

Oranga Tamariki Act Review



New Zealand Council Of
Christian Social Services

August 2022

Contact Name:	Nikki Hurst
Organisation Name:	New Zealand Council of Christian Social Services (NZCCSS)
Organisation Description:	The New Zealand Council of Christian Social Services (NZCCSS) welcomes this opportunity to provide feedback to Oranga Tamariki to inform changes to the Oranga Tamariki Act. NZCCSS has six foundation members: the Anglican Care Network, Baptist Churches of New Zealand, Catholic Social Services, Presbyterian Support and the Methodist and Salvation Army Churches. Through this membership, NZCCSS represents over 250 organisations providing a range of social support services across Aotearoa. We believe in working to achieve a just and compassionate society for all, through our commitment to our faith and Te Tiriti o Waitangi. Further details on NZCCSS can be found on our website https://nzccss.org.nz/

Tirohanga Whānui | Overview

NZCCSS welcome the opportunity to provide feedback to inform review of the Oranga Tamariki Act. We note that any changes must be both child-centred and informed by genuine, on-going, engagement with tamariki and rangatahi.

We advocate for the review to be guided by the following principles:

1. Safety of the Young Person

The safety of young people in care is of paramount importance and their rights must be prioritised in any legislative change made by Oranga Tamariki. This is reflective of the Crown's commitment to Te Tiriti and its responsibilities under the United Nations Convention on the Rights of the Child. We note the serious trauma and harm that has been caused to young people through deficiencies in the Oranga Tamariki system historically and the diminishing powers of oversight and monitoring of Oranga Tamariki introduced through the Oranga Tamariki Oversight Bill. We support moves towards legislating approaches that are evidence based, fit for Aotearoa, and increasingly trauma-informed, in contrast to those which diminish the mana of tamariki and rangatahi. We advocate for partnership, transparency and accountability throughout the process of determining how such approaches will be

embedded in legislation and applied in practice, recognising the wisdom, aroha and contribution of the community in ensuring the best interests of children are upheld.

2. Enaction of te Tiriti o Waitangi:

We advocate for the Crown's responsibilities under Te Tiriti to be firmly upheld through this process. First and foremost the recognition of tamariki and rangatahi as taonga under Article 2 must be considered as a guiding principle of these amendments. As such the rights of tamariki and rangatahi must be upheld and their experiences and insights valued in any process which affects them. We recognise also the rights of whānau, hapū and iwi to exercise tino rangatiratanga over such taonga, maintaining their rights to connection to, and protection of, young people within the Oranga Tamariki system. Further, we advocate for enaction of Article 3, in which tamariki and rangatahi rights are upheld, as individual citizens of the Crown. Enaction of the articles of te Tiriti o Waitangi would ensure the rights of children and young people to safety and care are met.

3. Cultural Safety:

The rights of children and young people to protection and identity under the United Nations Convention on the Rights of the Child (Articles 3 & 8) must be paramount. This includes are right to their cultural identity – across all markers of culture including but limited to:

- Ethnicity
- Gender
- Religion / Spirituality
- Age
- Ability
- Economic Status
- Sexuality

Those working alongside tamariki and rangatahi must be required to be broadly and specifically culturally competent. In particular, in relation to ethnicity, ability, age and gender / sexuality. The time for those who are trained to work with adults being co-opted to work with our taonga is past, as is the time for those unable to practice from a deep understanding of complexity and intersections of culture. This lens must apply structurally as well as operationally.

4. Safety of other Tamariki and Rangatahi/Caregivers:

The safety of other tamariki, rangatahi and kaimahi is critical to the effectiveness of care and must also guide legislative changes and practice. Tamariki, rangatahi and kaimahi are at risk of being traumatised by mana-diminishing practices towards a child or young person and as such we support the general direction of these proposed changes acknowledging that they not only seek to provide the best outcomes for a tamariki or rangatahi, but for those who are part of their care also. We advocate for training and support for kaimahi, from a strong evidence base, to ensure that new trauma-informed and therapeutic approaches to care are effective and accessible for those in roles of responsibility. We acknowledge the move by Oranga Tamariki away from institutional residences towards more therapeutic settings and observe that the application of these amendments will in part guide the design of new residences to ensure the best chance of their successful application. We seek clarity as to how existing or continuing residences will be modified to ensure that non-traumatic approaches to secure care/seclusion/physical restraint etc. can be effectively utilised in these settings. We advocate for rigorous, independent monitoring of changes to practice to ensure the continued safety and input of caregivers and tamariki and rangatahi.

5. Consistency and Clarification:

The adoption of more culturally empowering and mana enhancing approaches to care and protection must be applied consistently and provide clarity for all involved. This includes the empowering of parents and whānau to understand and uphold their rights to connection with tamariki, and the provision of adequate and consistent guidance, training, and support for kaimahi and other relevant professionals involved in the care of children. We note this also extends to ensuring consistency of terminology and definitions across legislation and contexts and/or clear rationale where there is a unique set of circumstances for a specific audience or context. We seek greater clarification of specific amendments per the table provided below.

Taunakitanga | Recommendations

Information Sharing:

In the process of information sharing, sharing with iwi and Māori providers can be beneficial however must not come at the expense of the privacy, safety or development of tamariki/rangatahi. While iwi knowledge of young people can be beneficial, more important is the knowledge of the tamariki / rangatahi of their own identity and place in the world. Recognition of the right to such information as taonga is a significant step towards Crown adherence to Te Tiriti o Waitangi, and an overarching guideline with detailed information on how such information can and should be shared is necessary.

Rights, Protections, Safeguards and Mitigations

for Use of Powers in Residential Settings:

Guidance and training in restraint which limits traumatisation or re-traumatisation is necessary. There is significant expertise available in both physical and verbal de-escalation as well as restraint and this training is readily available in Aotearoa. An environment where untrained kaimahi are forced to restrain tamariki and rangatahi puts the safety of all at risk, especially that of tamariki and rangatahi.

Additionally, the guidelines around when and where restraint may be used must be prescriptive and cover all areas and sectors of residential care. Kaimahi must understand where and when it is necessary and legal to restrict any freedoms to tamariki and rangatahi, and tamariki/rangatahi must be informed and provided with accessible information around these guidelines. The Ministry of Health is [actively working](#)¹ towards elimination of restraint in other residential cases, and NZCSS firmly holds the position that Oranga Tamariki should follow this lead.

Powers of Search:

Most stakeholders support the removal of strip searching in the majority of cases. This is consistent with the objective of protecting tamariki/rangatahi as paramount, as strip searching is demeaning and traumatising especially where no prohibited items are found. Where strip searches and other

¹Ministry of Health, (2021). Sector Guidance for Ngā Paerewa Health and Disability Services Standard (NZS 8134:2021). Available at: <https://www.health.govt.nz/our-work/regulation-health-and-disability-system/certification-health-care-services/services-standard/resources-nga-paerewa-health-and-disability-services-standard/sector-guidance-nga-paerewa-health-and-disability-services-standard-nzs-81342021/part-6>

invasive methods of searching are necessary to protect the safety of kaimahi and other tamariki and rangatahi, this must be done in both a culturally safe and gender appropriate manner, meaning that the young person is treated with the most respect possible.

Powers of search must not extend beyond the premises in which the tamariki and rangatahi is housed. Although these young people are often in exceptional circumstances, it is imperative that they are allowed some semblance of normalcy within their lives. Young people within this system require care and a pathway to reintegrate into the outside world as healthy, well-adjusted adults. Searches outside of their premises impinge on the possibility of this reintegration significantly by institutionalising young people and ingraining distrust and trauma.

Topic	Issues in Residential Care: Secure Care	Issues in residential care: Response to challenging behaviour, including use of physical restraint	Special guardianship orders	Voluntary care agreements
Legislation	ss367-383 of the OT Act 1989 Part 5 of the OT (Residential Care) Regulations 1996 and regs 54 and 56	s384 of the OT Act 1989 Part 2 of OT (Residential Care) Regulations 1996	Subsections 113A & 113B of The OT Act 1989	Section 140 of The Oranga Tamariki Act 1989
Questions	<p>What are trauma-informed alternatives or approaches to secure care and where have these been used successfully?</p> <p>Where is there evidence of secure care being eliminated in other countries and what can we apply from these learnings?</p> <p>What communication with parents will occur re the use of secure care?</p> <p>What input do whānau/family have into the use of secure care?</p>	<p>Where is there evidence of physical restraint being used in a manner that is trauma-informed and therapeutic?</p> <p>What alternative approaches to ensuring the safety of tamariki would be employed if statutory authority was diminished to match that of parents?</p>	<p>This article states that 75% of Special Guardians for Māori tamariki are someone within their wider whānau implying that their connection to whānau has been retained but there are issues in the power dynamic between that whānau member and the parent(s). How will this legislative change improve this outcome?</p> <p>https://www.rnz.co.nz/news/te-manu-korihi/395036/legality-and-disconnection-between-maori-kids-and-whanau</p>	<p>How will support for parents seeking voluntary care be increased/improved to increase the likelihood of their being able to resume care of their child?</p> <p>How will consistency of care be prioritised in this approach?</p>
Benefits	<p>Focus on elimination of secure care which has shown to be harmful to young people in care.</p> <p>Consistency of how children are treated with regards to secure care/seclusion across a range of spectrums and legislation.</p>	<p>Focus on reducing use of physical restraint.</p> <p>Greater clarity about the use of physical restraint is likely to lead to a more consistent approach.</p> <p>Flexibility for differing approaches in different facilities i.e. youth justice/care</p>	<p>Greater application of te Tiriti and Te Ao Māori principles in legislation.</p> <p>Retention of whanaungatanga responsibilities of family/whānau/hapū/iwi and child's connection to whānau and whakapapa</p>	<p>Greater accessibility of voluntary care where the parent is unable to provide assurance that they will resume care at the end of the agreement period.</p>

<p>Issues</p>	<p>Safety concerns for other tamariki in a facility. Secure care has been shown to have a negative impact on staff also – how will staff be safeguarded in the use of trauma-informed approaches to secure care? Consistency of application across the spectrum of residences. Potential for differing approaches in youth justice/care facilities.</p>	<p>Safety concerns for other tamariki and kaimahi in a facility. Consistency of application. Will these changes lead to greater protection of tamariki? Greater clarity re rationale for statutory authority that differs/matches that of parents needed.</p>	<p>Stability and safety for tamariki where it is unlikely a child will be returned to the parent’s care – how will this be balanced with the right to connection with family Greater accessibility of the SGO process needed for whānau to engage/oppose</p>	<p>Consistency of care for tamariki. Extended care agreements may lead to less permanency for tamariki. Consistency of practice – how will accessibility of extended care agreements be ensured through training and accountability. Adequate notice periods are needed to facilitate planning and consistency of care for children. Access to secure residences due to limited availability.</p>
----------------------	--	--	---	--

Topic	<u>Residential Care Settings</u>	<u>Authority to restrict freedom of movement of freedom of liberty</u>	<u>Children and young people sentenced to imprisonment in the adult jurisdiction and detained in OT residences</u>	<u>Review of provisions in the OTA for the remand of a Young Person by the Youth Court</u>
Legislation	Oranga Tamariki Act 1989 s 364	OTA s367-383 (for s364 residences) OTA s238(1)(d) for rangatahi on remand	Corrections Act 2004 s34a	OTA s238(1)(a)-(d)
Questions	What powers should be implemented in different kinds of care residence? How will the use be monitored and approved for each client or residence?	How will different forms of residence be approved and equipped for detention? Who will oversee and approve the rationale for detention?	Which set of care and provision requirements conclusively applies to s34a children and young persons? Are these individuals under the care of OT or Corrections?	Who will be assessing the risks presented to and by the young person in remand to determine the appropriateness of their remand location? Given the acknowledgement of the complex needs of most young people in remand, will this be integrated into support services while in remand?
Benefits	Active consistency or guideline assessment and creation for each residence type	Clarification around definition and application	Confirmation of s34a cohort's care lies primarily within the scope of OT and in consistency with the OTA – they should not be managed as 'prisoners'	Seeking to minimise the impact of 'criminal contamination' on young people Acknowledging the strong likelihood of young people in remand having complex needs
Issues	Varied threshold suggestion leaves area for ambiguity and personal interpretation	Many categories of detention cases being evaluated under the same structure – can therapeutic detention be ethically managed in the same context as punitive? Will TRCs be appropriately equipped and funded to align infrastructure with new guidelines	Issues in regard to mixed-allocation residences where the presence of s34a individuals may impact other residences. Categorisation of s34a cohort as such reduces access to rehabilitation programmes – new settings must ensure this is not persistent	Management of risks to whānau and community from young people on remand, especially in regard to bail breaches Acknowledges lack of resources for chronic and complex cases – how will new settings improve this?

Topic	Information Sharing with iwi and other Māori Providers	Use of Powers of Restraint	Searches
Legislation	Oranga Tamariki Act 1989 s66		
Questions	How are/will those receiving information be vetted for the safety of those in care?	How sufficient and consistent is the training for kaimahi authorised to use restraint?	<ul style="list-style-type: none"> • How consistent is the current guidance around usage of strip-searches?
Benefits	<p>A consistent recognition of information as taonga provides for a more conducive environment to te Tiriti compliance.</p> <p>As the majority of tamariki/rangatahi in Oranga Tamariki care are Māori, cultural competence is enhanced throughout the system.</p> <p>More widely shared information can provide for better practice moving forward as trends are seen and patterns emerge.</p>	Powers of restraint allow for safety to be attained for kaimahi and tamariki and rangatahi in dangerous situations.	<ul style="list-style-type: none"> • Strip searches have the potential to uncover substances and weapons that pose a threat to both tamariki and rangatahi and kaimahi.
Issues	With more widely shared information there comes a higher risk for individuals. As minors those in care have no say in where and when information is shared about them.		<ul style="list-style-type: none"> • Consistency around the necessary conditions of strip searches is necessary to avoid overuse. • Use of search powers outside of residences are unnecessary and concerning.