



11 February 2022

S22.04

Submission to the Social Services and Community Committee on the Oranga Tamariki Amendment Bill 95-1

Introduction

1. The National Council of Women of New Zealand, Te Kaunihera Wāhine o Aotearoa (NCWNZ) is an umbrella group representing over 200 organisations affiliated at either national level or to one of our 14 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.
2. This submission has been prepared by the NCWNZ Safety Health and Wellbeing Action Hub and the Parliamentary Watch Committee after limited consultation with the membership of NCWNZ.
3. Our submission deals mainly with the changes to the subsequent child provisions, but we also support changes that strengthen the rights of children, parents and whānau.

Executive summary

4. NCWNZ supports the changes to the subsequent child provisions which have disproportionately discriminated against and disadvantaged Māori parents, tamariki, and whānau.
5. We welcome the new child and whānau-centred approach and commitment to Te Tiriti o Waitangi and the genuine partnerships with iwi, NGOs and communities. We are optimistic that, together with cultural and structural change in Oranga Tamariki – and with sufficient financial resources – the Bill will bring long-overdue fundamental change to the country's child protection practice and outcomes.

6. There is an element of risk in the alterations to the subsequent child provisions, and we urge that the changes in Oranga Tamariki practice, especially partnerships with iwi to support parents be appropriately resourced to ensure children are not put at risk.
7. We welcome the provisions which strengthen the rights of children and young people in relation to appropriate communication, consent, and the appointment of child and youth advocates.
8. Given the vulnerability of subsequent children and young people, we wish to see established a system for monitoring and reporting on the impact of this legislation, particularly in relation to the Oversight of Oranga Tamariki System and Children and Young People's Commission Bill¹. We recommend that the Committee ask for more clarity on how the provisions in the Oranga Tamariki Amendment Bill 95-1 will be monitored and reported under the changes proposed in the Oversight Bill.

Recommendation

9. That the Committee ask for more clarity on how the provisions in the Oranga Tamariki Amendment Bill 95-1 will be monitored and reported under the changes proposed in the Oversight Bill.

NCWNZ policy

10. The level of child neglect, statistics of child abuse and numbers of children being killed by parents and carers amount to a national disgrace and represent a deep stain on our nation. In 2021 one child died every 5 weeks as a result of abuse; from 2004 to March 2019 every 8th homicide victim was a child².
11. NCWNZ has a long history of promoting and supporting legislation that seeks to improve the outcomes for children and their families and whānau. Our desire is to see every child thriving, belonging, achieving, and being supported by caring parents, family and whānau and communities. Over the years, NCWNZ has made many submissions³ on this and related topics. Sadly, there has not been any major shift in our child abuse and child homicide statistics, and we consider this a shameful national disgrace.
12. In any legislation, the best interests of the child must be paramount. The individual child should be the focus, given the needs of individual children are diverse and unique. Children should know who they are, where they belong, and who loves and cares for them. Being raised with a strong sense of cultural identity, knowledge of whakapapa and sense of belonging is critical for the child's wellbeing and positive development.

¹ Oversight of Oranga Tamariki System and Children and Young People's Commission Bill, 94-1.

<https://legislation.govt.nz/bill/government/2021/0094/latest/LMS591372.html?src=qs>

² New Zealand Child Abuse Statistics. <https://www.childmatters.org.nz/insights/nz-statistics/>

³ Appendix A: NCWNZ Submissions and NCWNZ. 2022. Submissions [2000-2022].

<https://www.ncwnz.org.nz/submissions>

13. Particularly relevant NCWNZ policy⁴ is:

That NCWNZ ask the Government to ensure that all new legislation affecting children uphold the best interests of the child and to update existing legislation where necessary. 2001. Policy 1.4.4

That NCWNZ as part of its policy affirms its belief that good parenting is crucial to child health and well-being. 1981. Policy 11.1.9

14. We are heartened to see that the vision, purpose, and values set out in the Oranga Tamariki Strategic Intentions 2021-25 document⁵ completely align with NCWNZ policy.

All children are safe, loved and nurtured by whānau, hapū, and iwi, supported by thriving communities.

To ensure that all tamariki are in loving whānau and communities where oranga can be realised. and

We put tamariki first We will challenge when things are not right for the child.

Te Tiriti o Waitangi/Treaty of Waitangi

15. The current system has been an abject failure in protecting children, especially tamariki Māori.

16. We welcome the acknowledgement in the Department Disclosure Statement⁶ (para 8) that confirms partially repealing the subsequent child provisions is consistent with the principles of Te Tiriti and reflects section 7AA of the Act. The Waitangi Tribunal report (WAI 2915)⁷ found that the Crown has continued to breach its Te Tiriti/Treaty obligation to honour the right of Māori to exercise tino rangatiratanga over their kāinga, and taonga by failing to partially repeal the subsequent child provisions.

17. The Waitangi Tribunal's report on Oranga Tamariki highlights the intrinsic racism and "white saviourism" that is part of the existing process and legislation-

From the outset of this inquiry, claimants broadly opposed the subsequent child provisions, arguing they contain harmful presumptions and cause disproportionate prejudice to Māori.

Children's Commissioner, Judge Becroft describes the existence of the second and subsequent child legislation to be 'pernicious' and "organisational racism". "The assumptions in the shorthand second and subsequent child legislation.... I think has significantly affected social work practice, so that it has become the default starting position that when a previous child has been

⁴ NCWNZ. 2012. *115 years of resolution*. https://bit.ly/ncwnz_resolutions_1896-2010

⁵ Oranga Tamariki. 2021. *Strategic Intentions 2021-25*. <https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Corporate-reports/Strategic-intentions/Strategic-intentions-2021-2025.pdf>

⁶ Departmental Disclosure Statement: Oranga Tamariki Amendment Bill. <http://disclosure.legislation.govt.nz/assets/disclosures/bill-government-2021-95.pdf>

⁷ Waitangi Tribunal. 2021. He Pāharakeke, He Rito Whakakīkinga Whāruarua Oranga Tamariki Urgent Inquiry: Wai 2915 Waitangi Tribunal Report 2021. Legislation Direct. https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_171027305/He%20Paharakeke%20W.pdf

removed then it is up to the mother to demonstrate ability to love and safely provide for the child.

18. We are optimistic that the new child and whānau-centred approach and commitment to genuine partnerships with iwi, NGOs, and communities, together with cultural and structural change in Oranga Tamariki – **and** appropriate financial resourcing – will bring long overdue fundamental change to the country’s child protection practice and outcomes.

International Human Rights Obligations

Obligations under United Nations Convention on the Rights of the Child (UNCROC)

19. The departmental Disclosure Statement (para 3.1) specifies how the Bill will increase New Zealand’s alignment with the United Nations Convention on the Rights of the Child (UNCROC)⁸. We warmly welcome this.
20. We further note that the document also states that the Bill does not to give effect to New Zealand action in relation to an international treaty. UNCROC is, strictly speaking, a comprehensive human rights treaty that enshrines specific children's rights in international law. This Policy Disclosure Document, and future ones, should be amended to correct this technical error.
21. We are also pleased to note that the Bill extends Aotearoa New Zealand’s compliance with the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)⁹, particularly Article 23, which focuses on eliminating discrimination based upon disability relating to family matters, including parenthood.

Comment on specific clauses of the Bill

Part 1 Amendments to principal Act

22. We support the partial repeal of the subsequent child provisions, including new section 18B which retains the existing provisions for anyone who has been convicted of the murder, manslaughter, or infanticide of a child or young person who was in the person’s care or custody at the time of the death.
23. We note, however, the element of risk in this new approach. It is imperative that Oranga Tamariki, iwi, other agencies, and NGOs are given the appropriate resourcing to ensure the protection and wellbeing of children and to support parents to be successful in their parenting roles.

⁸ United Nations Human Rights. 1989. *Convention on the Rights of the Child*.

<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

⁹ United Nations. Department of Economic and Social Affairs Disability. 2006. *Convention on the Rights of Persons with Disabilities*. <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/convention-on-the-rights-of-persons-with-disabilities-2.html>

24. We are encouraged by the recent shift in approach set out in the Cabinet Paper from Minister Davis (November 2021) *that Oranga Tamariki is developing alternate mechanisms to ensure the safety of future children, including the development of whānau-centred supports for parents who are not in a position to provide long term stability for their tamariki.*
25. We acknowledge that in Budget 2019, \$1.1 billion was invested over four years to enable the transformation of the Oranga Tamariki operating model. The five key initiatives funded include a new intensive response function and improve outcomes for tamariki and rangatahi Māori.
26. The Cabinet Paper of May 2021 reported Progress on developing 11 whānau care partnerships with iwi and kaupapa Māori organisations, the setup of intensive intervention services in four areas, the establishment of 42 Kairaranga ā-whānau positions to enhance whānau participation in decision-making, build local cultural competency, and connect Oranga Tamariki with iwi and Māori NGOs, and 8 strategic partnership agreements with iwi and Māori organisations.
27. The report showed early signs of improvement for tamariki Māori. For example, there has been a marked reduction in the number of tamariki Māori entering care and a reduction in the number of reports of concern for tamariki Māori. The Cabinet Paper, however, also reported delays in these initiatives along with slower uptake of services and lower expenditure due to COVID-19, as well as the additional time needed to build strong partnerships.

Despite the progress made to date to establish Oranga Tamariki and change how it operates, there are still significant and serious concerns that need to be addressed in order to improve outcomes for children and whānau (para 34).

28. The departmental Disclosure Statement¹⁰ (para 7) accompanying the Bill reinforces this concern.

There is a risk that operational policy and practice guidance may not be sufficient to ensure that we are consistently and adequately:

- responding to the needs of subsequent children
- recognising progress and change when a subsequent child comes to our notice.

29. Robust monitoring of implementation and outcomes is critical. We are confused by the statement in para 2.6:

*That there will be **no impact** on the effectiveness of the Bill by*

- (a) the level of effective compliance or non-compliance with applicable obligations or standards*
(b) the nature and level of regulator effort put into encouraging or securing compliance.

¹⁰ Departmental Disclosure Statement: Oranga Tamariki Amendment Bill.
<http://disclosure.legislation.govt.nz/assets/disclosures/bill-government-2021-95.pdf>

30. This seems to conflict with the commitment in the Oranga Tamariki Future Direction Action Plan on performance reporting and compliance with National Care Standards¹¹.

Related legislation: Oversight of Oranga Tamariki System and Children and Young People's Commission Bill 94-1

31. We are deeply concerned about the proposals in the concurrent Oversight of Oranga Tamariki System and Children and Young People's Commission Bill. We share the concerns of many other NGOs and children's advocates that the Bill will create a complex and confusing system between the "independent" monitor in a government agency, the Ombudsman, Oranga Tamariki, and the proposed Children and Young People's Commission. We consider that such a complex, confusing system will instead weaken monitoring, not be seen as independent, not be trusted and will further discourage young people, parents and whānau from making complaints.

32. The current role of the Children's Commissioner is a highly respected and trusted truly independent voice and advocate for children and young people. Successive holders of that position have spoken "truth to power" and important changes have been made. The current proposal for a Commission will fragment and dilute that voice – there is not even a proposal for a lead Commissioner.

33. We strongly urge the Committee to recommend that the current position and role of Children's Commissioner be retained.

34. We recommend that the Committee ask for more clarity on how the provisions in the Oranga Tamariki Amendment Bill 95-1 will be monitored and reported under the changes proposed in the Oversight Bill.

Clause 4 Section 11 amended (Child's or young person's participation and views)

35. We welcome this strengthening of children's and young people's rights by explaining decisions to them in a manner appropriate for their age and level of understanding.

Clause 5 Section 17 amended (Investigation of report of ill-treatment or neglect of child or young person)

36. The amendment changes the wording of Section 17 from "Investigation of report of ill-treatment or neglect of child or young person" to "concerns about safety or well-being".

37. We have concerns about this change. We assume the intention is to indicate a broad definition of child abuse and neglect which allows people to raise issues without having to specify exactly what is happening. This could then lead to more contact with the family to make sure all is well, and perhaps put in place more learnings for the parents. However, we would not like this to be a "sugar coating" of what is actually happening to children.

¹¹ Department of the Prime Minister and Cabinet. 2019. *Child and youth wellbeing: current programme of action*. <https://childyouthwellbeing.govt.nz/sites/default/files/2019-08/current-programme-action-child-wellbeing-strategy-aug-2019.pdf>

Clause 17 Section 144 amended (Agreement not to be made without consent of child or young person)

38. We support new section 144(1) that provides that certain agreements may not be made unless the child or young person concerned consents and changes the requirement for written consent to a requirement for recorded consent.

Clause 32 Section 248A amended (Chief executive to appoint youth advocate to represent child or young person if offence punishable by imprisonment of 10 years or more)

39. We strongly support the provision that the chief executive must appoint a youth advocate for a child or young person at the family group conference if the child or young person would be without legal representation at the family group conference.

Conclusions

40. NCWNZ broadly welcomes this Bill as part of a suite of legislation and other measures to fundamentally shift culture and practice in Aotearoa New Zealand's child and youth protection system.

41. We remain concerned, however, that the Bill will not achieve its aims due to:

- Insufficient financial and other resources
- Insufficient operational policy and guidance
- A complex and confusing oversight, monitoring, and reporting system split between several entities.
- Insufficient regulation of compliance with the legislation.

42. We request that these critical issues will be addressed during the Select Committee proceedings on this and other relevant Bills, in particular the Oversight of Oranga Tamariki System and Children and Young People's Commission Bill.

43. We would be pleased to make an oral submission to the Committee.



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Appendix A: NCWNZ Submissions

[S19.05](#) Oranga Tamariki Legislation Bill

[S17.02 Oral](#) Submission Children, Young Persons and Their Families (Oranga Tamariki) Legislation Bill

[S17.02](#) Children, Young Persons and Their Families (Oranga Tamariki) Legislation Bill

[S14.14](#) Children's Action Plan - Approved Information Sharing Agreement

[S13.19 oral](#) Submission Vulnerable Children Bill

[S13.19](#) Vulnerable Children Bill

[S12.04](#) Green paper on Vulnerable Children

[S03.72](#) Care of Children Bill

[S01.45](#) Agenda for Children Discussion Document

[S00.59](#) Children, Young Persons and Their families Bill