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Submission on the Children, Young Persons and their Families (Oranga Tamariki) Legislation Bill

February 2017

This submission is from:

Child Poverty Action Group Inc.
PO Box 5611,
Wellesley St,
Auckland 1141.
<http://www.cpag.org.nz>

Child Poverty Action Group (CPAG) is an independent charity working to eliminate child poverty in Aotearoa/ New Zealand through research, education and advocacy. CPAG believes that New Zealand's high rate of child poverty is not the result of economic necessity, but is due to policy neglect and an ideological emphasis on flawed economic incentives. Through research, CPAG highlights the position of tens of thousands of New Zealand children, and promotes policies that address the underlying causes of the poverty they endure.

We would like the opportunity to present an oral submission.

Contact: admin@cpag.org.nz

CONTENTS

SUMMARY OF KEY POINTS ON SPECIFIC CLAUSES	3
OVERVIEW	6
1. Need to address child poverty.....	6
2. Māori children and removal of the whānau first provision	10
3. Focus on vulnerable children and name of the new ministry	14
4. Resources	16
CLAUSE BY CLAUSE SUBMISSIONS ON THE BILL.....	17

SUMMARY OF KEY POINTS ON SPECIFIC CLAUSES

CLAUSE 4 – INTERPRETATION

CPAG supports the new definition of “young person” which enables persons who are or have been married or in civil unions to access the protections in the act.

CLAUSE 6 – PURPOSES

CPAG submits that a new purpose should be added, providing a duty on governments to ensure that all children and their families have adequate income to meet their basic needs.

CLAUSE 7 – WELL-BEING AND BEST INTERESTS

CPAG does not support Clause 7(2), which provides that, in youth justice matters, the well-being and best interests of the child or young person “are a primary consideration that must be weighed with other primary considerations.” CPAG submits that the well-being and best interests of the child must be *the* paramount consideration.

CLAUSE 8

CPAG agrees that children or young persons must be at the centre of decision-making affecting them. CPAG supports the inclusion in clause 8(b)(iv) of recognition of the need to respect, strengthen, and support relationships between siblings.

CLAUSE 9

Clause 9 inserts a new section 5A into the act, providing for the first time for principles of participation by children. CPAG supports these principles and agrees that children and young persons should be encouraged and assisted to participate in decisions about their futures. CPAG supports a requirement for decisions to be explained to the children or young persons affected by those decisions. CPAG also agrees that decision-makers making decisions in writing should be required to set out the child or young person’s view. However, CPAG

submits that safeguards need to be included to ensure that abusive parents or family members would not learn what children had said, resulting in the risk of violence to children.

CLAUSE 10

CPAG does not support repeal of this section 6.

CLAUSE 11

CPAG's view is that, until the Government acknowledges the role of poverty in poor outcomes for children and takes steps to address it, its actions will be ineffective in achieving significant change. CPAG supports the introduction of standards of care. CPAG supports the creation of complaints mechanisms to enable children, young persons, parents, families and caregivers to complain about actions taken by the chief executive and others, and to receive timely, fair and child-centred responses.

CLAUSE 12

Clause 12 requires the Chief Executive to take further specific steps in relation to improving outcomes for Māori children. CPAG does not consider that these are meaningful provisions, given that Māori are overwhelmingly opposed to the removal of "whānau first," and the evidence is that taking children away from their whānau and cutting them off from their culture is overwhelmingly detrimental to them in the long term. CPAG submits that a better way of ensuring more positive outcomes for Māori children would be to restore whānau first and acknowledge the role poverty plays in poor outcomes for children and take steps to address that. CPAG agrees that the Chief Executive should be able to delegate functions under the act to iwi and other Māori organisations, as provided for in the new section 7A(2)(iv). CPAG supports the proposed section 7A(3), which requires the Chief Executive to report at least once a year on measures taken to carry out the duties set out in the bill, including the impact of those measures in improving outcomes for Māori children and young persons in care or protection.

CLAUSE 13

CPAG does not support these principles and submits that the current whānau first provisions should be retained in the act. However, CPAG agrees with the clause 13(2)(g)(iv) emphasis on placing children with their siblings.

CLAUSE 38 – INFORMATION SHARING

CPAG stresses the importance of safeguards to protect personal information and supports the creation of a mandatory Code for information sharing prior to information sharing commencing, rather than it being left to the discretion of the Minister as currently proposed under the new section 66K. CPAG supports notification of a draft Code and the opportunity for submissions to be made on the Code.

CLAUSE 92

CPAG supports this amendment which provides that young people should be kept in the community as far as practicable, both when they have committed offences and when they are alleged to have committed offences.

CLAUSE 94 – DETENTION OF YOUNG PERSONS IN PRISON OR POLICE CELLS

CPAG submits that a ban on holding young people overnight in police and court cells should be written into the act, so that Child, Youth and Family is required to access other accommodation.

CLAUSE 102 – JURISDICTION OF YOUTH COURT

CPAG supports raising the age of Youth Court jurisdiction to 17 years.

CLAUSE 105 – MOVING TO LIVE INDEPENDENTLY

CPAG supports the provisions in the bill allowing for support to be provided for young persons in care up to the age of 21. CPAG also supports the provision for the Chief Executive to provide transition advice and assistance to young persons leaving care or youth justice facilities up to the age of 25.

OVERVIEW

Child Poverty Action Group (CPAG) has four key points to make about the bill in this Overview section of the submission. The Overview section is followed by a clause by clause analysis of the bill.

1. Need to address child poverty

CPAG believes that significant, long-term progress in improving the lives of children cannot be made without recognition of, and steps to address, child poverty.

The *Child Poverty Monitor: 2016 Technical Report*, released on 13 December 2016, recorded that 28 per cent of dependent children – approximately 295,000 children or a population the size of Wellington and Lower Hutt cities – lived in income poverty in 2015.¹ That figure was based on a contemporary median threshold of 60 per cent of the median income after housing costs. Using a fixed-line threshold of below 60 per cent of the median income after household costs, an estimated 21 per cent of dependent children – 220,000, or almost the population of Hamilton – were in income poverty in 2015.²

The document compared the 2015 results with the period 1982 to 1990, when the number of 0-17 year olds living in income poverty was between 10 and 15 per cent using the contemporary median threshold, and between 11 and 16 per cent using the fixed-line threshold.

Using the New Zealand Household Economic Survey data, the percentage of 0-17-year-olds in households living in material hardship in 2015 was 14 per cent, the same figure as in 2014.³

The 2016 report is the fourth consecutive annual report on indicators that assess aspects of child poverty in Aotearoa New Zealand and their implications

¹ Simpson J, Duncanson M, Oben G, Wicken A, Gallagher S, *Child Poverty Monitor: 2016 Technical Report*, New Zealand Child and Youth Epidemiology Service, University of Otago, Dunedin <http://www.nzchildren.co.nz/>, p 3.

² Ibid, p 3.

³ Ibid, p 3.

for child wellbeing. The first group of measures comprises the five measures identified in the Expert Advisory Group's 2012 report to the New Zealand Children's Commissioner on solutions to child poverty.⁴ That paper advocated a fixed-line income measure; a moving-line income measure; and measures of material hardship, severe poverty and poverty persistence to capture different aspects of child poverty and facilitate monitoring of the effectiveness of efforts to reduce child poverty in Aotearoa New Zealand. The second group of indicators tracks progress on factors in the health, education, housing and social sectors relating to the conditions in which children are born, live and grow, and which affect their ability to develop and thrive. The third suite of measures has examples from the New Zealand social and economic environment of the context for specific child-related issues, including measures of income inequality and data on unemployment and underutilisation.

The *Child Poverty Monitor; 2016 Technical Report* noted that child income poverty rose from 13 per cent in 1988 to 27 per cent in 1992, as a result of rising unemployment and benefit cuts in 1991.⁵ Between 1992 and 1998, child poverty declined as unemployment fell. However, after 1998, incomes for many low-income households with children did not rise. The promising decline in child poverty seen between 2001 and 2007, when policies such as Working for Families contributed to increases in income for some families, has not been maintained.⁶ Between 2007 and 2010 child poverty rates increased, then declined, so that in 2013 rates were nearly equal to those in 2007.⁷

The *2016 Technical Report* said that between 2009 and 2013, among children aged 0 to 14 years, an average of 28 children died each year from medical conditions and 38 from injuries. The death rates for Māori children were 2.8 times higher and for Pasifika children 3.7 times higher than those for European/Other children.⁸ The hospitalisation rate for medical conditions with

⁴ Expert Advisory Group (2012). Solutions To Child Poverty in New Zealand: Evidence for Action. Wellington, Children's Commissioner.

⁵ Simpson J, Duncanson M, Oben G, Wicken A, Gallagher S, Child Poverty Monitor: 2016 Technical Report, New Zealand Child and Youth Epidemiology Service, University of Otago, Dunedin <http://www.nzchildren.co.nz/>, p 10.

⁶ Ibid, p 10.

⁷ Ibid, p 10.

⁸ Ibid, p 4.

a social gradient rose from 2000 to 2015.⁹ Hospitalisation for children living in areas with the greatest deprivation was more than eight times higher than for their peers living in areas with the lowest NZDep2013 scores.¹⁰

Around 197,000 0-14 year olds – 21 per cent – experienced one or more types of unmet need for primary health care in 2015.¹¹ Major problems with dampness and mould were experienced by 34 per cent of 0-17 year olds in households in the lowest income quintile compared with one per cent in the highest income quintile.¹² Major difficulties with heating and keeping homes warm were suffered by 21 per cent of 0-17 year olds in households in the lowest income quintile, compared with two per cent in the highest income quintile.¹³

The above snapshot clearly explains the link between poverty and immediate and long-term negative outcomes for children. The figures for child poverty in Aotearoa New Zealand over the past three decades demonstrate the clear and close causal connection between low benefit rates, low wages, unemployment and child poverty. Child poverty makes children vulnerable.

Accordingly, until child poverty is addressed by the Government, improved outcomes for our most vulnerable children will not be achieved. The Government throughout the development of its vulnerable children initiatives has refused to address the economic factors contributing to child poverty. The Government-appointed Expert Panel's Interim Report, *Modernising Child, Youth and Family*,¹⁴ did not address poverty, and nor did the final report, *Investing in New Zealand's Children and Their Families*,¹⁵ or the Children, Young Persons, and Their Families (Advocacy, Workforce, and Age Settings)

⁹ Ibid, p 4.

¹⁰ Ibid, p 5.

¹¹ Ibid, p 5.

¹² Ibid, p 6.

¹³ Ibid, p 6.

¹⁴ Expert Panel on Modernising Child Youth and Family, *Interim Report: Modernising Child Youth and Family*, July 2015 <https://www.msd.govt.nz/documents/about-msd-and-our-work/work-programmes/cyf-modernisation/interim-report-expert-panel.pdf>.

¹⁵ Expert Panel on Modernising Child Youth and Family, *Investing in New Zealand's Children and Their Families*, April 2016 - <https://www.msd.govt.nz/about-msd-and-our-work/newsroom/media-releases/2016/investing-in-nz-children-and-their-families.html>.

Amendment Bill. CPAG accordingly believes the Government's efforts to improve children's lives are doomed to failure.

David Kenkel pointed out that the final report of the Expert Panel mentioned investment 240 times, but deprivation was mentioned only four times, inequality once and poverty once.¹⁶ He went on to state that:

Despite the often unspoken reality that the vast majority of return visit CYFS clients are poor, and that people on reasonable incomes seldom have long-term contact with CYFS, it seems the authors of the report do not see poverty as having any great relevance to the business of CYFS. Given the truly astounding amount of data demonstrating clear links between poverty, deprivation and increased levels of neglect and abuse of children it seems an extraordinary oversight... This seems even more the case when you consider the equally astounding amounts of data (Szalavitz, 2010; Murali & Oyeboode, 2004) showing that poverty plays a causative role in many of the other factors associated with increased levels of child abuse and neglect: these are factors such as parental depression, poor mental health, high levels of family stress, insecure, overcrowded and unhealthy housing, and increased levels of drug and alcohol abuse as self-medication to manage misery.¹⁷

Kenkel also notes that the fact that being poor and living in a starkly unequal society such as New Zealand correlates with higher levels of child abuse and neglect is newer information, but also well-researched:

Sadly, New Zealand has been identified as one of the most starkly unequal societies in the OECD (Rashbrooke, 2014). What is striking about our inequality is that it is relatively new. From a reasonably equal society 30 years ago we now live in a country where nearly a quarter of our children live in poverty (Office of the Children's Commissioner 2012 & 2013) and a small number of very rich people enjoy conspicuously opulent lifestyles.¹⁸

CPAG submits that the Government needs to halt its plans for this legislation and for a Ministry for Vulnerable Children and rethink its policies, focusing on the link between poverty and poor outcomes for families, and committing to provide significant financial resources to end poverty in Aotearoa New

¹⁶ Kenkel, D *The absent elephant in the 2016 'Modernising Child, Youth and Family Expert Panel Report'*, Re-Imagining Social Work in Aotearoa New Zealand - <http://www.reimagining-social-work.nz/2016/04/the-absent-elephant-in-the-2016-modernising-child-youth-and-family-expert-panel-report/>.

¹⁷ Ibid.

¹⁸ Ibid.

Zealand. This would result in massive cost-savings in the long term, as children would be mentally and physically healthier and would not represent lifelong costs to the health system due to preventable illnesses. Healthy children will grow into adults who are better able to work, which would mean savings on benefit costs. There would also be cost savings to the criminal justice system, as young people who are in work and earning enough to support themselves feel valued and have a greater stake in the community and are less likely to be drawn into a life of crime.

2. Māori children and removal of the whānau first provision

The two Expert Panel Reports and many of the statements from Ministers leading up to the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Bill referred to the over-representation of Māori children in Child, Youth and Family (CYF) Care. It is common for more than 60 per cent of the children in CYF Care at any time to be Māori. The Regulatory Impact Statement – *Investing in Children: Legislative support for improving outcomes for Māori children and young people*¹⁹ stated that young Māori were disproportionately represented in families with high levels of need and disadvantage, and were nearly four times more likely to have a parent who had been involved with CYF as a child.

The Regulatory Impact Statement said that the Expert Panel anticipated that there would be an increase in the number of vulnerable Māori children engaged with the system due to an increasing Māori youth population and underlying social and economic factors. The paper observed that previous reviews of CYF had sought to address these issues and to reduce the high number of Māori children and young people in the system. However, those reviews had largely failed to achieve the desired results for Māori and non-Māori children as they were not backed up by the level of legislative support now proposed.²⁰

¹⁹ Ministry of Social Development, Regulatory Impact Statement – *Investing in Children: Legislative support for improving outcomes for Māori children and young people*, 25 November 2016, p 4.

²⁰ *Ibid*, p 4.

The Statement said that the Cabinet Social Policy Committee had agreed that the proposed new operating model should place a high degree of specific focus on improving outcomes for Māori children and young people. Those features included the following:

- the design of a new operating model to have high and explicit expectations and targets to improve outcomes for vulnerable Māori children and young people, and their whānau;
- the new operating model should have a future target of improving outcomes for vulnerable Māori children and young people;
- strategic partnerships with iwi and Māori organisations, and Whānau Ora Commissioning Agencies to promote opportunity and innovation from organisations interested in improving whānau;
- the commencement of reporting progress towards improving outcomes for vulnerable Māori children and young people [SOC-16-MIN-0023 refers].²¹

In addition, the Regulatory Impact Statement said that the purposes and principles of the Children, Young Persons and Their Families Act 1989 would be updated to support the new operating model to focus more strongly on achieving positive outcomes for Māori children and young people, and to strengthen the existing duties of the Chief Executive of the Ministry of Social Development to give greater recognition and respect to the principles of the Treaty of Waitangi.

However, what the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Bill does is to remove the principle in sections 5 and 13 of the current legislation which provides for “whānau first” placement of Māori children. The current act sets out principles in section 5, including that:

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

Subject to [section 6](#), any court which, or person who, exercises any power conferred by or under this Act shall be guided by the following principles:

²¹ Ibid, p 3.

(a) the principle that, wherever possible, a child's or young person's family, whanau, hapu, iwi, and family group should participate in the making of decisions affecting that child or young person, and accordingly that, wherever possible, regard should be had to the views of that family, whanau, hapu, iwi, and family group:

(b) the principle that, wherever possible, the relationship between a child or young person and his or her family, whanau, hapu, iwi, and family group should be maintained and strengthened:

The current act also provides that:

Section 13

Principles

(1) Every court or person exercising powers conferred by or under this Part, [Part 3](#) or [3A](#), or [sections 341 to 350](#), must adopt, as the first and paramount consideration, the welfare and interests of the relevant child or young person (as required by [section 6](#)).

(2) In determining the welfare and interests of a child or young person, the court or person must be guided by the principle that children and young people must be protected from harm and have their rights upheld, and also the principles in [section 5](#) as well as the following principles:

(a) *[Repealed]*

(b) the principle that the primary role in caring for and protecting a child or young person lies with the child's or young person's family, whanau, hapu, iwi, and family group, and that accordingly—

(i) a child's or young person's family, whanau, hapu, iwi, and family group should be supported, assisted, and protected as much as possible; and

(ii) intervention into family life should be the minimum necessary to ensure a child's or young person's safety and protection:

(c) the principle that it is desirable that a child or young person live in association with his or her family, whanau, hapu, iwi, and family group, and that his or her education, training, or employment be allowed to continue without interruption or disturbance:

(d) where a child or young person is considered to be in need of care or protection, the principle that, wherever practicable, the necessary assistance and support should be provided to enable the child or young person to be cared for and protected within his or her own family, whanau, hapu, iwi, and family group:

(e) the principle that a child or young person should be removed from his or her family, whanau, hapu, iwi, and family group only if there is a serious risk of harm to the child or young person:

(f) where a child or young person is removed from his or her family, whanau, hapu, iwi, and family group, the principles that,—

(i) wherever practicable, the child or young person should be returned to, and protected from harm within, that family, whanau, hapu, iwi, and family group; and

(ii) where the child or young person cannot immediately be returned to, and protected from harm within, his or her family, whanau, hapu, iwi, and family group, until the child or young person can be so returned and protected he or she should, wherever practicable, live in an appropriate family-like setting—

- (A) that, where appropriate, is in the same locality as that in which the child or young person was living; and
- (B) in which the child's or young person's links with his or her family, whanau, hapu, iwi, and family group are maintained and strengthened; and
- (iii) where the child or young person cannot be returned to, and protected from harm within, his or her family, whanau, hapu, iwi, and family group, the child or young person should live in a new family group, or (in the case of a young person) in an appropriate family-like setting, in which he or she can develop a sense of belonging, and in which his or her sense of continuity and his or her personal and cultural identity are maintained:
- (g) where a child or young person cannot remain with, or be returned to, his or her family, whanau, hapu, iwi, and family group, the principle that, in determining the person in whose care the child or young person should be placed, priority should, where practicable, be given to a person—
 - (i) 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 or young person; and
 - (ii) who lives in the same locality as the child or young person:
 - (h) where a child or young person cannot remain with, or be returned to, his or her family, whanau, hapu, iwi, and family group, the principle that the child or young person should be given an opportunity to develop a significant psychological attachment to the person in whose care the child or young person is placed:
 - (i) where a child is considered to be in need of care or protection on the ground specified in [section 14\(1\)\(e\)](#), the principle set out in [section 208\(g\)](#).”

The removal of this principle is strongly criticised and strongly opposed by Māori. In addition, Māori have condemned the lack of consultation with them about the proposed changes, and have asked for a deferral of further progress of the legislation until they have been properly consulted.

The Māori Women's Welfare League has filed a claim in the Waitangi Tribunal challenging the changes.²² Māori Women's Welfare League President, Prue Kapua, said innovative, Māori solutions should be sought to improve the well-being of Māori children. She pointed to the *Puao te ata tu* report released in 1988.²³

²² See - <https://nzfvc.org.nz/news/treaty-claim-lodged-move-away-wh%C4%81nau-hap%C5%AB-iwi-placements-children-care>.

²³ Ministerial Advisory Committee on a Maori Perspective for the Department of Social Welfare, *Puao-Te-Ata-Tu (Daybreak)* <https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/archive/1988-puaoteatatu.pdf>.

A Hui Whakatipu was held by the Māori Women's Welfare League in Wellington on 28 November 2016 to discuss the proposals. Dame Tariana Turia in a speech on 2 February 2017 condemned the proposed change.²⁴

Political parties have extensively and strongly condemned the changes and the lack of consultation. Iwi leaders at a 68-member Iwi Chairs Forum in August 2016 signed "A Covenant for Our Nation's Children."²⁵ The Government could have used the opportunity offered by this current law reform to incorporate the covenant into law.

CPAG submits that the whānau first principle of the current legislation should be incorporated in the bill. Progress of the bill should be delayed until Māori are satisfied they have been consulted properly.

3. Focus on vulnerable children and name of the new ministry

The new ministry to be established on 1 April 2017 will be called the Ministry for Vulnerable Children, Oranga Tamariki. CPAG makes two key criticisms in this regard. These are that –

- The name of the ministry will shame children and their families with whom it is associated;
- The Government should have a plan to promote the welfare of all children, not simply one group of children.

Children's Commissioner Andrew Becroft in an article described the name of the new ministry as "stigmatising" and "crushing." He said that the ministry should carry a name that was aspirational, rather than one with negative connotations.²⁶ CPAG shares those concerns.

When Social Development Minister Anne Tolley was questioned by the United Nations Committee on the Rights of the Child in September 2016, she was

²⁴ See <http://www.scoop.co.nz/stories/PO1702/S00019/the-future-is-behind-us.htm>.

²⁵ Collins, *C Iwi sign vow of respect for our nation's kids*, New Zealand Herald, August 2016 - http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11687482

²⁶ Judge Becroft, article published on www.stuff.co.nz website - <http://www.stuff.co.nz/national/faces-of-innocents/82699004/Ministry-for-Vulnerable-Children-name-stigmatising-and-labelling>.

asked about why the Government was creating a Ministry for Vulnerable Children, which would focus only on some children, and why it did not have a plan covering all children.²⁷ The committee was concerned that Aotearoa/New Zealand had no over-arching plan addressing the well-being of all children and young persons under 18.

CPAG Management Committee member, Associate Professor Mike O'Brien, in an article said that CPAG believed that a comprehensive preventative approach was needed to address child poverty, rather than a focus on a small subset of poor children living in "complex" families. He said CPAG did not support an approach that concentrated on:

*Responding to the worst outcomes of child poverty and deprivation and then only once these conditions have become patently obvious with families living in cars or casualties of our health and welfare systems that... can no longer be ignored.*²⁸

Associate Professor O'Brien said that targeting at risk children implied that social services were reactionary measures delivered to complex families, rather than social support that ensured all children in all families could have the best start in life.²⁹

Malnutrition, inadequate clothing and footwear, degenerate housing and lack of social interaction and support may not register on any [Predictive Risk Model] radar. While it is important to support those who need specialist social services intervention, that intervention would be less necessary if broader, preventative social measures formed the basis of our welfare system.

Targeting at risk children reinforces stigmatism of the very children it is attempting to support. Such punitive, reactionary measures will inevitably lead to more and more children being removed from their families. The assumption implied is that child abuse or neglect is a preventable disease, fixed through targeting individual children within individual families while ignoring the extensive poverty faced by too many families.

²⁷ Radio New Zealand – *UN Committee questions focus of NZ's new child agency*, 16 September 2016 - <http://www.radionz.co.nz/news/national/313465/un-committee-questions-focus-of-nz-s-new-child-agency>.

²⁸ O'Brien, M *Prevention – The Best Way to Address Child Poverty*, 20 May 2015 <http://briefingpapers.co.nz/2015/05/prevention-the-best-way-to-address-child-poverty/>.

²⁹ *Ibid.*

Poverty is the predominant context in which children can come to harm, both because of the stresses parents face in hardship and the dangerous environment caused by material deprivation.³⁰

CPAG supports the creation of a Ministry for Children and the appointment of a Minister for Children. CPAG does not support the name “Ministry for Vulnerable Children.”

4. Resources

Child, Youth and Family (CYF) has been hampered in its care and protection work by insufficient resources to respond promptly to notifications of neglect and abuse. When notifications are made, there is commonly a considerable delay before these are followed up on. CYF uses a priority system, but this means children are not adequately protected. The priority system is regularly changed to reflect resource availability; it does not represent an appropriate and safe approach to protecting children at risk of neglect and abuse. Children who might need support do not obtain it for a lengthy period because their situation is not ranked as a top priority. However, they might still be in very unsatisfactory situations, and the risks to their safety might be growing over time. It is clear from the background documents that the changes are being substantially driven by a desire to reduce government expenditure; ‘vulnerable’ children’s safety and needs are not the central consideration, despite the rhetoric to the contrary.

CYF social workers have difficulty in complying with court deadlines because of their heavy workloads. Training and ongoing education are sometimes insufficient for CYF staff to carry out their work to a high standard. If the Government does not make sufficient resources available for training and supporting those working to protect children, legislative changes will not result in practical improvements.

³⁰ Ibid.

CLAUSE BY CLAUSE SUBMISSIONS ON THE BILL

CLAUSE 4 – INTERPRETATION

CPAG supports the new definition of “young person” which enables persons who are or have been married or in civil unions to access the protections in the act.

CLAUSE 6 – PURPOSES

CPAG submits that a new purpose should be added, providing a duty on governments to ensure that all children and their families have adequate income to meet their basic needs. This would also be in compliance with Aotearoa/New Zealand’s obligations under the United Nations Convention on the Rights of the Child.

CPAG does not support purpose (c) which provides for the early removal of children from their whānau and submits that it should be deleted.

Clause 6 replaces the section 4 objects in the current legislation with purposes. The purposes include:

(d) supporting families, whānau, hapū, iwi, and usual caregivers to enable them to provide a safe, stable, and loving home for, and meet the needs of, their children and young persons:

(e) strengthening the relationships between children and young persons and their family, whānau, hapū, and iwi (including the relationships between siblings)

However, these purposes are contradicted by the bill’s emphasis on early removal of children from their families, and its deletion of the current “whānau first” principle contained in the present act. Early removal of children from their whānau is not supporting families to enable them to provide stable and loving homes for children. As noted in the Overview section above, CPAG submits that the current whānau first policy should be inserted into the bill.

There is nothing in the purposes clauses about ensuring that children and their families have sufficient income to provide for their basic needs, including food, clothing, housing, heating, medical care and other necessities. Without access

to adequate resources to provide for these basics, it is inevitable that children will have a poor start to life. Growing up in damp and mouldy homes is correlated with life-long health problems.

CLAUSE 7 – WELL-BEING AND BEST INTERESTS

CPAG does not support Clause 7(2), which provides that, in youth justice matters, the well-being and best interests of the child or young person “are a primary consideration that must be weighed with other primary considerations.” The other primary considerations are the public interest – including public safety; the interests of the victim of any offending by a child or young person; and the accountability of the child or young person for their behaviour.

CPAG submits that the well-being and best interests of the child should be **the** paramount consideration.

Clause 7 inserts a new section 4A into the legislation. This provides for the “well-being and best interests” of children or young persons to be the first and paramount considerations in all matters relating to the administration or application of the act. Section 6 of the present act provides that the “welfare and interests” of the child or young person are to be the first and paramount consideration.

The United Nations Convention on the Rights of the Child in Article 3 uses the term “the best interests of the child.” Section 4 of the Care of Children Act 2004 states that the “welfare and best interests” of a child are to be the first and paramount consideration in making decisions about children.

The Explanatory notes to the bill state that it “promotes a holistic approach to understanding what is in the interests of the child or young person by replacing ‘welfare’ with ‘well-being’.” If this is the intention, it would be helpful to define “well-being.” Its introduction is likely to cause uncertainty, given that the word “welfare” has been used until now, and “welfare” is used in the Care of Children Act. If there is no definition of “well-being,” its meaning will not be clear until jurisprudence develops.

The *Concise English Dictionary* defines “welfare” as “the state of faring or doing well: freedom from calamity, etc, enjoyment of health, etc: prosperity.” The dictionary defines “well-being” as “welfare.”³¹

CLAUSE 8

Clause 8 sets out the principles to be applied in exercising the powers conferred by the act. CPAG supports the inclusion in clause 8(b)(iv) of recognition of the need to respect, strengthen, and support relationships between siblings.

CPAG agrees that children or young persons should be at the centre of decision-making affecting them. CPAG supports provision for children’s or young person’s rights – including those in the United Nations Convention on the Rights of the Child and the United Nations Convention on the Rights of Persons with Disabilities - to be respected and upheld.

CLAUSE 9

Clause 9 inserts a new section 5A into the act, providing for the first time for principles of participation by children. CPAG supports these principles and agrees that children and young persons should be encouraged and assisted to participate in decisions about their futures.

CPAG also agrees that decision-makers making decisions in writing should be required to set out the child or young person’s view. However, CPAG is concerned that this provision could raise safety concerns in domestic violence cases. CPAG submits that safeguards need to be included to ensure that abusive parents or family members would not learn what children had said, resulting in the risk of violence to children.

CPAG supports a requirement for decisions to be explained to the children or young persons affected by those decisions.

³¹ Davidson, GW, Seaton, MA and Simpson, J *Concise English Dictionary*, Wordsworth Reference, 1988, p 1136.

CLAUSE 10

CPAG does not support repeal of this clause.

CLAUSE 11

Clause 11 sets out the duties of the Chief Executive. CPAG's view is that, until the Government acknowledges the role of poverty in poor outcomes for children and takes steps to address it, its actions will be ineffective in achieving significant change.

Clause 7(3) inserts a duty to ensure that services funded by the department to reduce the impact of early risk factors are co-ordinated with other government-funded activities for improving outcomes for children, young persons and their families, or reducing the impact of early risk factors. This includes services of the kind set out in any vulnerable children's plan under the Vulnerable Children's Act 2014.

CPAG supports the introduction of standards of care. These are essential to provide guidance as to the standards expected, and to enable monitoring and raise standards overall. It is reprehensible that standards have not previously been developed to ensure children are properly cared for.

CPAG supports the creation of complaints mechanisms to enable children, young persons, parents, families and caregivers to complain about actions taken by the chief executive and others, and to receive timely, fair and child-centred responses. Legal Aid should be made available for these processes, as without legal representation many people wishing to make complaints will not have the capacity to do so.

CLAUSE 12

CPAG supports the proposed section 7A(3), which requires the Chief Executive to report at least once a year on measures taken to carry out the duties set out in the bill, including the impact of those measures in improving outcomes for Māori children and young persons in care or protection. Reporting and monitoring are essential to ascertain whether or not improvements are being achieved.

CPAG supports recognition and practical commitment to the principles of the Treaty of Waitangi. However, it is ironic that this is provided for in the bill at the same time as the Māori Women’s Welfare League is taking a Treaty claim alleging that the aspect of the bill relating to the deletion of the “whānau first” provisions is a breach of the Treaty. Provisions relating to recognition and practical commitment to the principles of the Treaty of Waitangi need to be more than words.

Clause 12 requires the Chief Executive to take further specific steps in relation to improving outcomes for Māori children. CPAG does not consider that these are meaningful provisions, given that Māori are overwhelmingly opposed to the removal of “whānau first,” and the evidence is that taking children away from their whānau and cutting them off from their culture is overwhelmingly detrimental to them in the long term.

CPAG submits that a better way of ensuring more positive outcomes for Māori children would be to restore whānau first and acknowledge the role poverty plays in poor outcomes for children and take steps to address that.

CPAG agrees that the Chief Executive should be able to delegate functions under the act to iwi and other Māori organisations, as provided for in the new section 7A(2)(iv).

CLAUSE 13

CPAG does not support these principles and submits that the current whānau first provisions should be retained in the act. However, CPAG agrees with the clause 13(2)(g)(iv) emphasis on placing children with their siblings.

CLAUSE 38 – INFORMATION SHARING

CPAG stresses the importance of safeguards to protect personal information and supports the creation of a Code for information sharing prior to information sharing commencing. CPAG submits that a Code should be mandatory, rather than it being left to the discretion of the Minister as is currently proposed under the new section 66K. The bill has extensive provisions about information sharing. CPAG is aware that information sharing is in some cases required to prevent abuse and protect children. CPAG

supports notification of a draft Code and the opportunity for submissions to be made on the Code.

CLAUSE 92

CPAG supports this amendment which provides that young people should be kept in the community as far as practicable, both when they have committed offences and when they are alleged to have committed offences.

CLAUSE 94 – DETENTION OF YOUNG PERSONS IN PRISON OR POLICE CELLS

CPAG submits that a ban on holding young people overnight in police and court cells should be written into the act. Such detention can only occur when it is ordered by a judge, after Child, Youth and Family has advised that no suitable beds are available for young persons.

Clause 94 provides that the court must not make an order under section 238(1)(f) for the detention of a young person aged 17 years in a prison unless a joint application has been made by the Chief Executive and the Chief Executive of the Department of Corrections for the order and the court is satisfied that the order is necessary to ensure the safety of any young person and a youth unit within a prison is available for the young person to stay in.

This is an issue that has been occurring for decades now. Once Child, Youth and Family staff have advised that no beds are available, there is little option for judges but to order detention in unsatisfactory locations if young persons are to be held in custody.

Police and court cells are unsuitable for young persons. They have to be kept in isolation to keep them away from adults in detention. However, it is common for young people to be detained in unsatisfactory premises. This submission writer has often been in court when judges have made such orders. It becomes almost routine and commonplace.

It was reported in 2016 that a lack of suitable accommodation in youth justice facilities run by Child, Youth and Family had led to almost 700 children and

teenagers being held in police cells in the past five years.³² The highest number was in 2012, when 210 people aged under 17 were housed in cells. In Nelson in April 2016, two teenage boys spent a total of four nights in a police cell because there was nowhere else for them to go.

In January 2017, Principal Youth Court Judge John Walker said that the number of teenage alleged offenders forced to spend nights in police custody was unacceptable. Young offenders spent at least 24 hours in police cells on 151 occasions between June 2015 and June 2016, an increase of almost 200 per cent on the previous year.³³

A Joint Thematic Review of young persons in police detention was conducted by the Independent Police Conduct Authority in 2012. It made 24 recommendations for improvement, and recorded that, in 2011, 213 young people were detained in police cells for an average of 1.9 days. This indicates that the problem is an ongoing one.

CPAG submits that it is too easy for Child, Youth and Family to tell judges that no beds are available. Judges then make orders that young persons are to be detained in police custody. CPAG submits that the only way of bringing this to an end is to write an absolute bar on such overnight detention into the act, so that Child, Youth and Family is required to access other accommodation.

CLAUSE 102 – JURISDICTION OF YOUTH COURT

CPAG supports raising the age of Youth Court jurisdiction to 17 years. The most appropriate forum for dealing with young people and providing the assistance they require to prevent reoffending is the Youth Court rather than the District Court.

³² Radio New Zealand – *Kids and teens being held in police cells*, 12 May 2016 - <http://www.msd.govt.nz/about-msd-and-our-work/work-programmes/community-investment-strategy/#CommunityInvestmentStrategyUpdate2016August2>.

³³ Radio New Zealand – *Use of police cells to hold young people “unacceptable”*, 23 January 2017 - <http://www.radionz.co.nz/news/national/322947/use-of-police-cells-to-hold-young-people-unacceptable>.

CLAUSE 105 – MOVING TO LIVE INDEPENDENTLY

CPAG supports the provisions in the bill allowing for support to be provided for young persons in care up to the age of 21. CPAG also supports the provision for the Chief Executive to provide transition advice and assistance to young persons leaving care or youth justice facilities up to the age of 25.

Young persons who have been in care or have been through the youth justice system are extremely vulnerable and at risk of adverse life outcomes and reoffending. They require support in order to be able to set themselves on a positive path.