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S19.05

## **Submission to the Social Services and Community Select Committee on the Oranga Tamariki Legislation Bill**

### **Introduction**

1. The National Council of Women of New Zealand, Te Kaunihera Wahine o Aotearoa (NCWNZ) is an umbrella group representing over 200 organisations affiliated at either national level or to one of our 15 branches. In addition, about 450 people are individual members. Collectively our reach is over 450,000 with many of our membership organisations representing all genders. NCWNZ's vision is a gender equal New Zealand and research shows we will be better off socially and economically if we are 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 Justice and Law Reform Standing Committee and the Parliamentary Watch Committee and is informed by previous consultation and policy developed by the membership of NCWNZ.
2. NCWNZ has a long history of supporting legislation directed at improving outcomes for children and young persons and has recently made related submissions on the Green Paper on Vulnerable Children (2012), the Vulnerable Children Bill 150-1 (2013), the Children, Young Persons and Their Families (Advocacy, Workforce and Aging Settings) Amendment Bill 142-1 (2016), and the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Bill (2017).

### **International Commitment**

3. NCWNZ supports New Zealand's key commitments to children and young people under international law - such as the Universal Convention on the Rights of the Child ("UNCROC"),

the Convention on the Elimination of all forms of Discrimination against Women (“CEDAW”), the Convention on the Elimination of all forms of Racial Discrimination, the Convention on the Rights of Persons with Disabilities (“CRPD”) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In particular, the 2017 Act and this Bill help to ensure that the definition of young person includes 17-year-olds - which is the definition in UNCROC. NCWNZ also recognises that New Zealand has committed to meet the United Nations Sustainable Development Goals: goals 3, 5, 10 and 16 are of particular relevance to this Bill.

4. Thus it is surprising that on reading the Departmental Disclosure document for the Bill it states that the Bill is not giving effect to international treaties<sup>1</sup>. This reflects a broader issue where this knowledge and capacity appears to be missing from Government analysis, NCWNZ notes gender analysis is frequently missing from policy documents and strongly recommends that it be an inbuilt part of the policy design and analysis - not just in the traditional social policy areas but to include economic and environmental policies. NGOs such as the National Council of Women of New Zealand, are well placed to provide this service for Government and to provide training across departments, it was adequately resourced and mandated. Such an approach is consistent with SDG17 - which sees a joint partnership approach (including with civil society) in order to progress or meet the SDG targets.

## Intent of the Bill

5. The stated purpose of this omnibus Bill is to “give full effect to aspects of the Children, Young Persons and Their Families (Oranga Tamariki) Legislation Act 2017 (the 2017 Act) by—
  - a. seeking to ensure that the benefits of the policy to include 17-year-olds in the youth justice jurisdiction are fully realised. It does this by amending legislation to ensure that

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<sup>1</sup> Although this statement is later contradicted within the same Departmental Disclosure document, which notes that: “The treatment of 17-year-olds within the new design of the youth justice system significantly increases the alignment of New Zealand’s justice system to the United Nations Committee on the Rights of the Child (UNCROC). It also responds to a recommendation from UNCROC to raise the age of criminal majority to 18 years (recommendation 45 (b) in the 2016 UNCROC concluding recommendations on NZ’s Fifth Periodic Report).”

the extended youth justice jurisdiction is applied consistently across the justice system. The inclusion of 17-year-olds in the youth justice jurisdiction will take effect on 1 July 2019; and

- b. addressing drafting errors in the 2017 Act, including unintentionally broad provisions relating to interim court orders. It also makes a consequential amendment to the Children’s Commissioner Act 2003 to correct a cross-referencing error.”
6. NCWNZ recognises the vulnerable position of children and young people as both offenders and victims in the criminal justice system, and the need to have a system that recognises evidence showing that young people assess risk differently and are more influenced by peer pressure. A recent *Time* article has cited the research using brain imagery scanning and the work of people like Frances Jensen in her book *The Teenage Brain*<sup>2</sup> and notes that:
    - i. “...the teenage brain is nowhere near fully baked and that the brain’s structure and its effects on development continue into a person’s 20s... It’s not that teens don’t have frontal-lobe capabilities but rather that their signals are not getting to the back of the brain fast enough to regulate their emotions. It’s why risk-taking and impulsive behaviour are more common among teens and young adults. “This is why peer pressure rules at this time of life,” .....
  7. New Zealand has a criminal justice system for young offenders that recognises the vulnerable position of children and young people and:
    - i. “aims to keep children and young people out of the formal criminal justice system, while at the same time holding them accountable and encouraging them to take responsibility for what they’ve done.”<sup>3</sup>
  8. NCWNZ supports the raising of the age of the youth jurisdiction to include 17 years old. NCWNZ also supports the purpose of this Bill, to ensure consistency in the way that young

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<sup>2</sup> *The Teenage Brain : A Neuroscientist's Survival Guide to Raising Adolescents and Young Adults*. By (author) Frances E Jensen , By (author) Amy Ellis Nutt. Harper Paperbacks. January 2016.

<sup>3</sup> <https://www.govt.nz/browse/law-crime-and-justice/courts/how-the-youth-justice-system-works/>

offenders are treated within the different parts of the criminal justice system by using the age of 17 at different stages and forums within the youth justice process.

9. NCWNZ recognises the efforts that the Minister of Justice has made to engage with the public on a different approach to justice through his Criminal Justice Summit and we look forward to engaging with the draft proposals, as they are made publicly available.

### Comments on specific clauses

10. NCWNZ notes that the Explanatory Note states:

- a. “Clause 6(1) and (2) amends clause 4 of Schedule 1AA, which is a transitional provision that was enacted in 2017 but is not yet in force. This transitional provision provides that any defendant aged 17 years in criminal proceedings that are under way in the District Court or the High Court on the commencement date must be dealt with by the court as if the new definition of young person had not come into force.”

11. The amendment in clause 6(1) amends this clause in Schedule 1AA of the Oranga Tamariki Act 1989 by adding in a definition of criminal proceedings. Not by otherwise changing the policy that was set by the previous Government through the 2017 Act. Similar types of amendments are made throughout other clauses of the Bill - for example, clause 11.

12. While the rule of law dictates that laws should not apply retrospectively and that the executive / legislature should avoid undue influence with the role of the judiciary, NCWNZ notes that in this case the young offenders are likely to be better served by having their case referred to the youth justice jurisdiction - or at least to have an option of applying to have their case considered within the youth justice jurisdiction, with discretion granted by the Judge so that the interests of any victims can also be considered. The Committee could consider asking Ministry officials how many young people are likely to be affected by this law.

13. NCWNZ is interested that this policy about existing cases carried over / proposed by the Oranga Tamariki Legislation Bill contrasts strongly with the Government’s policy in the Equal Pay Amendment Bill (refer Schedule 2, Part 1, clause 2), which would automatically

discontinue cases that were before the Employment Relations Authority or Courts if they were commenced before the Bill was enacted. NCWNZ would recommend alignment of approaches regarding existing cases being carried over.

## Conclusion

14. NCWNZ supports this omnibus Bill which will give full effect to aspects of the 2017 Act to ensure that 17 year olds are included in all relevant legislation through amendments to 12 other enactments.



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