



New Zealand Council Of  
Christian Social Services



**Submission on the Children, Young Persons, and Their Families (Oranga  
Tamariki) legislation Bill**

**15 February 2017**  
**New Zealand Council of Christian Social Services**  
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***“Let the children come to me; do not hinder them, for to such belongs the kingdom of God. Truly, I say to you, whoever does not receive the kingdom of God like a child shall not enter it. And he took them in his arms and blessed them, laying his hands on them”.***

[Mark 10-13]

The following is a joint submission to the Social Services Committee by Te Kahui Atawhai O Te Motu (TKAM) and the New Zealand Council of Christian Social Services (NZCCSS).

TKAM and NZCCSS formed a strategic alliance in 2014 to work together for the empowerment and holistic wellbeing of whānau, hapu and iwi, along with the right of poor and vulnerable New Zealanders to social justice and compassion.

Both our respective agencies share the government’s concern for children and young people whose own parents struggle to parent safely. Collectively, we have a long history of working alongside such vulnerable families/whānau, some known to child, youth and family.

This submission draws our collective knowledge and expertise about what supports vulnerable children and young people and their families/whānau to address underlying issues that impede the ability of the whole family/whānau to thrive and live independently.

During our consultation process on this bill we gave consideration to four key questions:

1. How will this Bill make a difference to the lives of the children and young people at the heart of this legislation? And in particular, Māori tamariki and rangatahi?
2. How will this Bill support families/whānau to care safely for their children and young people?
3. How does the Bill retain the learnings of Puaotū-Atatū that were reflected in the 1989 Act and that came out of a robust consultation process with Māori?
4. To what extent does this Bill address the association between poverty, inequality and child neglect that underpins the social context in which parents often struggle to parent safely?

The following submission is the outcome of this process and comprises two parts. The first section sets out four key areas of concern to our respective memberships and the second section sets out our analysis of the bill, identifying its strengths and weaknesses.

### **Te Kahui Atawhai O Te Motu**

TKAM is the national body for Iwi and Māori Social Service providers in New Zealand. The organisation is driven by a strategic vision and mission statements, encouraging us to always look forward for the holistic well-being of all Māori. TKAM provide a range of services to 180 members located throughout New Zealand, and offers a collective Māori voice within the Social Services sector representing Iwi and Māori Social Services interests at local and national government level. Further details on TKATM can be found at [www.tekahuiatawhai.com](http://www.tekahuiatawhai.com)

### **The New Zealand Council of Christian Social Services**

NZCCSS has six foundation members: the Anglican Care Network, Baptist Union of New Zealand, Catholic Social Services, Methodist Church of New Zealand, Presbyterian Support New Zealand Inc. and the Salvation Army. NZCCSS works for a just and compassionate society in Aotearoa New Zealand. We see this as a continuation of the mission of Jesus Christ. In seeking to fulfil this mission, we are committed to giving priority to poor and vulnerable members of our society and to Te Tiriti O Waitangi. Nationally the range and scope of our six member network is extensive and comprises 213 separate providers, who deliver a range of 37 general types of services via 1024 specific programmes, and are located in 55 towns and cities throughout New Zealand. Further details on NZCCSS can be found at [www.nzccss.org.nz](http://www.nzccss.org.nz).

### **Contact details**

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## **Part one**

***“...Our children are telling us –the universal indigenous theme of identity, connection and belonging are the story that shapes our lives. Knowing who we are; who we connect to; our special songs, our places, our ancestors, is all about whakapapa, whānau, whenua, whare”.***

[Hon Dame Tariana Turia, Waitangi Rua Rautau Te Herenga Waka Marae](#)

### **Overview of key points and recommendations**

TKAM and NZCCSS thank the Social Services Committee for the opportunity to comment on the *Children, Young People and Their Families (Oranga Tamariki) Legislation Bill*.

At the onset of this submission we wish to acknowledge the strength of opposition to this Bill by Māori, Māori organisations, and the [Iwi Leaders Forum](#)

We also acknowledge the [Treaty Claim](#) filed by the Māori Women’s Welfare League on the grounds that *..”policy changes to a safe, stable, loving home without the existing priority of placement within whānau, hapu, iwi is a breach of the rangatiratanga and partnership guarantees under the Treaty of Waitangi”.*

TKAM and NZCCSS raise four key points for consideration by the select committee. These are set out in detail below: 1) strategic partnership with Māori, 2) preservation of the Whānau first principle 3) support whānau to care for tamariki and rangatahi and 4) Poverty, inequality and child neglect.

#### **1. Strategic partnership with Māori**

The Regulatory Impact Statement *“Investing in Children: legislative support for improving outcomes for Māori children and young people”* gives recognition to

***“the absence of any legislative impetus or direction to develop strategic partnership involving iwi, and Māori leadership” (p8).***

However, the consultation underpinning policy and legislative changes has shown scant attention to the views of iwi and Māori leadership at every stage of the process, starting with the appointment of the Expert Panel on Modernising Child Youth and Family, all the way through to the development of new policy, legislation and the operational model underpinning the new Vulnerable Children’s Ministry (Oranga Tamariki).

What we believe we have now, as a result of the absence of an authentic strategic partnership, is wide spread dissent among Māori who feel deeply that this bill will bring more harm than good to Māori tamariki and rangatahi, as it does not get to grips with the underpinning issues for Māori in state care.

If we contrast the Māori-led consultation process (led by the late John Rangihau and his ministerial advisory group), which underpinned the Children and Young Persons and their Families Act 1989 Act (1989 Act), the difference is stark. Puao-te-ata-tu was the document that emerged out of 65 hui on marae and a raft of meetings the length and breadth of the country, and laid the foundation for 1989 Act.

As members of the select committee you will be aware that Puao-te-ata-tu identified the critical importance of belonging to whānau and hapu to a Māori child’s wellbeing (physical, social, and spiritual). It also identified the need for the then Department of Social Welfare (along with the broader public service) to transcend its monoculturalism and actively develop Māori cultural awareness, internal Māori capability and develop Maori informed practice. The result was an Act founded on a bi-cultural approach, and established for the first time family group conferences, and restorative justice processes, both ground breaking approaches at the time.

At the heart of the contention of this bill is the assumption that the 1989 Act (and the care and protection system) it represented, has failed Māori tamariki. In contrast, our members tell us the 1989 legislation is

not the issue but rather its application in practice, including under-resourcing investment in Child, Youth and Family staff, along with a failure in many cases to honour the bi-cultural intent of the legislation.

## **2. Preservation of the Whānau first principle**

A primary concern for our respective members is the use of discretionary wording that undermines the whānau first principle.

Section (5) *wherever possible* and;

Section (13) *unless it is unreasonable or impracticable in the circumstances*.

All children have their biological whānau in their hearts. Knowing who we are and where we came from is a fundamental need in all of us. We agree no child should be placed in an unsafe home. However, when there is breakdown within a whānau, intensive long-term support is needed early on to address this either to ensure a child can safely remain with whānau, ensure all attempts are made to find suitable carers from the wider whānau, strengthening the capability of whānau to care for their child so they can return home.

The changes to the whānau first principles appear to assume – that there is no safe member in a child's whole whakapapa to justify a non-kin placement. This assumption is not supported by our membership. In contrast, our members tell us is that Child, Youth and Family has in many cases not had the necessary cultural knowledge, experience and resources to find suitable whakapapa-based placements.

### **1989 Act states:**

#### **Section (5) (C)**

*Principles to be applied in exercise of powers conferred by this Act*

*(C) the principle that consideration **must always** be given to how a decision affecting a child or young person will affect*

–

*(i) the welfare of that child or young person; and*

*(ii) the stability of that child's or young person's family, whānau, hapu, iwi and family group*

#### **Section (13)(g) (i)**

*The principle that prioritises placing a child with "a person who is a member of the child's or young person's hapu or iwi (with preference being given to hapu members), or, if that is not possible, who has the same tribal, racial, ethnic, or cultural background as the child."*

### **Bill replaces these sections with**

#### **Section 8 (b)**

*When making a decision about a child or young person, the child's or young person's place within their family is recognised, and, in particular, (iii) **wherever possible**, the relationship between the child or young person and their family, whānau and usual caregiver is respected, supported and strengthened.*

#### **Section 13 (c)**

*Where a child or young person is at risk of being removed from their immediate family, whānau, or usual caregivers, the child's or young person's usual caregivers, family, whānau, hapu, iwi and family group, **unless it is unreasonable or impracticable in the circumstances**, be assisted to enable them to provide a safe, stable and loving home to the child or young person in accordance with whakapapa and whānaungatanga".*

### **Recommendations:**

- I. Every child taken from its whānau should be placed within its whakapapa.
- II. Remove discretionary wording from sections (8) and (13) of the Bill.

## **3. Support whānau to care for tamariki and rangatahi**

Well trained whānau supported to care for Māori tamariki and rangatahi would provide the best conditions to enable the return of a child to their parents and home, or to thrive within a whānau placement. We strongly oppose the early (and permanent) removal of tamariki and rangatahi into non-kin placements, where the likelihood of dislocation from who they are and where they belong is greatest.

We know from Ministry of Social Development data that 5,300 children are in the care of Child Youth and Family. 3,200 of these children are Māori and 2,300 of them in whānau care. This number of whānau placements needs to increase under this Bill.

Feedback from our membership point to Child Youth and Family decision-making that is largely limited to immediate family, without looking to other whānau members. Iwi, hapu given the right resources, are capable of supporting their tamariki and rangatahi. The establishment of a mechanism, such as a register, to identify a pool of Māori caregivers within a whānau, hapu or iwi to assist the new ministry to place tamariki and rangatahi with whānau that provide a whakapapa connection, would go a long way to addressing this issue. An example of this is Mokopuna Ora, which is a joint initiative between Waikato-Tainui and Child Youth and Family which identifies kaitiaki through their tribal register.

Feedback from our membership also point to a lack of resource, access to specialist services and training to support whānau of Māori children. Whānau members, often grandparents, are often not well themselves, and have limited resources, but don't want their whānau members to be cared for by non-kin.

Whānau members need access to resources to support participation in cultural, sports, other social activities that help a child and young person to build strong social connections and to develop resilience. They also need access to training to manage any behavioural challenges stemming from experiences of trauma. We know provisions to provide financial assistance already exist in the current legislation, but members advise that whānau ora navigators are needed to support whānau to access additional resources. Otherwise, many family members simply do not understand what support is available and how to access it.

We acknowledge there are additional supports contained in this bill, but again, we want to see these supports available to whānau caregivers early on.

#### ***Early consideration and planning for the possibility that alternative care arrangements may be needed for a child***

Our agencies are concerned that provisions to enable early placements could create an unintended incentive to give such plans effect and remove children from their homes early. We wish to see the same level of resources accorded to early planning for alternative care, put into supporting whānau to address underlying issues that impact on parents to care for their children safely.

We know that many of the parents that are the focus of this bill have come out of the care and protection system. These children became parents and for many carried the trauma of their experience into their own families creating a cycle of abuse and poverty. The dichotomy of the 'good' parent 'bad parent' that seems to underlie this bill is too simplistic. Resources and support need to be put into struggling parents to support them to create safe, stable and loving homes rather than a focus on early planning to remove a child from its parents and home and into a non-kin arrangement.

We note this bill supports the direction of the Vulnerable Children's Act and the Social Investment approach that focuses resources on those more highly vulnerable rather than taking a truly preventative approach that addresses the determinates of vulnerability before it occurs. The Social Investment approach underpinning this approach supports people once they have reached a critical point, rather than at an earlier stage of concern. Our membership believes high quality (culturally appropriate) services provided in local communities can reduce vulnerability before issues reach the point of statutory care.

#### **Recommendation**

- Support whānau to care for tamariki and rangatahi with appropriate levels of resources and access to specialist services.

#### **4. Poverty, inequality and child neglect**

While we support the focus of the Bill on supporting an early intervention response, we believe that to truly apply a preventative approach, policy needs to address the underlying causes of child harm.

We direct the Select Committee to work undertaken by the Child Poverty Action Group (CPAG) that identifies substantive evidence over twenty five years of the link between poverty and abuse (particularly emotional and neglect) [Child abuse: What Role does Poverty Play. Child Abuse: An Analysis of Child Youth and Family Data. CPAG 2013.

As captured in the NZCCSS Vulnerability Report series (2009-2016), distressed families trying to cope with living costs that exceed their incomes, debt, inability to provide life's bare necessities for their children, overcrowded or substandard accommodation is the likely social context from which children are placed into statutory care. Such adversity (or material poverty) constrains family/whānau in [providing for proper care of their children.

The disproportionate rate of Māori living in poverty is undisputed. We know there is higher unemployment in Māori communities where there is insufficient income to provide even the most basic needs such as stable, healthy housing, food, heating, medical care, educational and social activities. We also know that there are many outstanding Māori men and women in their communities who can provide quality care and support for their wider whānau.

## **Part two**

This section sets out our analysis of the bill, identifying the strength and weaknesses of the bill.

We acknowledge new provisions in this Bill that may have real potential to make a positive difference in the lives of Māori tamariki, rangatahi and their whānau.

We also believe if these provisions are applied to the existing legislation - Children, Young Persons and Their Families Act 1989 - with appropriate levels of resourcing, and capability building, these provisions would go a long way to support vulnerable children, young people and their families/whānau to thrive.

## **Section 5**

### **Principles of participation, 5A, Clause 1**

We support the principles of participation and agree wholeheartedly that affected children/tamariki and young people/rangatahi should be supported to participate in decisions about their lives.

### **Consideration of sibling, Clause 4, 8**

*(b) when making a decision about a child or young person, the child's or young person's place within their family is recognised, and in particular*

*(iii) the relationship between the child or young person and their siblings is respected, supported and strengthened".*

We support the recognition of siblings in the new definition of "young persons". The issue of siblings being placed in separate placements, without knowledge of their whereabouts or support to maintain contact has been a longstanding concern to our respective members. It is critical that resources are made available to whānau caregivers to support siblings to maintain contact.

## **New Section 7A**

### **New Duties of the Chief Executive to measure outcomes for Māori, Clause 12**

#### **Providing for practical commitment to principles of Te Tiriti o Waitangi**

We acknowledge and support the Bill's inclusion of a "practical commitment" to principles of Te Tiriti o Waitangi, although we question whether the inclusion of discretionary wording to consider *child's or young person's family, whānau, hapu, iwi and family group* supports the active protection of Māori culture, the Crown's recognition of rangatiratanga, or the involvement of Māori in the development of this legislation.

### **The Rangatiratanga Principle – The Principle of Self Management**

The second Article of the Treaty guarantees to iwi Maori the control and enjoyment of those resources and taonga that it is their wish to retain. The preservation of a resource base, restoration of iwi self-management, and the active protection of taonga, both material and cultural, are necessary elements of the Crown's policy of recognising rangatiratanga.

Whānau o whakapapa are taonga. This bill must recognise this and explain this as critical to the legislation not as an "if possible" add on. It is critical to the effectiveness and durability of this legislation that cultural competency underpins any government model (legislation and operational policy) to address Māori issues and to supports Maori-led solutions.

### ***Measurable outcomes for Māori children and young persons***

We support the Bill's intention to address the disproportionate number of Māori tamariki and rangatahi in the care and protection system. New duties on the chief executive to set '*measurable outcomes for Māori children and young persons who come to the attention of the department*' will enable government to monitor the effectiveness of the legislation to achieve its overarching goal to improve the long-term outcomes of Māori.

### ***Monitoring of placements within whānau, hapu and iwi***

In addition to these measures, we recommend legislative requirements to report on the number of placement of children/young person's within their own whānau, hapu and iwi. The Social Services Select Committee will be aware of substantive Kaupapa Māori research that identifies cultural identity and connectedness to whakapapa as integral to Māori well-being [Sir Mason Durie et al]. It is critical that this Bill enables every opportunity is provided to place Māori children and young people within their own whānau, hapu and iwi.

### ***Monitor Maori cultural and language development***

To further support a principle of Māori development, NZCCSS supports a legislative duty on the Chief Executive to monitor the number of children and young people a) developing Te Reo Maori b) registered with their iwi b) actively engaged with activities which will give expression to their cultural identity.

### ***Commissioning of services subject to above monitoring requirements***

NZCCSS strongly recommends that any commissioning of private services to provide care placements should also be monitoring by the Chief Executive against the above requirements, and specifically the number of placements of children/young person's within their own whānau, hapu and iwi.

## **Section 14**

### **Removal of Subsequent Child (14, (2) (a), (b))**

We are aware there are already legal processes (via a court order) in place to support the removal of subsequent children from their families. However, NZCCSS would be concerned if provisions within this Bill made easier the process of removing babies from their mothers.

We acknowledge the need to ensure a subsequent child of a parent (to whom 18A applies) is safe in the care of their parents. However, the removal of a subsequent child should only be the very last resort and only after intensive support has not resulted in confidence that parents can safely parent their children.

Furthermore, the decision to remove a subsequent child must be accompanied by appropriate support and resources to address underlying issues (mental health, drug/alcohol addiction, family violence/lack of parenting skills), and by effective engagement with families struggling to care for their children.

We believe mothers of a subsequent child need to have real hope that they might keep their child if they make agreed changes to their lives. Early in the cycle work with the mother/whanau of subsequent child needs to begin to support positive change and transformation. Otherwise, without this support and hope families enter a cycle of children born and removed in an environment without any hope of change and

transformation. Government policies must be underpinned by a belief in hope and redemption; people can and do change with appropriate support.

### **Domestic violence (12) (c)**

*“the child or young person has been exposed to domestic violence (within the meaning of section 3 of the Domestic Violence Act 1995)”.*

We support the inclusion of domestic violence in the definition of child and young person in need of care and protection, acknowledging government’s focus on reducing the incidence of domestic violence in communities. At the same time, we are looking for assurances of sufficient resourcing and services at a community end to support both perpetrators of violence and victims. [[refer to NZCCSS’ submission on family violence](#)]

### **Section 18**

#### **New Section 18AAA (Chief executive may make family group conference available in certain circumstances)**

We support the government’s focus on early intervention and prevention and accompanying new provisions that enable family group conferences (and plan) to be established in situations when there are issues outside of the threshold for Statutory intervention.

Member agencies report ongoing concerns for families that do not meet the threshold of Child, Youth and Family, particularly in the areas of neglect. This along with ‘more flexibility’ accorded to the chief executive that provides for referrals to universal or targeted services where there are reports of concern, has real potential to support the child and family/whānau.

What member agencies working in their communities tell us is that children/tamariki have the best outcomes when parents are supported to address underlying issues (mental health, alcohol/drug addiction, poor parenting skills). And it is from here that parents make changes to their behaviour, and this in turn strengthens their parental bond with their children, creating resilience. What we also know is this process is long-term and intensive and requires significant resources (trained social workers/access to specialist services) available in communities when needed.

### **Section 66**

#### **Information sharing [65A – 660]**

All professionals working with children must be competent in identifying child harm and know how to appropriately respond. A system which allows for these appropriate responses to be logged and tracked so that actions are recorded is appropriate. There must be huge care that information, especially where harm is not proven, is not used in ways that are detrimental to the life or character of the child and their caregiver. Information collected without the knowledge of the parent or child and their whānau must be fully protected and used only for the purposes which it was gathered and open to challenge from the affected people.

Furthermore, we are also concerned government is instigating a full collection of individual client level data for all users of social services. This type of approach may significantly undermine the ability of our service providers to form the trusting relationships that are at the heart of real change. It may also mean where children are likely to be seen as vulnerable, parents actively turning away from approaching services to receive support, fearful data collection process may be used to start active processes to remove their children.

#### *Duration of data held*

We seek clarification from the Select Committee on how long data obtained by a child welfare and protection agencies and independent persons will be kept, noting there will be a point in a child’s life

where this data is not viewed as positive, and accordingly they may seek advice on whether this data can be removed? New Zealand has a 'clean slate policy' where data on less serious offences is removed after 7 years. We would like a similar consideration given to information captured under 66J.

We note that Section 66 (4) sets out the information relating to a child or young person includes information about (a) a member of the family of that child or young person and (c) about any person who is likely to reside with the child or young person. Again, we believe family members and others should be allowed to respond to information sought by welfare agencies about them, and that there should be a mechanism to challenge data that is inaccurate. As above, a clean slate policy should also be included in the provisions of this bill, alongside a timeframe for this data to be deleted.

#### *Code of Practice*

Specifically, we support the need for legislative oversight of information sharing across agencies (including NGOs and private services), and for the Minister of Social Development to issue a Code of practice for information sharing (66K).

In relation to new provisions (66I (a) – (c) that requires a child welfare and protection agency or an independent person to disclose information to the child or young persons concerned, we would like to see removed the wording “*unless it is impracticable*” to strengthen this requirement, and to avoid a legal loop hole that might be used to avoid consultation with relevant children and young people.

#### **Section 386AAA, 386AAB to 386C**

##### **Transition Support [386AAC principles] and eligibility [clause 116]**

We support the extended definition of the term young person to include young adults who are aged up to 21 or 25 (as relevant) for purpose of supporting their transition to independent living (including financial assistance). Member agencies have long been concerned for young people leaving state care without sufficient supports and life skills to transition to independence and who have moved all too quickly into homelessness and a life time of crime. We commend government for addressing this policy gap in making available advice and assistance (including financial assistance, support to find accommodation and counselling) to those eligible for this support [386A (3) and (4)].

#### **Section 208**

##### **Youth Justice**

We support the lifting of the age settings for youth justice to include 17 year olds and support all efforts made to retain young offenders in the community and to provide support to stop offending and address underlying problems that are preventing them from living positive lives. However, we also shares UNICEF NZ's concerns about new provisions (276A) that enable the immediate transfer of 17 year olds to an adult court. Article 37 of UNCROC states that “*children who break the law should not be treated cruelly. They should not be put in prison with adults and should be able to keep in contact with their families*”. A focus on the underlying causes of serious offending among young people and on addressing challenging behaviour, is likely to achieve far better results than locking up children with adults.

#### **Section 447 (f)**

##### **National Care Standards**

We support the development of National Care Standards and provision of financial support for caregivers that will be more responsive to the changing needs of children in care. We also support the development of standards for caregiver training, monitoring and support. We would have concerns, however, if these new provisions make it harder to find Māori to care for Māori children. The process of development, delivery and assessment for these standards must be culturally appropriate, and support Māori

participation in standards training, and achievement of competence at levels equal to the number of Māori children placed in care.