights of the Child can be at risk when agencies share information. However, NCWNZ responders argued that safety and well-being should be paramount, even if this compromises the privacy of children and young persons who may be in need of care or protection or assistance.

Value of information sharing

- 4.3. Deaths of young children identified as at risk, suggests that accurate information has not been shared across agencies working with relevant whānau/families and this legislation has the potential to address this. There was deep concern about how government agencies operated as independent silos. A NCWNZ member who has worked in this field for over 30 years stated that:

By the time any intervention is contemplated, there have usually been multiple investigations involving multiple agencies and services, at considerable cost. When a family group conference requires the attendance of 23 agencies, the impact of our ineffective silo practices becomes very obvious. Worse than being extremely costly and ineffective, this enhances a culture of professional helplessness, hopelessness, dependency and dysfunction.

Transparency

- 4.4. Responders considered that the sharing process needs to be transparent – what information is currently shared and what will be shared in the future with whom. NCWNZ strongly supports Clause 38 Section 66D which requires a child welfare and protection agency that using information relating to a child or young person to link or analyse data sets of information to notify at least once every year, on an Internet site, the types of information used in the data bases, the sources of this information, the purposes served and the privacy safeguards used.

Consultation processes

- 4.5. There is also strong support for Clause 38 Section 66I which sets out the consultation processes to be used by a child welfare and protection agency with respect to informing the child or young person, or their representative when information is requested or disclosed under Sections 66a to 66F.

5. Transition support

Part 1, Clause 115 386AAA to 386AAG

- 5.1. NCWNZ supports these amendments and offers the following comment on these initiatives.

Transition and assistance up to age 25

- 5.2. There was strong support for young adults being able to live with their caregivers until they are 21 and receive transition assistance until they are 25 years old. This would allow for continuity of care, especially for those children and young people in state foster care. This would mimic what is

happening in many New Zealand families who support young adult family members over these years. It is consistent with findings about brain development in young adults and the time it takes for young adults to mature.

- 5.3. More support for people entering trades or moving straight into the workforce is needed, both at school and beyond. This advice should come from school career advisors or from information on line from knowledgeable people who have chosen a particular career and can advise the young person about it. CVs, sex education, family planning, job-seeking skills, life skills such as budgeting and banking should be taught.
- 5.4. The needs of those with intellectual impairment and their need for education and support about how to live independently were mentioned. The most obvious need would be issues related to employment, housing and counselling.

Gender equality

- 5.5. Most of the responders considered that young adults should be informed about gender equality for both females and males and their respective rights. Some thought that awareness of gender equality should be incorporated into the guidance from advisors and mentors.
- 5.6. Advice should include information about the right to freedom from harassment and other legal rights as employees. There is also a need in this process of transition to ensure there is education around gender equality with respect to personal relationships and family life. Support for young women encountering limiting or sexualized expectations and responses from colleagues or employers in workplace situations were seen as very important. Young women should have an opportunity to understand their rights to equal treatment with men and their protections in New Zealand law. A useful resource is NZ Human Rights A-Z Pre-employment Guide for employers and employees.²
- 5.7. Transition advice between 21 and 25 years should include the opportunity to contact a trusted person at any stage. Particular areas of advice should also include sexual health and well-being, safety (physical, cyber bullying, emotional) and self-esteem.

Funding issues and resourcing

- 5.8. There was very strong emphasis on the need for robust funding for these initiatives for young persons after an order or agreement is made under section 361(a), (c) or (d). A professional working in this field commented:

We have had some successful systems and interventions from organizations that have received short-term or inadequate funding. The Canterbury Development Corporation achieved a great deal of success in finding employment and training for young people, but lost the funding. The 298 Youth Health Centre has helped and probably saved a lot of young people from suicide and sexual exploitation, but it is a struggle to keep it financially buoyant. These two examples are from personal experience.

² <https://www.hrc.co.nz/your-rights/business-and-work/tools.../pre-employment-guide/>

6. Youth Justice

Part 2, Subpart 1, Clause 125

Including 17 year olds in the youth justice system

6.1. There was strong support for including 17 year olds in the youth justice system for these reasons:

- It would make New Zealand practice consistent with the United Nations Convention on the Rights of the Child which New Zealand ratified in 1993 and ensure that New Zealand practice is in line with a number of other social democracies. The Convention defines a child as every human being below the age of 18 years.³
- The most effective responses to youth offending involve a remedial rather than a punitive response. Including more young people in the youth justice system would increase the opportunities for a remedial response to their offending and decrease the chances of them reoffending.
- Young persons over 17 years who are currently not being included in the youth justice system do not receive the forms of assessment that can lead to effective interventions and the development of remedial responses.
- A developmental response is necessary rather than the “recycling” of many young persons through the criminal justice system. It can also identify issues relating to cognitive and emotional development that require attention and support for young people who have offended.
- Young people under 25 years are over-represented in the adult justice system. Thoughtful and strategic responses to their offending will diminish rates of reoffending and avoid the psychological, social and material costs that arise out of imprisonment and reoffending.
- Longitudinal neuroimaging studies show that adolescent brains continue to mature during most people’s 20s and this has implications for policy relating to the treatment of adolescents and young adults.⁴ While there are ongoing debates about the interaction between biological and social determinants of behaviour, increasing the age for young persons to be included in the youth justice system is consistent with recent research findings. Some young people may have been exposed to childhood experiences and the use of drugs that seriously undermine aspects of brain development. Early intervention, rather than imprisonment and association with experienced offenders, may avoid the extensive cost of recidivism and its consequences.

³ UN Convention on the Rights of the Child 1989. Article 1 and Article 40 are particularly relevant to the access by those 17 and younger to the youth justice system. <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

⁴ Johnson, Sara B., Blum, Robert B. Giedd, M.D. (2009) Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy. *Journal of Adolescent Health*, 45(3), 216-221. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2892678/>

Funding and resources

- 6.2. Those supporting the inclusion of 17 year olds in the youth justice system argued strongly for the allocation of resources to implement a remedial and developmental approach to youth offending. Those with experience of work in this sector stated that intention to pursue this strategy was often not associated with the resources necessary to implement the goals of youth justice.
- 6.3. Some NCWNZ branches, members and affiliated organisations thought that 18 years might still be too young to be included in the adult justice system. They argued for inclusion of all young persons under 21. They thought that this would be consistent with defining ‘young persons’ as those under 21 – a definition that appears to be informing decisions about the opportunities for advice and assistance to young persons who have experienced state care. This is consistent with the Age of Majority Act 1970.
- 6.4. Others argued that there is great variability in the maturity of those aged 15 – 18 years and that there was a need for a case-by-case approach. This is consistent with an approach that would require 17 year olds charged with serious offences to be transferred to the adult court on their first appearance in the Youth Court.

7. Conclusion

- 7.1. The NCWNZ Branches, affiliated organisations and individuals who responded to questions about this legislation were broadly in favour of these legislative changes. They particularly supported the following initiatives:
- requirements to improve outcomes for Māori and attention to the principles of the Treaty of Waitangi
 - the strengthening of children and young persons’ participation in decision-making
 - changes with respect to transition assistance and advice
 - extension in the use of Family Group Conferences
 - improving agencies’ collaboration and sharing of information about children and young people
 - lifting the age for young persons to be included in the NZ youth justice system to under 18 years
- 7.2. NCWNZ is concerned about the extent to which there would be adequate resourcing of initiatives associated with the proposed changes. Funding increases are essential if this legislation is to make a difference to the lives of children and young persons who are currently, and in the future, most in need of action that ensures the rights to well-being identified in the UN Convention on the Rights to the Child.
- 7.3. The title for this Ministry was frequently criticised. The Māori title – Oranga Tamariki was supported because it highlights the goal of well-being. The English title – Ministry for Vulnerable Children – was seen as negative and stigmatising. All children are vulnerable, some more than others at particular

times. A Ministry for the Well-being of Children and Young Persons would be preferable or the sole use of Oranga Tamariki to refer to this agency.



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