Oranga Tamariki Amendment Bill
Partial repeal of subsequent-child provisions
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New Zealand Council Of Christian Social Services

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Ko wai au | Who we are:	The New Zealand Council of Christian Social Services (NZCCSS) welcomes the opportunity to provide feedback on Oranga Tamariki Amendment Bill. 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 www.nzccss.org.nz.

Tirohanga Whānui | Overview

We support the kaupapa to partially repeal the subsequent child provisions set out in sections 14(1)(c) and 18A to 18D of the Oranga Tamariki Act and the repeal of the Section 66D dataset provision.
We are seeking greater clarification of proposed amendments of sections 258 and 261 relating to family group conferences.

NZCCSS believes the repeal of the subsequent child provisions will create a more equitable approach to assessing the safety of subsequent children, whilst still maintaining sufficient safeguards to protect at-risk tamariki. As part of this repeal, we urge government to both continue, and increase, investment in Māori-led approaches to supporting whanau, recognising the high representation of Māori in child-removal statistics and Oranga Tamariki's commitment to enact Te Titiri o Waitangi.

Our main points are:

1. A more equitable approach to assessing the safety of a subsequent child

NZCCSS believes the partial repeal of the subsequent child provisions will result in more equitable practice.

2. Balance immediate safety with longer-term outcomes for tamariki

We note the shift in social work practices that have in part resulted from these provisions.

3. Increase provision of mana enhancing and Māori-led services

NZCCSS notes the government's investment in Tiriti-honouring and mana-enhancing service provision and advocates for increased investment in this area.

4. Clarification of proposed amendments to sections 258 and 261
NZCCSS believes the current language relating to family group conferences in these proposed amendments is too ambiguous and requires greater clarification.

5. Dataset provisions
We support the proposed repeal of the data-set provisions set out in Section 66D.

Taunakitanga | Recommendations

We raise the following points and recommendations for consideration:

1. A more equitable approach to assessing the safety of a subsequent child

NZCCSS supports the repeal of the subsequent-child provisions for parents who have had a previous child permanently removed from their care. We believe the repeal of this provision supports a more equitable approach to the care and protection of subsequent children, while maintaining sufficient safeguards within the existing legislation to enable the identification of risk for a subsequent child. NZCCSS is concerned that these provisions and their interpretation in practice by Oranga Tamariki have been shown to disadvantage parents and influence care and protection practice more broadly to the detriment of children and whanau.

The subsequent-child provisions were introduced in July 2016 as part of a raft of changes designed to address New Zealand's shocking child abuse statistics and ensure greater care and protection for children in Aotearoa. These provisions relate to parents who have previously had a child removed from their care, and where there no reasonable prospect of the child returning into the parent's care. The subsequent child provisions require that a safety assessment for any subsequent child be conducted by a social worker. If the social worker is satisfied that the parent is unlikely to inflict or allow similar harm on a subsequent child they can apply to the court for a 'Confirmation of Decision Not to Apply for a Care or Protection Order'. If the social worker is not satisfied that the child will be safe with the parent, they must apply for a care and protection order for that child. The provisions do not require a family group conference be held before an application is made to the court. (Waitangi Tribunal, 2021, p. 115)

The subsequent child provisions are one of very few aspects of our legal framework that operate on the presumption of guilt. Guidance provided to social workers on the use of these provisions noted *'it is assumed any subsequent child these parents are caring for is in need of care or protection'* ((Office of the Ombudsman, 2020, p. 71)) The legislation has been fraught in practice due to the failure of Oranga Tamariki to ensure its policies and practices align with the requirements of these provisions. (Office of the Ombudsman, 2020, pp. 21,26). In practice, the onus of proof has been on the parent to prove they are fit to care for their child, with parents being responsible for gathering information and evidence of change, rather than the social worker being responsible for proving the child is unfit. (Office of the Ombudsman, 2020, p. 71) This has been found to be inconsistent with the legislative requirements and *"highly problematic for parents who struggle to advocate for themselves"*. (Office of the Ombudsman, 2020, p. 21).

Further critique of practice relating to these provisions notes the failure to adequately recognise the responsibility of Oranga Tamariki to '*facilitate advocacy and provide support*' to parents throughout

the subsequent child assessment process. (Office of the Ombudsman, 2020, p. 71). Parents report fear and distrust of the Oranga Tamariki system, maintaining that "'Statutory social workers have all the power and control'". (Office of the Children's Commissioner, 2020, p. 84) Research conducted by the Children's Commissioner has highlighted the imbalance of power mothers and whanau experience in their interactions with the care and protection system and as a result, their loss of hope in their ability to keep or regain custody of their child.

> *"They talked about their efforts to make positive change for their tamariki, and how those changes have not been recognised, by Oranga Tamariki or their previous Child, Youth and Family social workers, and decisions were not revisited."* (Office of the Children's Commissioner, 2020, p. 19).

We note that parents who have a child removed typically have a high need for support due to experiencing a range of complex issues including poverty, housing instability, and for some addiction and/or mental health challenges. (Office of the Children's Commissioner, 2020) Parents may have escaped a violent relationship which has led to the previous removal. (Oranga Tamariki, 2020) Ensuring they have adequate support and advocacy throughout the assessment process is critical to both upholding their right to defend their ability to care for a subsequent child and ensuring an accurate assessment of the child's safety. NZCCSS is concerned that the voices of parents and whanau are not heard through the assessment process and decisions are being made to remove children without a thorough assessment of their safety undertaken.

Recommendation Proposal 1: NZCCSS supports the removal of this provision in the hope that it will result in a more equitable balance of power between Oranga Tamariki and parents who have had a children removed from their care.

NZCCSS supports the retaining of the subsequent-child provisions as they apply to parents with a conviction relating to the murder, manslaughter, or infanticide of a child in their care. We believe such convictions deem these provisions necessary for the protection and wellbeing of tamariki and their whanau.

2. Balance immediate safety with longer-term outcomes for tamariki

Whilst these provisions relate to a small population of children, the rationale behind this piece of legislation is thought to have influenced culture and practice more broadly within Oranga Tamariki. ((Office of the Children's Commissioner, 2020, p. 89)

It appears that the subsequent-child provisions have contributed to a trend in social work practice that focuses on the immediate safety of a child at the detriment of the child or a subsequent child's long term wellbeing. This has been evidenced in the application of the subsequent child provisions in practice and the recent increase of urgent 'without notice' removals taking place under Section 78 of the Oranga Tamariki Act, particularly in the 0-3 month old, Māori population, where engagement with whanau has not occurred prior to an uplift. (Office of the Ombudsman, 2020, pp. 161-162) (Office of the Children's Commissioner, 2020, p. 89)

NZCCSS is concerned at the lack of early engagement with parents and whanau prior to the uplift of a child noted in the reports published by the Waitangi Tribunal and Ombudsman (Waitangi Tribunal, 2021) (Office of the Ombudsman, 2020). NZCCSS is also concerned that Oranga Tamariki staff have received insufficient training and guidance on the use of powerful pieces of legislation such as the subsequent-child provisions and Section 78 of the Act. (Office of the Ombudsman, 2020, p. 194)

An inquiry undertaken by the Ombudsman into the removals of 74 pēpi between 2017-2019 found that Section 78 uplifts were occurring in part due to a lack of understanding of, and compliance with, the subsequent child legislation among Oranga Tamariki staff. The removal of a previous child was used as evidence to support the need for a Section 78 urgent uplift, yet the manner in which this occurred and the failure to follow the appropriate process meant that parents were generally not notified of the uplift and did not have the opportunity to defend themselves before the child was removed. Nor was there an opportunity to engage more broadly to seek care for the child within the whanau. Poor planning and capacity issues were also noted among the factors contributing to an increase in urgent uplifts, the result being a failure to engage whanau and assess all options for the child before they are removed from care. (Office of the Ombudsman, 2020, p. 125)

The trend of increasing urgent uplifts observed in recent social work practice is particularly concerning given the age of the pēpi at the time of removal, acknowledging the importance of these early years and the impact of trauma within that timeframe on child development and attachment. (O'Neill & Younger, 2021) The removal of a child is a highly traumatic experience for both the parent(s) and pēpi. International research has shown that mothers who have a child removed from their care experience incredible grief, receive limited to no support following the removal of a child to process their grief and address the causes for the child's removal, and often go on to have subsequent children as a response to the grief they are experiencing. (Oranga Tamariki, 2020, pp. 14, 42).

NZCCSS views the apparent lack of support for parents following the removal of a child as concerning and short-sighted. Greater focus on early intervention and support for parents to address underlying issues such as poverty, mental health, addiction etc. is required if we are serious about the longer-term outcomes for children at risk. Unfortunately, the assumption of guilt underlying the subsequent child provisions creates an environment where parents may be afraid to seek help when needed, for fear their requests will be used against them when assessing the safety of their child.

It is unfortunately ignorant to assume that a child's longer-term outcomes will be more favourable if placed in state care. The State of Care report (Office of the Children's Commissioner, 2015, p. 5) notes that,

> *"We don't have enough information to say conclusively whether children are better off as a result of state intervention, but the limited data we do have about health, education, and justice outcomes is concerning."*

Research indicates that children in state care are more likely to experience poor educational and mental health outcomes, experience issues relating to the stability of placements and lack support in leaving care. (Atwool & Fernandez, 2013). The recent Royal Inquiry into Abuse in Care estimates that between 16% and 38% of children or young people in state care during the period 1950 – 2019 were abused. (Martin, Jenkins & Associates Limited, 2020, p. 28). Oranga Tamariki currently estimates this figure at 7-10% of children in state care annually. (Parahi, 2019) We note the generational impact of state care evidenced in that 48% of pregnant women whose pēpi Māori were taken into State care before birth had been in State care themselves. (Office of the Children's Commissioner, 2020, p. 98).

NZCCSS is concerned at the trend to remove children without sufficient engagement with parents and whanau, recognising that being in state care also puts children at risk. We urge the government to deliver on its commitment to develop *'new models of intensive intervention and early intervention to prevent children and young people entering State care'* referred to in The Child & Youth Wellbeing Strategy (The Child & Youth Wellbeing Strategy, 2019, p. Section C).

Recommendation Proposal 2: NZZCCSS recommends Oranga Tamariki invest more heavily in early engagement and support for parents and whanau where a child has been removed or is deemed at risk.

3. Increase provision of mana enhancing and Māori-led services

NZCCSS believe there is a need to both address issues of institutional racism inherent within care and protection social work and invest more heavily in the provision of mana-enhancing services for Māori who interact with the care and protection system. Institutional racism is in breach of Tiriti commitments, human rights and is undermining efforts to work effectively with parents and whānau for the benefit of tamariki.

There are clear inequities between rates of Māori and non-Māori pēpi being taken into state care and high rates of unsubstantiated findings of abuse among Māori pēpi. We note the overrepresentation of tamariki Māori who have been subject to declarations they are in need of care or protection on the basis of being a subsequent child. (Oranga Tamariki, 2020, p. 12) Further, evidence has shown that the subsequent child provisions have contributed to social work practice that is discriminatory towards Māori. Former Children's Commissioner Andrew Becroft's comment that these provisions were *'buying a fight with Māori'* (Kirk, 2017), has been borne out of the *'mutual mistrust and poor relationships between caregivers and Oranga Tamariki'* which have underpinned many situations of child removal. (Oranga Tamariki, 2020).

NZCCSS notes concurrent efforts to build partnership with Māori in accordance with Section 7AA of the Act. We acknowledge the impacts of intergenerational trauma that have occurred because of colonisation and the need for Oranga Tamariki to enable Māori to re-establish *'the honour and status of our children'* (Gabel, 2021, p. 8).

NZCCSS would further make the point that far more education is required of social workers and the wider workforce operating in this space, to ensure a deep understanding of ethical, safe, child-centred practice. It is increasingly clear that there is a need for graduates who specialise in working alongside tamariki and whānau, and are able to do so in mana-enhancing and Tiriti honouring ways, underpinned by critical thinking and a firm evidence base. It is no longer acceptable to create lower qualified, more poorly paid roles to back-fill gaps in core practice.

Recommendation Proposal 3: We urge government to increase investment in the provision of services that are by Māori, for Māori to address issues relating to the safety of tamariki in Aotearoa.

4. Greater transparency and clarification of terminology required

We are concerned about the use of ambiguous language in the proposed amendments to sections 258 and 261 of the bill and request that greater clarification of the terminology *'or is in need of assistance'* is provided.

The risk with such terminology is that it leaves defining the nature of *'in need of assistance'* subjective to a range of parties. The Ombudsman's review of the use of Section 78 of the Oranga Tamariki Bill (without notice uplift) provides an example of insufficient guidance for Oranga Tamariki staff on the use of such legislation, raising questions as to the likelihood of this clause being interpreted and applied consistently and without discrimination. (Office of the Ombudsman, 2020)

Further, the Bill currently refers to '*family group conference'*. We seek clarification as to whether references to Family Group Conference in the Bill should also recognise the Hui ā whānau approach being rolled out by Oranga Tamariki, to better reflect partnership with Māori.

Recommendation Proposal 4: We request greater clarity with regards to the terminology used in the proposed amendments to Sections 258 and 261.

5. Dataset provision

NZCCSS supports the repealing of the redundant data-set provisions set out in Section 66D of the Act. We maintain that data sharing between government and non-government agencies is useful for enabling more effective support for tamariki and their whanau.

Recommendation Proposal 5: We recommend the repeal of the data-set provisions in Section 66D.

Kupu Tautoko | References

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