

# **Joint Children's Sector Submission to the Social Services and Community Select Committee:**

## ***Oversight of the Oranga Tamariki System and Children and Young People's Commission Bill***

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## **Joint Children's Sector Submission on the Oversight of Oranga Tamariki System and Children and Young People's Commission Bill (the Bill).**

### **Executive summary and recommendations**

1. This Bill provides an opportunity to create a statutory framework that protects and upholds the rights, interests and wellbeing of all pēpē, tamariki and rangatahi in Aotearoa including, indeed especially, children and young people in the Oranga Tamariki system.<sup>1</sup>
2. It is an opportunity to strengthen the Children's Commissioner's Office so that it remains an effective, authoritative, and independent voice for all children in Aotearoa, grounded in evidence, research and maatauranga about children and their lives.
3. Instead, this Bill weakens the Children's Commissioner, undermines the independent oversight of Oranga Tamariki and fails to consider children and young people's perspectives, including how they think their Commissioner should be appointed and function.
4. While we appreciate the stated broad intent of the Bill (to improve outcomes for children), we believe insufficient consideration has been given to its actual impact on pēpē, tamariki and rangatahi and what the proposed changes will mean for different groups of children. The Bill risks deepening the prejudices, discrimination and inequities that already exist for children within the Oranga Tamariki system, and within Aotearoa New Zealand society more broadly.
5. In our view, the oversight framework established by the Bill is unnecessarily complicated. It is not child-friendly and more focused on systems and monitoring than children's experiences and outcomes.
6. The criticisms of the Bill in this submission are not made lightly. Rather, we have considered, in the limited time available to us, how we might help to strengthen the Bill by establishing an integrated monitoring, complaints and advocacy framework that works in the best interests of children.
7. We do not support the Oversight of the Oranga Tamariki System and Children and Young People's Commission Bill in its current form. We recommend that:
  - i. Progress on the Bill be paused to allow the distinct issues related to monitoring of Oranga Tamariki and the structure and function of the Children's Commission/er to each be more thoroughly considered.
  - ii. Part 5 of the Bill does not proceed until:
    - a. work is undertaken on the purpose, structure, powers, operation and resourcing of the Office to ensure any changes maintain and strengthen the Commission/er's mana and effectiveness for all children in Aotearoa;
    - b. the views and suggestions of tamariki and rangatahi about the structure and functions of their Commission/er have been sought and considered, including the views of children, young people and young adults who are, or have been, in the care and protection

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<sup>1</sup> In this submission we use the terms children, young people, pēpē, tamariki and rangatahi interchangeably, and as we think appropriate, to refer to people under 18 years of age. Where reference is made to young people or young adults aged over 18 we specifically note this.

system about the proposed change to include them within the Commission/er's mandate.

- iii. Parts 2, 3 and 4 of the Bill do not proceed further until:
  - a. the Bill is amended to ensure that monitoring of the Oranga Tamariki system will be independent;
  - b. the views and ideas of tamariki and rangatahi about monitoring, complaints, and advocacy to improve the care and protection system have been sought and considered, including the views of tamariki and rangatahi Māori and disabled children and young people;
  - c. the Bill includes greater, and ongoing, opportunity for input on the changes from children and young people, whānau, iwi Māori, and communities; and
  - d. the recommendations of the Abuse in Care Royal Commission of Inquiry have been taken into account, particularly the recommendations in the Royal Commission's 2021 report *He Purapura Ora, he Māra Tipu; from Redress to Puretumu Torowhānui*.<sup>2</sup>
8. Should the Bill proceed, we make the following recommendations (please note these recommendations should not be regarded as a complete list of the changes we suggest are made to the Bill if it were to proceed):
  - i. The Bill include explicit provision for:
    - a. a named Children's Commissioner; and
    - b. a Māori Children's Commissioner.
  - ii. The principle of children's participation in their own lives and in matters that affect them be embedded in this Bill - in its passage through the House, its operation, and in any reviews of the resulting legislation as provided for in clauses 57 and 118.
  - iii. The Commissioner's existing functions under section 12(1)(a) and (b) of the Children's Commissioners Act 2003 be carried over into the Bill, retaining the Commissioner's investigations and complaints function; and the Bill makes it clear that the Commission/er's complaints and investigations function covers children in the Oranga Tamariki system and decisions, acts and omissions within that system.
  - iv. The Commissioner's existing powers to report to the Prime Minister on matters affecting the rights of children, with or without request, be carried over into the Bill.<sup>3</sup>
  - v. Consideration be given to the Commission/er having the power to report to Parliament.
  - vi. If the move to a Board model proceeds, we recommend that the Bill is strengthened to require
    - a. at least half the members of the Board whakapapa Māori
    - b. the Board's membership to be representative, reflecting the diversity of children and children's lives in Aotearoa; and

<sup>2</sup> <https://www.abuseincare.org.nz/our-progress/reports/from-redress-to-puretumu/>

<sup>3</sup> s12(1)(k) Children's Commissioners Act 2003.

- c. transparent and publicly advertised appointment processes for all Board members with applications publicly invited.
- vii. The Commission/er must be properly resourced to fulfill its mandate and responsibilities for children, including full, ongoing resourcing of the Commission/er's work to enable children's participation on matters affecting them, and to ensure that the Commission/er maintains an up-to-date understanding on the experiences and views of children, that they share directly with the Commission/er and their Office, which then inform the Commission/er's work.
- viii. The Ombudsman and Children's Commission/er's complaints and investigations roles be aligned and complementary to each other so that there are no gaps for children and whānau to fall through.
- ix. The Ombudsman or the Children's Commission/er be added to the people to consult in Clause 16(4).
- x. Clause 20 be amended to require the Monitor to be guided by principles regarding engagement with children similar to those in s5 of the Oranga Tamariki Act 1989 when creating their own code of ethics for engagement, and that consideration be given to applying these principles more generally to the Monitor's functions.
- xi. The decision to house the Monitor with ERO be reconsidered.
- xii. Clause 35 be amended to make it clear that entry can only be denied on the basis it will exacerbate tensions or emotional harm if that tension or emotional harm is felt by a child or young person on the premises.
- xiii. The Bill is amended to ensure processes are accessible and it is as easy as possible for children to make complaints and raise concerns about their lives – and that such complaints and concerns are able to be addressed in an effective and timely manner.
- xiv. Clause 102 be amended to require the interface between the Commission/er, Ombudsman and the Monitor to be actively managed so that there are no gaps in oversight or monitoring for children to fall through.
- xv. Resources be allocated to the Ombudsman, the Commission/er and the Monitor to allow communication between the three as required and appropriate, keeping children's rights and outcomes at the centre.
- xvi. Either significantly greater resourcing is given to the office of the Ombudsman to specifically deal with Bill-relevant complaints in a child-friendly manner, or that a specific independent complaints system is established to ease the burden on the Ombudsman's office.

## Introduction

9. This joint children's sector submission is from individuals and organisations working with and for pēpe, tamariki and rangatahi throughout Aotearoa New Zealand and has been co-ordinated by the Children's Rights Alliance Aotearoa New Zealand, the collective voice for children's rights in Aotearoa. The names of all those supporting this submission are listed at the end of this submission. At the time of making this submission to the Social Services and Community Select Committee, this submission has 34 signatories from across the children's sector.
10. This joint submission focuses primarily on the high level issues raised by the Bill that we are advocating for collectively as a children's sector. More detailed comment on specific issues raised by the Bill will be addressed in our individual submissions.
11. We urge the Select Committee not to underestimate the significance of this Bill for all Aotearoa's children, for their families and whānau, and for New Zealand society as a whole.
12. In developing this joint submission we have been guided by Aotearoa's commitments and duties as a State Party to the United Nations Convention on the Rights of the Child (the Children's Convention),<sup>4</sup> in particular, the Principles of the Children's Convention, which require all laws and policies to:
  - Uphold the rights of all children equally, without discrimination.<sup>5</sup>
  - Be in the best interests of children - as a population, groups of children and individual children.<sup>6</sup>
  - Maximise the survival and development of every child.<sup>7</sup>
  - Take the views of children into account and support their participation.<sup>8</sup>
13. This submission is founded on our collective belief that the application and implementation of children's rights in Aotearoa must be in accordance with te Tiriti o Waitangi, respecting and upholding the rights of pēpē, tamariki and rangatahi Māori as tangata whenua and as children.
14. Before turning to the substantive matters covered in our submission, we wish to draw the Committee's attention to the closing paragraphs of the Waitangi Tribunal's WAI 2195 report:

We have written at length in this report about systemic issues. We have done our best to describe how it is that the notify–investigate model – coupled with a child rescue imperative – inevitably results in over-surveillance and disproportionate intervention and harm to whānau Māori, and to other communities who may be struggling with entrenched inequality and poverty. We have tried to describe how such a system can also lead a range of State employees (including Māori staff) to act on occasion in harmful and apparently inhumane ways, simply because they have a court order to implement.

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<sup>4</sup> New Zealand ratified the Children's Convention in 1993 and is due to be examined on progress on children's rights later in 2022. It is likely the UN Committee on the Rights of the Child will closely consider the Bill and the extent to which it upholds children's rights during their deliberations later this year.

<sup>5</sup> Article 2.

<sup>6</sup> Article 3.

<sup>7</sup> Article 6.

<sup>8</sup> Article 12.

Protecting our vulnerable children is both necessary and important. It is an emotive and difficult topic and as the numerous reports and attempts at reform of the child protection system over the last 30 years show, it is difficult to get right.

The single recommendation we make with regard to the 'Hastings uplift' is that all ministers who carry the responsibility to decide what happens next, first make time to watch the *Newsroom* documentary of the attempted uplift in Hastings in May 2019 (if they have not already done so). We say this because we believe this short documentary makes a case for substantial reform in ways more eloquent and direct than we can convey in words.<sup>9</sup>

15. We ask that members of the Select Committee make the time to watch the Newsroom documentary if they have not already done so and, when considering this Bill, ask themselves what difference will the changes proposed in this Bill really make for children, whānau, iwi Māori and communities?<sup>10</sup>

### **Putting pēpē, tamariki and rangatahi at the heart of this Bill**

16. This Bill is about children, it affects all pēpē, tamariki and rangatahi in Aotearoa especially, but not only, those in the Oranga Tamariki system. This Bill has significant implications for the way children, and the issues that affect them, are considered by successive governments now and into the future. It is an opportunity to strengthen the way government fulfills its responsibilities to children: responsibilities to create the conditions in which all children in Aotearoa can grow and thrive.

17. Specifically, the Bill is an opportunity:

- to strengthen the Children's Commissioner's Office so that it continues to be an effective, authoritative and independent voice for all children in Aotearoa, grounded in evidence, research and maatauranga about children and their lives; and
- improve oversight of State support and care for children, so that problems or areas for improvement are identified and responded to quickly, minimizing any harm to children and creating a continuously improving care and protection system.

18. This Bill comes at the end of a ten-year period of review and reform, beginning with the Green and White papers on Vulnerable Children, over which time successive governments have implemented policies and legal changes intended to transform the care, protection and youth justice systems in Aotearoa. It follows multiple reviews of the then Children, Young Persons and Their Families Act 1989.

19. There has not been any official, on-going evaluation of the changes made over the last decade, but the findings of the five inquiries into the removal of pēpē from their whānau,<sup>11</sup> video footage of a young person being physically assaulted

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<sup>9</sup> He Pāharakeke, he Rito Whakakīkinga Whāruarua; Oranga Tamariki Urgent Inquiry, at pg 191.

<sup>10</sup> The Newsroom documentary can be viewed here: <https://www.newsroom.co.nz/investigations/nzs-own-taken-generation>

<sup>11</sup> Office of the Children's Commissioner, *Te Kuku O Te Manawa - Ka puta te riri, ka momori te ngākau, ka heke ngā roimata mo tōku pēpi: A review of what needs to change to enable pēpi Māori aged 0-3 months to remain in the care of their whānau in situations where Oranga Tamariki-Ministry for Children is notified of care and protection concerns*. Report one of two (June 2020). ISBN 978-0-473-51773-1. *Te Kuku O Te Manawa - Moe ararā! Haumanutia ngā moemoeā a ngā tūpuna mō te oranga ngā tamariki: A review of what needs to change to enable pēpi Māori aged 0-3 months to remain in the care of their whānau in situations where Oranga Tamariki-Ministry for Children is notified of care and protection concerns*. Report two of two (November 2020) ISBN 978-0-473-55383-8. Both available here: [www.occ.org.nz](http://www.occ.org.nz); Whānau Ora Commissioning Agency Ko Te Wā

in an Oranga Tamariki residence in 2021,<sup>12</sup> the findings and recommendations of the Ministerial Advisory Board on Oranga Tamariki in its 2021 report, *Hipokingia ki te Kahu Aroha Hipokingia ki te Katoa*,<sup>13</sup> and *He Purapura Ora, he Māra Tipu: From Redress to Puretumu Torowhānui*, the interim redress report from the Abuse in Care Royal Commission of Inquiry (December 2021),<sup>14</sup> all underscore the importance of this Bill in shaping the way children are regarded and treated in Aotearoa, both within the care and protection system, and within society at-large.

20. In particular, the Royal Commission's interim report emphasised that the monitoring system for children in care to date has not been effective. This is due to the monitoring functions being spread across several government agencies and portfolios, and where recommendations made have been implemented without adequate time, resourcing and communication across the agencies and portfolios. The Royal Commission recommended that the Crown should ensure that any new monitoring body:

- nurtures the trust of children, young people and adults at risk;
- is consistent with the Crown's te Tiriti o Waitangi obligations;
- is organised to reflect the Māori-Crown relationship;
- is independent of other oversight mechanisms and the organisation(s) being monitored;
- complies with all relevant human rights obligations; and
- operates regularly, or is conducted regularly, using staff with appropriate skills and expertise.<sup>15</sup>

The proposed model in the Bill is not in line with these recommendations.

*What does the Bill do?*

21. The Bill does a number of things. It:

- Establishes a Children and Young People's Commission, replacing the Children's Commissioner sole model with a board of between 3 and 6 members. It does not include a named Children's Commissioner. The Commission's mandate under the Bill is systemic advocacy for
  - all children aged under 18; and
  - young people aged between 18 and 25 who have been in care or custody.
- Defines the functions, duties and powers of a new body called the Independent Monitor of the Oranga Tamariki System (the Monitor).

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*Whakawhitie, It's Time for Change: A Māori Inquiry into Oranga Tamariki - report* (February 2020). ISBN 978-0-473-51039-8. Available here: <https://whanauora.nz/maori-inquiry/>; Chief Ombudsman *Investigation report into policies, practices and procedures for the removal of newborn pēpi by Oranga Tamariki, Ministry for Children*. (August 2020) ISBN (online) 978-0-473-53590-2. Available here:

<https://www.ombudsman.parliament.nz/resources/he-take-kohukihuki-matter-urgency>; Waitangi Tribunal, WAI 2195 *He Pāharakeke, he Rito Whakakīkīnga Whāruarua; Oranga Tamariki Urgent Inquiry* (2021). Available here: <https://waitangitribunal.govt.nz/news/tribunal-releases-report-on-oranga-tamariki/>; Oranga Tamariki, *Ministry for Children Professional Practice group Practice Review into the Hastings Case*. (November 2019) Available here: <https://www.orangatamariki.govt.nz/about-us/news/hawkes-bay-practice-review/>

<sup>12</sup> <https://www.newsroom.co.nz/alarm-at-physical-restraints-of-kids-in-care>

<sup>13</sup> Available here: <https://www.orangatamariki.govt.nz/about-us/news/mab-report-released/>

<sup>14</sup> Available here: <https://www.abuseincare.org.nz/our-progress/reports/from-redress-to-puretumu/>

<sup>15</sup> <https://www.abuseincare.org.nz/our-progress/reports/from-redress-to-puretumu/from-redress-to-puretumu-5/1-1-introduction-24/>

Currently, these functions, duties and powers are primarily vested in the Children's Commissioner. The decision has been taken by Government to house the Monitor with ERO, not the Children's Commissioner's office as originally planned and where it would be more appropriately situated.

- Sets out the Ombudsman's complaints function in relation to Oranga Tamariki. (The Ombudsman already has an oversight function in relation to Oranga Tamariki. The changes in the Bill raise issues about the extent of the Ombudsman's powers to investigate non-government organisations considered to be within the "Oranga Tamariki system".<sup>16</sup>)
- Constructs a framework for the Monitor, Ombudsman and Commission to work together.

### *Intent vs. Impact – pausing the Bill to get it right*

22. The general policy statement in the explanatory note to the Bill states that the broad policy objective of the Bill is to improve outcomes for children and young people in New Zealand by strengthening:
- the independent monitoring and complaints oversight of the Oranga Tamariki system; and
  - advocacy for children and young people's issues generally.
23. Despite its stated policy intent, we suggest that this Bill raises, and should address, two broadly related, but ultimately distinct, policy objectives:
- Making the Children's Commission/er fit for purpose now and into the future enabling the Office to fulfill the important role it plays for all children; and
  - Monitoring of Oranga Tamariki to ensure all children and young people in the State's care and protection system receive quality care, protection and youth justice services.

Each of these policy objectives within the Bill merits separate and thorough consideration, given their practical implications for children.

24. We believe the starting point and driving force behind any changes made by the Bill should be children and the protection and advancement of their rights, interests and wellbeing. As a sector, we hold deep knowledge, understanding and experience regarding children's issues. We stand willing and able to assist the Government to strengthen the Bill so that it truly leads to improved life experiences and outcomes for all children in Aotearoa, both now and intergenerationally.
25. We strongly recommend that progress on the Bill be paused to allow the distinct issues related to monitoring of Oranga Tamariki and the structure and function of the Children's Commission/er to each be more thoroughly considered, and that:
- i. Part 5 of the Bill does not proceed until:
    - a. work is undertaken on the purpose, structure, powers, operation and resourcing of the Office to ensure any changes

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<sup>16</sup> The "Oranga Tamariki system" is defined (in clause 9 of the Bill) as

- the system responsible for delivering services and supports under "or in connection with" the Oranga Tamariki Act 1989
- applying to those providing services and supports (agencies, or contracted partners within the system) including health, education, disability and other services.



- maintain and strengthen the Commission/er's mana and effectiveness for all children in Aotearoa;
      - b. the views and suggestions of tamariki and rangatahi about the structure and functions of their Commission/er have been sought and considered, including the views of children, young people and young adults who are, or have been, in the care and protection system about the proposed change to include them within the Commission/er's mandate.
  - ii. Parts 2, 3 and 4 of the Bill do not proceed further until:
    - e. the Bill is amended to ensure that monitoring of the Oranga Tamariki system will be independent;
    - f. the views and ideas of tamariki and rangatahi about monitoring, complaints, and advocacy to improve the care and protection system have been sought and considered, including the views of tamariki and rangatahi Māori and disabled children and young people;
    - g. the Bill includes greater, and ongoing, opportunity for input on the changes from children and young people, whānau, iwi Māori, and communities; and
    - h. the recommendations of the Abuse in Care Royal Commission of Inquiry have been taken into account, particularly the recommendations in the Royal Commission's 2021 report *He Purapura Ora, he Māra Tipu; from Redress to Puretumu Torowhānui*.<sup>17</sup>

## Children's views

26. The major changes to the Children's Commissioner in this Bill will impact children in Aotearoa today, as well as into the future. We strongly emphasise that the lack of meaningful opportunity for New Zealand's 1.2 million children to contribute on this kaupapa is deeply disrespectful to them and contradictory to the principle of participation in the Children's Convention. It is also contradictory to the position stated in New Zealand's Child and Youth Wellbeing Strategy, that "children and young people are involved and empowered" (one of the six outcome areas of the Strategy). The Strategy goes on to state that children and young people will "have their voices, perspectives and opinions listened to and taken into account",<sup>18</sup> and that youth voice will be "heard and acted on across government."<sup>19</sup> Indeed, the lack of consideration given to children's views in the development and progress of this Bill is inconsistent with the Bill itself.<sup>20</sup>
27. From this point on, respect for children's participation must be embedded in this Bill; in its passage through the House, its operation, and in any reviews of the resulting legislation as provided for in clauses 57 and 118 of the Bill.
28. As well as being their right, it is common sense to consider the views of tamariki and rangatahi when making changes to the oversight of Oranga Tamariki. Otherwise, how will Government know that the changes it is making are going to work for children?

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<sup>17</sup> Available here: <https://www.abuseincare.org.nz/our-progress/reports/from-redress-to-puretumu/>

<sup>18</sup> Child and Youth Wellbeing Strategy, 2019, available at: <https://childyouthwellbeing.govt.nz/sites/default/files/2019-08/child-youth-wellbeing-strategy-2019.pdf>, see p.17.

<sup>19</sup> Ibid, p. 56.

<sup>20</sup> See, for example, clauses 20, 38, 101.

29. Taking the views and ideas of disabled children and tamariki and rangatahi Māori into account will be especially important to the effective oversight of the Oranga Tamariki system. This is because we know that a disproportionate number of children in the care and protection system have a disability and/or are Māori due to structural discrimination and lack of inclusivity for these children and rangatahi across a range of systems and areas of their lives.
30. We urge the Committee to pay particular attention to the submission on this Bill from VOYCE- Whakarongo Mai, which reflects tamariki and rangatahi views.

### **Te Tiriti o Waitangi**

31. In its 2021 *He Pāharakeke, he Rito Whakakīkinga Whāruarua; Oranga Tamariki Urgent Inquiry Report*, the Waitangi Tribunal reinforced the following passage from the report of the Māori-led inquiry into Oranga Tamariki:

Decades of reviews, reports and legislation on child welfare services have failed to produce a system that answers the needs of whānau and tamariki. Many of the same themes in this report appear repeatedly throughout the history of State engagement with Māori in the area of child welfare; the desire of Māori communities to keep tamariki with whānau; the lack of responsiveness of services to whānau needs; the continued failure of practitioners to exercise the required cultural intelligence in dealing with whānau. For these reasons, the same mistakes seem to be repeated generation after generation.<sup>21</sup>

32. We suggest that this Bill is inconsistent with the views of the Waitangi Tribunal and reflects a continued failure to fully implement the recommendations of the 1988 Ministerial Advisory Committee report *Puaoteatatu*.<sup>22</sup> Care needs to be taken to avoid the Bill perpetuating and compounding the mistakes that have already been made by the Crown in relation to the care and protection system.
33. We submit that the structure and operation of the Children's Commission/er must be consistent with Te Tiriti o Waitangi. On current drafting, the Bill requires at least half of the Commission's Board members to have Māori knowledge and experience in, and knowledge of, tikanga Māori.<sup>23</sup> This wording is overly broad, and there is a lack of clarity about how that knowledge or experience would be measured. This is not sufficient to honour and uphold Te Tiriti o Waitangi and the rights of pēpē, tamariki and rangatahi as tangata whenua. The Bill should be amended to require at least half of the membership of the Board to whakapapa Māori.
34. In this submission we are calling for a named Children's Commissioner, even if there is a move to a Board model. In accordance with Te Tiriti o Waitangi, consideration should also be given to establishing a statutory role of a named Māori Children's Commissioner.
35. We note the requirements under the Bill for the Monitor to establish a Māori Advisory Group, and for the Monitor and the Ombudsman to "make reasonable efforts to develop arrangements with iwi and Māori organisations" to assist them to carry out their roles.<sup>24</sup> Again, we do not believe these provisions by themselves

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<sup>21</sup> Kaiwai et al, *Ko Te Wā Whakawhiti/ It's Time for Change*, pg 74, quoted in WAI 2915, Waitangi Tribunal Report 2021, *He Pāharakeke, he Rito Whakakīkinga Whāruarua; Oranga Tamariki Urgent Inquiry*, at pg 181.

<sup>22</sup> Available here: <https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/archive/1988-puaoteatatu.pdf>

<sup>23</sup> Clause 92.

<sup>24</sup> Clauses 17-19, 42.

are sufficient to honour and uphold Te Tiriti o Waitangi and the rights of pēpē, tamariki and rangatahi as tangata whenua.

### **Changes to the Children's Commissioner - why are these changes being made?**

36. The Bill provides an opportunity to strengthen the Children's Commissioner so this important role remains an effective and authoritative independent advocate for all children in Aotearoa. However, as drafted, the Bill raises a myriad of issues concerning the purpose, structure, operation and resourcing of the Office, highlighting the need for a clear legislative mandate for the Children's Commission/er to advance and protect the rights, interests and wellbeing of **all** children in Aotearoa, now and in the future.

#### *Background to the changes and current context*

37. The changes proposed by the Bill have been under consideration for at least 4 years. They began with a review undertaken in 2018 because "the recent reforms of the Oranga Tamariki system and new government priorities provide an opportunity to review the current independent oversight arrangements for the Oranga Tamariki system and children's issues (the Review)".<sup>25</sup>
38. The Bill is primarily about monitoring of the Oranga Tamariki system and that is what has driven the policy work underpinning the proposed changes. As indicated by the title of the Review that formed the starting point leading to the Bill, the focus of the policy work has not been on children (and what is consistent with their rights, wellbeing and interests) or even the Children's Commissioner, but rather "Strengthening Independent Oversight of the Oranga Tamariki System and of Children's Issues in New Zealand".<sup>26</sup> This implies that the proposed changes to the Children's Commissioner are merely collateral to the policy objective of developing a new system of monitoring and accountability in relation to Oranga Tamariki.
39. We are not aware of any clearly articulated or evidenced reasoning as to why a new system of monitoring and accountability in relation to Oranga Tamariki was needed (as opposed to strengthening existing arrangements to ensure they work in the best ways possible for children). There also appears to be a lack of any clearly articulated rationale for why (as has been asserted during the Review process, for example) the advocacy and monitoring functions that have been held by the Commissioner for the last 30 years should not remain with the Commissioner. We believe that monitoring, complaints and advocacy work better together, and that keeping these functions united and better resourcing them, will lead to better experiences and outcomes for children as well as greater accountability.
40. We understand that government has budgeted \$40 million over 4 years for the Monitor, compared to \$12 million over 4 years for the Office of the Children's Commissioner. We query the rationale behind this disparity in funding.

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<sup>25</sup> Paragraph 2, Report number no.: REP/18/8/1145 from MSD to Hon Carmel Sepuloni Minister for Social Development, available here: <https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/information-releases/strengthening-independent-oversight/post-consultation-report-strengthening-independent-oversight-of-oranga-tamariki-and-childrens-issues.pdf>

<sup>26</sup> Sandi Beattie, *Strengthening independent oversight of the Oranga Tamariki system and of children's issues in New Zealand; Ko te whakakaha i te tirohanga motuhake ki te pūnaha a Oranga Tamariki me ngā take tamariki i Aotearoa*, Post consultation report (August 2018) available here: <https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/information-releases/strengthening-independent-oversight/post-consultation-report-independent-oversight.pdf>

41. As noted in paragraph 18 above, the context and operating environment of the Bill has changed considerably since the Review was undertaken and the findings published in September 2018. We urge the Select Committee to take these key contextual developments into account in continued work on the Bill. Failing to consider the recommendations from the various inquiries, the Ministerial Advisory Board on Oranga Tamariki, and Abuse in Care Royal Commission of Inquiry as the Bill progresses will make a mockery of this significant earlier work and will very likely mean that the legislation is mis-aligned with these developments.

### **A Commissioner for all children – the need for a holistic approach**

In 1989 Judy Keall, speaking to the second reading of the Children, Young Persons and Their Families Bill, spoke about the new Office of the Commissioner for Children. She said this would be “an independent voice for children who will speak (out) about their welfare and their interests”.

In the same debate the Right Honourable Michael Cullen said of the Office, “The functions ... include investigating decisions made or actions taken under the legislation and monitoring policy and practices relating to the exercise of powers under the Act. I think it will be a widely welcome breakthrough ...”

And so it has transpired.<sup>27</sup>

42. New Zealand was one of the first countries in the world to establish a Children's Commissioner; a voice for children in the corridors of power. Someone to speak up for children, to look out for and promote their interests, rights and wellbeing. The essence of the role of the Children's Commissioner is to be a champion for children, all children - to lift children up, make them visible, and work to ensure children's issues are taken seriously. The Children's Commissioner must remain an effective and authoritative, independent voice for all children in Aotearoa, grounded in evidence, research and maatauranga about children and their lives.

#### *Keeping the Children's Commissioner*

43. Thirty years since the Office was originally established, the need for a voice for children, especially in the corridors of power, is as great as it has ever been.
44. We strongly recommend the Bill provide for a named Children's Commissioner, even within a Board model. This is especially important so that children themselves know that they have a Commissioner who is the independent person who champions them, and who that person is.
45. As noted above, we believe a statutory role of a named Māori Children's Commissioner should also be established.

#### *Oversight and advocacy – keeping more of the Commissioner's existing functions*

46. The Office of the New Zealand Commissioner for Children was established as a statutory advocate for children in the Children, Young Persons, and Their Families Act 1989 largely to protect children's interests in the care and protection system.<sup>28</sup>

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<sup>27</sup> DJ Carruthers, Chief District Court Judge, 7 July 2003, Foreword to A Voice for Children, *The Office of the Commissioner for Children in New Zealand 1984–2003*, John Barrington, Dunmore Press, (2004)

<sup>28</sup> Above, n24.

“Mike Doolan makes the interesting point that the term “Ombudsman for Children” was not adopted (as it had been for the World’s first equivalent office in Norway in 1981) because of its ‘compliance orientation’. The Office of the New Zealand Commissioner was envisaged, by contrast, as ‘much wider in its functions than just compliance, with a role in both research and policy related to the wellbeing of children’.”<sup>29</sup>

47. As the quote above illustrates, the role of the Commissioner has always included oversight and advocacy functions and this should remain the case because it allows for a holistic, well-informed (including by the views of tamariki and rangatahi) approach to identifying and resolving children’s issues in ways that serve their best interests. The Commissioner, not the Ombudsman or the Monitor, is best placed to take such an approach and many of the functions within clause 99 of the Bill will encourage and enable such an approach.
48. The Bill is premised on splitting independent monitoring and complaints oversight of Oranga Tamariki from advocacy for children and young people’s issues generally. This premise is fundamentally flawed in that it fails to recognise the reality of children’s lives. Children do not live their lives in siloes, but across many systems and they need avenues for raising issues or concerns no matter which system those issues or concerns relate to.
49. We are concerned that the failure of the Bill to carry forward several existing functions, powers and duties of the Commissioner, including the Commissioner’s role in relation to complaints and investigations, will weaken the effectiveness of the Commissioner’s Office for children, undermining its mana.

#### *Consistency with UN recommendations*

50. In 2016, when Aotearoa New Zealand’s progress on children’s rights was last examined by the United Nations, the United Nations Committee on the Rights of the Child made the following recommendation on independent monitoring of children’s rights:

11. In the light of its general comment No. 2 (2002) on the role of independent human rights institutions, the Committee recommends that the State party:

(a) Ensure that the Children’s Commissioner has the adequate human, technical and financial resources to advance and monitor the application of the Convention, its two Optional Protocols, and its mandate as a national preventive mechanism in relation to children in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and to receive, investigate and address complaints from children;

(b) Consider further strengthening the independence of the Office of the Children’s Commissioner, including in the provision of its budget.<sup>30</sup>

51. When New Zealand next appears before the UN Committee on the Rights of the Child (currently scheduled for September 2022) it is very likely to be examined on whether the changes made by the Bill are consistent with the UN Committee’s general comment No. 2 (2002) and 2016 recommendations, including those

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<sup>29</sup> Above, n24, Mike Doolan was the chief social worker in the then Department of Social Welfare at the time of the 1989 Act.

<sup>30</sup> United Nations Committee on the Rights of the Child, Concluding Observations on the fifth periodic report of New Zealand (2016) CRC/C/NZL/CO/5, paragraph 11.

related to the Children's Commissioner.<sup>31</sup> In our view the changes proposed in the Bill are not consistent with UN Committee's general comment or its recommendations on strengthening the Commissioner's Office and they are therefore likely to draw criticism from the United Nations.

### *Complaints and investigations*

52. Currently the Commissioner's functions include the following:

- (a) to investigate any decision or recommendation made, or any act done or omitted (other than a decision, recommendation, or act to which section 13(1)(a) applies), in respect of any child in that child's personal capacity;
- (b) to promote the establishment of accessible and effective complaints mechanisms for children and to monitor the nature and level of complaints.<sup>32</sup>

53. Under the Bill the Commission/er will no longer have the authority to receive and investigate complaints or concerns about a child, including from the child themselves, or to keep a general overview of issues affecting children. Also, while clause 99(f) provides for the Commission/er to promote accessible and effective complaints mechanisms for children they will no longer monitor the nature and level of complaints. The failure to carry these functions through into the Bill diminishes the Commissioner's role.

54. It is important that the Children's Commissioner is for all children, in all circumstances. The Bill must guard against any distinction between the Commission/er's role in relation to children in the Oranga Tamariki system and children who are not in the Oranga Tamariki system, which would be arbitrary and confusing to children. The Commission/er's role in relation to children in the Oranga Tamariki system must be made clear in the Bill.

55. Currently, as well as monitoring and assessing Oranga Tamariki's policies and practices, the Commissioner has an existing mandate to:

- investigate decisions, recommendations, acts or omissions in respect of a child under Oranga Tamariki;<sup>33</sup>
- encourage good policies and services for children and young people in Oranga Tamariki;<sup>34</sup>
- provide advice to the Minister about Oranga Tamariki;<sup>35</sup> and
- keep under review and make recommendations on the way the Act is working.<sup>36</sup>

56. The removal of these functions from the Commissioner under the Bill leaves significant gaps in monitoring how well the Oranga Tamariki system is working for pēpē, tamariki and rangatahi. It also creates a risk that the Monitor and Ombudsman will be regarded as holding all oversight responsibility for children in the Oranga Tamariki care and protection system; and that the Commissioner

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<sup>31</sup> United Nations Committee on the Rights of the Child, General Comment No.2: The Role of Independent National Human Rights Institutions in the Protection and promotion of the Rights of the Child (2002). Available here:

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11)

<sup>32</sup> S12(1)(a) Children's Commissioners Act 2003.

<sup>33</sup> s13(1)(a) Children's Commissioners Act 2003.

<sup>34</sup> Ibid, s13(1)(c)

<sup>35</sup> Ibid, s13(1)(d)

<sup>36</sup> Ibid, s13(1)(e)

does not retain any remit in relation to children and young people in State care and protection.

57. The definition and use of the term "Oranga Tamariki system" within the Bill is also potentially problematic because it may lead to disputes about whether, or not, a child is within the system and therefore within the ambit of the Monitor (and Ombudsman's) powers and duties. We note that there have been various definitions of what the Oranga Tamariki system includes over the course of the last 5 years, indicating potential for confusion.<sup>37</sup>
58. We recommend that the Commission/er retain an investigations and complaints function and that the Office's existing functions under section 12(1)(a) and (b) are brought forward into the Bill. Further, we recommend that the Bill makes it clear that the Commissioner's complaints function includes complaints from children in the Oranga Tamariki system and decisions, acts and omissions within that system.
59. Should there be a situation where there is a conflict with the Commissioner's advocacy role (which is unlikely because the Commissioner's advocacy role is a systemic advocacy role) or in the Commissioner's view another body was better placed to respond to a child's concerns, then complaints could be referred to the Ombudsman or another appropriate authority, such as the Privacy Commissioner, Health and Disability Commissioner or the Human Rights Commission. Such a framework would mean that a child would always have a clear avenue for raising issues or concerns by virtue of being a child – their Commissioner.

### *Reporting*

60. Another omission in the Bill is the Children's Commissioner's existing powers to report to the Prime Minister on matters affecting the rights of children, with or without request.<sup>38</sup> This power has not been carried over in the Bill and we strongly recommend that an amendment be made to enable this power to continue.
61. Consideration should also be given to the Commission/er having the power to report to Parliament. The Bill provides for the Monitor's final reports to be tabled in Parliament.<sup>39</sup> There is no mechanism in the Bill for reports from the Children's Commissioner to be tabled in the House.

### *Board or sole Commissioner?*

62. The move from a Commissioner sole model to a Commission with a board is explained as being in recognition of "the importance of children's issues generally in society and that it is no longer possible for a single individual to be across the broad scope of issues."<sup>40</sup> Arguably this has always been the case. We agree that it is unrealistic to expect a single Commissioner to be an expert on all children's issues. We do not believe that has ever been, or needs to be, a pre-requisite for

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<sup>37</sup> See Office of the Minister for Social Development and Employment *Oversight of the Oranga Tamariki System and Children and Young people's Commission Bill – further policy decisions to Progress Legislation*, paper for Cabinet Social Wellbeing Committee, June 2021, paragraphs 20 – 26.

<https://www.msdc.govt.nz/documents/about-msdc-and-our-work/publications-resources/information-releases/cabinet-papers/2021/paper-two-oversight-of-the-oranga-tamariki-system-and-children-and-young-people-s-commission-bill-further-policy-decisions.pdf>

<sup>38</sup> s12(1)(k) Children's Commissioners Act 2003.

<sup>39</sup> Clause 28

<sup>40</sup> Explanatory note, pg 3.

the role. To a certain extent, the Commissioner is a figurehead, a focal point for growing a shared understanding of what needs to happen for all children in Aotearoa to have good childhoods. This is another reason why, if there is a move to a Board model, it is essential to have a named Children's Commissioner.

63. There are merits in moving to a Board model. The make-up of the Commission could reflect and respect the diversity of children and childhoods within Aotearoa, so that all children – including, for example, Pacific children, disabled children, children in the Oranga Tamariki system, children who are working, and children of all ages – can see themselves in the work of the Office and know that the Commission/er is for them. If the move to a Board model proceeds, we recommend that the Bill is strengthened to ensure the Board is representative. Furthermore, careful consideration would need to be given to the statutory framework underpinning the structure of the Board, and the processes for appointing members. Appointment processes for all Board members should be transparent and publicly advertised, with applications publicly invited. Under clause 94 of the Bill, a nominations panel, selected by unstated government agencies, is to be appointed to assess and make recommendations to the Minister about Board candidates. This does not achieve independence or transparency, which we believe should be strongly guarded and maintained.
64. We suggest that consideration be given to building in flexibility to allow current children's issues to be reflected in the make-up of the Board. For example, a board member for children in Canterbury could have been appointed following the Canterbury earthquakes. There are exciting possibilities for designing a Commission/er with a structure and functions that future-proof its ability to be a true champion for all children and have a positive impact on their lives. It is disappointing that these possibilities have not been fully explored during the development of this Bill.

*Downsides of a Board model – what will be best for children?*

65. There are risks that having a Board model, rather than a Commissioner sole, will:
- make it more difficult for children themselves to know who their champion is;
  - dilute the strength of the Office's "voice", especially if there are differences of opinion amongst Board members; and
  - give rise to administrative and operational costs using resources that could be put to better use for children.
66. We would anticipate that the designated Children's Commissioner would be the chair of the Board, mitigating the first two risks noted above. The extent of the third risk depends to a certain extent on how the Board will work. The Bill is silent on whether Board members will be full-time members or undertake their Board work part-time (and, if so, to what level). What are the costs (e.g., travel) of servicing and operating a Board and is this the best use of resources for children?

*Are there other options?*

67. Before moving to a Board model, consideration should be given to other ways to strengthen the Office, rather than just identifying a Board model as the most appropriate. For example, an alternative approach could be to employ staff within the Office with a breadth of experience in children's issues and networks and contacts across the different communities in which children live and the different sectors that impact children's lives. Such an approach would enable the Office itself to continue to develop as an institution, a well-connected repository of knowledge and expertise in relation to children providing a solid foundation from



which the Commission/er can continue to raise the visibility and status of children generally and respond to issues of concern.

*Including care experienced 18-25 years olds in the Commission's mandate*

68. With reference to the move to include young people aged over 18 and under 25 who have been in the care system within the Commission/er's mandate, we note:

- The proposed name of the Children and Young People's Commission is misleading and confusing, because on current drafting the Commission's mandate does not include all young people, only a small subset of 'young people' would fall under the Commission's remit.
- The basis or rationale for the Commission/er's mandate in relation to care experienced 18-25 year olds is different to the Commission/er's mandate for speaking up for those who are under 18. Again, this will very likely lead to confusion regarding the operation of the Commission and risks establishing/entrenching discrimination of young people who have been in State care.
- The Commission/er's duties are focused on promoting the interests and rights of children and young people. Per s86, the definition of young person has been extended to those aged 18-25 if they are, or have been, in care or custody. Under the Oranga Tamariki Act 1989, people aged 18-25 are defined as "young adults" for limited purposes.<sup>41</sup> The Children's Convention clearly defines a child as someone below the age of 18. This variation in definition creates confusion about the purpose of the Commission/er, particularly when the duties are focused on promoting the rights and interests of children and young people, having regard to the Children's Convention. It is not clear what role the Commission has to advocate for those aged 18-25 who are, or have been, in care or custody.
- Work is needed to determine what children, young people and young adults who are, or have been, in the care and protection system think about this proposed change to include them within the Commission/er's mandate.

*Resourcing*

69. Finally, but crucially, whatever changes are made by this Bill, the Commission/er must be properly resourced to fulfill its mandate and responsibilities for children. This must include full, ongoing resourcing of the Commission/er's work to enable children's participation on matters affecting them, and to ensure that the Commission/er maintains an up-to-date understanding on the experiences and views of children, that they share directly with the Commission/er and their Office, which then inform the Commission/er's work.

**Monitoring of the Oranga Tamariki System**

70. The powers exercised (or not) by Oranga Tamariki are amongst the most significant powers exercised by the State, with life-changing impact on children and whānau. It is essential that there is a check on those powers and monitoring of their use.

71. Overall, we are concerned the proposed changes will create an unnecessarily complicated oversight framework that, despite good intent, will not prevent harm or improve the experience of children, young people and whānau in the care and

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<sup>41</sup> The definition of young person under s386AAA of the Oranga Tamariki Act 1989 includes "young adults" for limited purposes under that Act. A young adult is someone aged over 18, and depending on the relevant section, is under 21 or under 25 years old.

protection system. Our concerns are compounded by the Bill's timing and rapid progress through the House over the summer holiday break, which has severely limited opportunity for public input. In our view this Bill requires more time and opportunity for government, iwi Māori, communities, and children, young people and whānau to work together to ensure monitoring of Oranga Tamariki is effective.

72. We recommend that:

Parts 2, 3 and 4 of the Bill do not proceed further without:

- i. Changes being made to the Bill to ensure monitoring of the Oranga Tamariki system is independent.
- ii. the views and ideas of tamariki and rangatahi about monitoring, complaints, and advocacy to improve the care and protection system have been sought and considered.
- iii. greater, and ongoing, opportunity for input on the changes from iwi Māori, communities, and children, young people and whānau
- iv. The recommendations of the Abuse in Care Royal Commission of Inquiry being taken into account, particularly the recommendations in the Royal Commission's 2021 report *He Purapura Ora, he Māra Tipu; from Redress to Puretumu Torowhānui*.<sup>42</sup>

*The Bill undermines the Children's Commissioner's role in oversight of Oranga Tamariki*

73. The Children's Commissioner's Office is an independent Crown Entity and it has been monitoring the care, protection and youth justice systems for over 30 years. Its current budget is approximately \$12 million over 4 years.

74. The Monitor is an entirely new departmental agency for which we understand \$40 million dollars has been budgeted over 4 years. Its functions are a portion of those the Commissioner's Office has been mandated to provide for the last three decades.

75. We are very concerned that the act of establishing the Monitor has and will continue to mask the very real and complex issues that exist around monitoring of Oranga Tamariki. It would be a mistake to regard the establishment of the Monitor, in and of itself, as improving the experiences and outcomes for children, including in terms of their rights, safety and wellbeing. Indeed, it may result in poorer but hidden services and negative experiences of the kind that are currently being documented by Abuse in Care Royal Commission of Inquiry.

76. The key components of the Monitor's functions in relation to Oranga Tamariki are to ensure effective systems performance, service, and practice monitoring and reviews, drawing on a range of information sources, including the voices of children, young people, families and whānau.<sup>43</sup> These are very similar to the monitoring functions currently held by the Children's Commissioner under s13 of the Children's Commissioner's Act 2003, leading to questions about why it is expected that the Monitor will be able to fulfil these functions more effectively than the Children's Commissioner's Office (apart from the \$28 million difference in funding levels).<sup>44</sup>

*Monitoring must be independent*

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<sup>42</sup> <https://www.abuseincare.org.nz/our-progress/reports/from-redress-to-puretumu/>

<sup>43</sup> Explanatory note, pg 2.

<sup>44</sup> S13 Children's Commissioner Act 2003.

77. As a departmental agency and with the powers and duties assigned to it under the Bill on current drafting, the Monitor simply does not have the necessary independence to effectively monitor the Oranga Tamariki system or safeguard the rights, interests and wellbeing of children and young people within the system.
78. Under clauses 21 and 22, the Monitor is required to prepare annual reports of compliance and outcomes related to the compliance with national care standards and regulations and for pēpē, tamariki and rangatahi Māori. The decision to locate the Monitor with the Education Review Office has the potential to significantly impact the independence or perceived independence, and therefore the value, of these reports.
79. Under clause 35, the power of an authorised staff member of the Monitor to enter premises is limited where a child may be put at risk of being harmed as a result of their entry or in exceptional circumstances. Exceptional circumstances includes the possible spread of disease occurring, or where the entry is likely to "exacerbate tension or emotional harm".
- On this wording, there is no requirement that the tension or emotional harm is to be felt by a child or young person on the premises. This creates an absurdity whereby a person in charge of a premises could deny entry because a caregiver or staff member could be distressed by the entry where that entry is to assess them. We recommend this is changed.
  - Further, all that is required is that the person in charge provides their reasoning for their refusal to the Monitor in writing. There is no way for the Monitor to override the refusal to allow the Monitor's staff member to enter where the reason is inadequate, beyond reporting non-compliance under clause 52 if they choose to. This section could be improved by, at a minimum, requiring mandatory reporting when improper refusal occurs.
80. We recommend that:
- changes be made to the Bill to ensure monitoring of the Oranga Tamariki system is independent; and
  - the decision to house the Monitor with ERO be reconsidered.
  - Clause 35 is amended to make it clear that entry can only be denied on the basis it will exacerbate tensions or emotional harm if that tension or emotional harm is felt by a child or young person on the premises.

### *Confusion, gaps and overlaps*

81. There is potential for confusion about the boundaries and overlaps between the different oversight agencies and their roles, meaning the Ombudsman, the Commission/er and the Monitor. This will likely make it difficult for children and their whānau to know who to approach for assistance or to raise concerns. The focus should always be on making it as accessible and easy as possible for children to make complaints and raise concerns about their lives – and to ensure that such complaints and concerns are able to be addressed in an effective and timely manner.
82. Per clause 102, the interface between the Commission/er, Ombudsman and the Monitor, will need to be actively managed so that there are no gaps in oversight or monitoring for children to fall through. Resources will also need to be allocated to the Ombudsman, the Commission/er and the Monitor to allow communication between the three as appropriate, which would be unnecessary and/or less costly if the monitoring was allocated to the Commission/er.

83. We note the common duties in the Bill for the Monitor and Ombudsman and Commission to minimise burdens on individuals and agencies.<sup>45</sup> It would be preferable for the Bill to establish an oversight framework that is structured and resourced to avoid any burden on children and their whānau seeking to have their concerns addressed. Again, we question the complexity of the oversight arrangements established by the Bill.

#### *Link between oversight and systems improvement*

84. It is unclear from the Bill how the oversight framework will work in practice to provide feedback to the Oranga Tamariki system and other systems – such as the education system, welfare system or labour market – making positive, timely changes to protect and advance children's rights, interests and wellbeing.

- Clauses 13 and 14 provide that the Monitor may make multiple assessments of the Oranga Tamariki system, and clauses 21-30 enables the Monitor to make reports. However, these sections do not empower the Monitor to make binding recommendations on Oranga Tamariki or even refer matters to a body who can, like the office of the Ombudsman.
- Clause 16(4) provides that, when developing their tools and monitoring approaches, the Monitor must consult the chief-executive of Oranga Tamariki, the Police Commissioner and anyone caring for children who are approved under s 396 of the Oranga Tamariki Act 1989. We recommend that the Ombudsman or the Children's Commission/er also be added to the people to consult.
- Clause 20 provides that the Monitor is to create their own code of ethics for engagement with people in relation to the monitoring function. We recommend that this code is guided by the principles similar to s 5 of the Oranga Tamariki Act 1989, where it relates to engagement with children. Those principles are likely also to be generally useful.

#### *Role of the Ombudsman*

85. The main focus of this submission is the impact of the Bill on the Children's Commissioner and, by implication, children. However, we do wish to make some comment on the role of the Ombudsman.

- Children are unlikely to know about the Ombudsman, let alone understand its functions or the boundaries of that Office's role, whereas they know that the Children's Commissioner is there to champion them and their needs and issues.
- In fulfilling its expanded functions under the Bill, the Ombudsman needs to be accessible to children in the care and protection system and operate in child (and whānau) friendly ways, with staff who have the capability and expertise to work in these ways.
- Additionally, we note that the office of the Ombudsman deals with a broad range of complaints across nearly all government agencies. They are consistently overburdened and significantly delayed in handling complaints. We recommend that either significantly greater resourcing is given to the office of the Ombudsman to specifically deal with Bill-relevant complaints, or that a specific independent complaints system is established to ease the burden on the Ombudsman's office. This is necessary given the specific vulnerability that children in care, and all children, face, and also given the

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<sup>45</sup> Clauses 7 and 102.

need for the swift resolution of any concerns raised by a child while they are still in care.

86. Moves to enhance the Ombudsman’s Oranga Tamariki oversight role should be taken together with the strengthened role of the Children’s Commission/er not as a replacement for the Commissioner’s complaints and investigation role.

#### Review

87. Consideration should be given to ongoing evaluation of the changes and a shorter (than 5 years) review period to ensure the new structure is working and:

- is not burdensome for children, and those who care for/about them;
- the interface and ways of working between the three agencies are clear and effective (this has potential to be confusing and perversely lead to detrimental impacts for children);
- recognises that children and young people in the Oranga Tamariki system are first and foremost children - they live their lives beyond the “Oranga Tamariki system” and they should not be defined by being in the care and protection system.

88. Tamariki and rangatahi should have the opportunity to participate review and assessment of the effectiveness of the changes brought in by the Bill. Building this in as a mandatory requirement of any review is in keeping with children’s participation rights. (See paragraphs 28 – 32 above.)

#### Conclusion

89. Thank you for considering this submission, which is supported by the following individuals and organisations:

1	Alison Vogel
2	Andrea Jamison, Executive Director, Children’s Rights Alliance Aotearoa New Zealand
3	Ara Taiohi
4	Associate Professor Emily Keddell, Social and Community Work, University of Otago
5	Barnardos – Mike Munnely, Chief Executive
6	Birthingright New Zealand – Leanne Inder, Kaihautū
7	Charlotte Robertson
8	Children’s Rights Alliance Aotearoa New Zealand
9	Cooper Legal
10	Cynthia Ward, CEO, Nurse Specialist, True Colours Childrens Health Trust
11	Deb Inder, Principal, Inder Family Law
12	Elaine Rush MNZM PhD, Fellow of the Australasian Society of Lifestyle Medicine, Emeritus Professor of Nutrition Faculty of Health and Environmental Science Auckland University of Technology
13	IHC – Trish Grant, Director of Advocacy
14	Jacqui Southey, Child Rights Advocacy and Research Director, Save the Children New Zealand
15	Julie Spray PhD BFA (hons)
16	Korowai Tupu
17	OMEP Aotearoa New Zealand Te rōpū a Ao mō te Mātauranga o ngā Kōhungahunga
18	Play Aotearoa (International Play Association Aotearoa New Zealand)
19	Professor Mark Henaghan, University of Auckland Law School
20	Professor Nicola Taylor, University of Otago Children’s Issues Centre
21	Ruth Leonard, Lecturer/Kaiako, Te Rito Maioha Early Childhood New Zealand
22	Safeguarding Children - Willow Duffy, CEO

23	Save the Children New Zealand
24	Social Service Providers Aotearoa – Dr Claire Achmad, Chief Executive Officer
25	Sonja Cooper, Principal Partner, Cooper Legal
26	START Timata Te Mahu-Oranga: Start Healing – Stop Abuse - Maggy Tai Rākena, Manager
27	Te Rūnanga o Aotearoa New Zealand Nurses Organisation - Mairi Lucas, CE and Kate Weston, Policy Manager, Kerri Nuku, Kaiwhakahaere and Titihuia Pakeho, Tumu Whakarae Te Rūnanga o Aotearoa - NZNO
28	Te Whakaruruhau – New Zealand Breast Feeding Alliance - Jane Cartwright Executive Officer, Carmen Timu-Parata – Māori Advisor, Henare Edwards and Wendy Dallas – Committee Chairs
29	True Colours Children’s Health Trust - Cynthia Ward, CEO
30	UNICEF Aotearoa - Michelle Sharp, Chief Executive Officer
31	VOYCE – Whakarongo Mai - Tracie Shipton, Tumu Whakarae (Chief Executive)
32	Whānau Āwhina Plunket
33	He Whānau Manaaki o Tararua Free Kindergarten Association Incorporated - Amanda Couslon, Chief Executive
34	YouthLaw

