



Public Submission

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

26 January 2022



CHILD WISE

Child Wise is pleased to respond to the Select Committee's (the Committee) invitation to make a submission to the *Oversight of the Oranga Tamariki System and Children and Young People's Commission Bill* (the Bill).

Child Wise is a social enterprise with 30 years of experience in keeping tamariki and rangatahi safe from harm. We are headquartered in Australia where we work in every state and territory, in rural, remote and metropolitan areas. We currently operate in eight countries, including Aotearoa where we have been working since 2019. We deliver services to government and non-government organisations, not-for-profits, educational and sporting institutions, faith-based organisations, the health sector and corporate entities to facilitate an environment, and build a culture, where child safety is front of mind.

Child Wise is a global leader in child safeguarding consultancy, training and technology. Child Wise was the first Australian organisation to develop safeguarding standards to evaluate and strengthen child safety practice, and in 2018 we welcomed the introduction of the Australian National Principles (National Principles) for Child Safe Organisations, which reflect our pioneering work.

Child Wise have made submissions to the Australian Royal Commission into Institutional Responses to Child Sexual Abuse (the Australian Royal Commission) as well as to federal and state-based legislative developments. We firmly believe that the protection and safeguarding of children and young people can only be achieved through meaningful multisectoral and multidisciplinary dialogue with people from all ages, backgrounds, genders, sexualities, cultures, bodies and abilities. The invitation to make submissions is one important mechanism to ensure that meaningful engagement is encouraged and acted upon. For this, we thank the Committee for providing us with the opportunity to make a submission.

Our submission is structured in two sections: key strengths & observations and areas we suggest would benefit from further consideration.

Key Strengths & Observations

1. We support the establishment of an Independent Monitor of the Oranga Tamariki System (the Monitor)

- The introduction of a monitoring system to ensure oversight, transparency and continuous quality improvement is critical for the proper functioning of any child protection system.
- The independence of this system is equally essential and ensures transparent critical review of policy, practice and resource allocation.

2. We support the requirement for the Monitor to appoint a Māori Advisory Group (the Advisory Group)

- The requirement for the Monitor to appoint, collaborate with the views of the Advisory Group is commended.
- Of importance is that partnership between the Advisory Group and the Monitor be meaningful, effective and result in agreed outcomes. The wording of the Bill is that the Monitor must 'have regard to the views of' the Advisory Group. Such wording

raises questions about the Advisory Group's proposed role, scope, influence and authority to make meaningful contributions.

- We recommend that the Advisory Group have a clear decision-making mandate which is publicly available.
- We recommend that the Committee also consider that the Monitor itself be composed of a governance structure which is representative of the diversity of people and groups that live in Aotearoa, in particular Māori.

3. We support the requirement for the Board of the Children and Young People's Commission to be inclusive

- The requirement for half of the Board members to have Māori knowledge and experience in, and understanding of, tikanga Māori, demonstrates a commitment to representing the diverse needs and lives of children and young people in Aotearoa.
- As with point 2 above, we recommend the Committee consider that not only the Board be composed of Māori members, but that the Commission also requires minimum representation.
- The inclusion of children and young people in matters that affect them is critical to ensuring that their voice is central to decisions around their wellbeing. This is echoed in the Beatie Report which recommended that Rangatahi be considered as board members of the proposed Commission.¹
- Child Wise champions the inclusion of the voice of children and young people in all the work that we do. To this end, we have set up a Youth Advisory Board for Rangatahi to have a say on issues affecting them and to be involved in young person led activities.
- In Australia more broadly, the Victorian, Western Australian, Queensland, New South Wales and Tasmanian children and young people's commissions all include a form of youth advisory council. This is not unique to Australia, with many countries and sectors establishing such councils.
- We recommend the Committee include Rangatahi in the board or that a separate youth advisory board be established.

Areas for further consideration

1. Timing of the Bill

- We note that the Royal Commission of Inquiry into Abuse in Care (the Royal Commission) is due to provide its recommendations to the Governor-General in 2023.

¹ Beatie, *Strengthening independent oversight of the Oranga Tamariki system and of children's issues in New Zealand - Post Consultation Report*, p.20.

- In the *He Purapura Ora, he Māra Tipu* Report, one of the overarching recommendations was the establishment of a new, independent Puretumu Torowhānui Scheme which is ‘open to all survivors of abuse in State and faith-based care, including indirect State care, and is independent of the State, indirect State care providers and faith-based institutions’.² The implications of such a recommendation will impact the current Bill, particularly in relation to information sharing.
- It is reasonable to assume that recommendations will be made to improve and strengthen oversight of child protection and the management of complaints, and that the Royal Commission may have a view about mandatory reporting of incidents or allegations of child abuse or neglect in New Zealand. In our experience, since the Australian Royal Commission, every state and territory have either updated or introduced legislation to respond to the recommendations. While Aotearoa is not federated, we anticipate there to be a significant number of recommendations. This is supported by fact that, in the *He Purapura Ora, he Māra Tipu* Report alone, 95 recommendations were made.
- As a result of the Royal Commission, it would not be unusual for government to produce a strategy related to preventing abuse of children. This will require machinery of government changes, such as those being proposed through this Bill. For example, following the Australian Royal Commission the Australian government implemented the National Strategy – a first of its kind in Australia – to provide a nationally coordinated, strategic framework for preventing and responding to child sexual abuse.³
- We recommend the Committee delay finalising the Bill until:
 - The Royal Commission findings and the Government’s response to this is known.
 - The Committee can consult with children and young people on proposed legislative, policy or machinery of government changes as part of the Government’s response to the Royal Commission (refer to point 2 for further detail).

2. Incorporating a child rights approach

- The lynchpin of a child protection system needs to be the voice of the child, mechanisms that ensure that decisions that affect them are led by them, and the fact that their participation in decisions made about them is key to their safety. Children will not speak up in a system where there are tacit signs they will not be heard. The system also needs to centre on a child rights approach that recognises, respects and protects children’s and young people’s agency.

² Royal Commission of Inquiry into Abuse in Care, <https://www.abuseincare.org.nz/our-progress/reports/from-redress-to-puretumu/from-redress-to-puretumu-5/1-1-introduction-20/>

³ National Strategy to Prevent and Respond to Child Sexual Abuse, <https://childsafety.pmc.gov.au/what-we-do/national-strategy-prevent-child-sexual-abuse>

- The National Strategy for Children’s Wellbeing (the Strategy) reinforces the importance of including the voice of the child. The Strategy outlines six wellbeing outcomes. Outcome six is ‘children and young people are involved and empowered’. Of relevance is the following statement:⁴

We want to ensure children and young people are listened to and taken seriously when decisions are made that affect them, including at school, in State care, and in decision-making more broadly. Children and young people deserve good, accessible information to help them make informed choices about their lives.

- Consulting with diverse groups of children and young people should be a pre-requisite for the Bill (re)drafting process. We understand that this consultation has not occurred. As a result, the Bill’s proposals, while well-intentioned, cannot take into account children and young people’s views on how these legislative changes will impact them.
- We recommend that meaningful consultation is undertaken with children and young people prior to proceeding with the Bill. This includes ensuring that children and young people understand what the legislative proposals are, what impact they will have, what their rights are and what recommendations they have to improve and strengthen the system.

3. Ensuring the right competency within the Ombudsman’s office

- In principle, we support the proposal that the Ombudsman is well-placed to conduct reviews and investigations given its skills and expertise in these areas. However, child-related matters require a specific skillset and experience, both in terms of how reviews and investigations are managed and conducted, and how all parties to these matters, particularly children and young people, are supported.
- The Beatie Report found that ‘*the key messages from those with experience of the care and protection system is that independent complaint avenues separate from Oranga Tamariki are needed for children, young people and adults.*’⁵ One of the recommendations was to consider placing the power to review and conduct investigations with the Ombudsman given its experience managing complaints and investigations as well as the Ombudsman having the status of an Officer of Parliament.
- However, the Beatie Report also highlighted that further work was needed to ensure that the Ombudsman was child friendly and accessible to whānau, family members and others seeking a complaint review.⁶
- We recommend that prior to finalising the decision about which entity is best placed to conduct reviews and investigations, a thorough assessment of the existing capability of the Ombudsman is carried out to determine whether it is suited to be carrying out such a responsibility. Significant investment may be required to ensure

⁴ Child and Youth Wellbeing, <https://childyouthwellbeing.govt.nz/our-aspirations/strategy-framework/outcomes/outcome-involved-and-empowered>

⁵ Beatie, *Strengthening independent oversight of the Oranga Tamariki system and of children’s issues in New Zealand - Post Consultation Report*, p.21.

⁶ Beatie, *Strengthening independent oversight of the Oranga Tamariki system and of children’s issues in New Zealand - Post Consultation Report*, p.21.

the Ombudsman has the necessary expertise, governance, policies and operational structure to undertake specialised work focused on children and young people.

- We also recommend that children and young people are consulted on this proposal to understand what their views, concerns and recommendations are.

4. The important function of a Children's Commissioner

- The Bill proposes to remove the role of Children's Commissioner and replace it with a governing board with oversight of the Children and Young People's Commission (the Commission).
- We support the inclusion of a board to provide expertise, guidance and accountability for the work of the Commission. However, notwithstanding the particular vulnerabilities of children in care, all children need an independent advocate with enforceable powers.
- We do not support the removal of the Children's Commissioner. This is a departure from existing good practice and expert opinion. For example, As outlined in the Beatie Report:

The role of Children's Commissioner is seen as a strong advocate for all children and their rights, particularly supportive of the role as an independent voice and influencer.⁷

- The importance of having a children's commissioner is well recognised across Australia. Every state and territory with a children and young people's commission, has a named Commissioner. Both Victoria and South Australia have two named children's commissioners: the Principal Commissioner and the Commissioner for Aboriginal Children and Young People.
- The Beatie Report⁸ also recommended the creation of a Commission with two statutory Commissioners: a Children's Commissioner and a Commissioner, Care & Protection. The former, would have the responsibility for the rights and interests of all children and young people, as well as being the guardian for New Zealand's responsibilities under the United Nations Convention on the Rights of the Child. The latter would be the responsible for monitoring the Oranga Tamariki system and reporting to the government and public.
- We recommend that the proposed Commission be led by a named children's commissioner or commissioners with defined legislated powers and sufficient resources to successfully carry out the functions of the Commission.

5. The independence of the Monitor

- A Monitor must be independent from outside, including government, influence if it is to be able to carry out its function independently and impartially.

⁷ Beatie, *Strengthening independent oversight of the Oranga Tamariki system and of children's issues in New Zealand - Post Consultation Report*, p.8.

⁸ Beatie, *Strengthening independent oversight of the Oranga Tamariki system and of children's issues in New Zealand - Post Consultation Report*, p.20.

- We encourage the Committee to consider where the Monitor will be best place to carry out its role effectively. Support has been given, as outlined in the Beatie Report,⁹ for the role to sit within a Commission.
- This is in line with the Australian Royal Commission's recommendation that an independent oversight body in each state and territory be responsible for monitoring and enforcing Australia's National Principles for Child Safe Organisations, noting that governments could enhance the roles of existing children's commissioners or guardians for this purpose.
- Given the Committee's proposal to establish a Commission, this presents an opportunity to consider whether the Monitor will be well-placed here.

6. Information sharing between the Monitor, Ombudsman and Commission

- If the tripartite system is to be successful, information sharing between the Monitor, Ombudsman and Commission is critical to ensuring that they are able to carry out their functions fully.
- The Bill provides for the Monitor, Ombudsman and Commission to share information between each other if certain criteria are met. However, the Bill also provides for the entities to decline a request for sharing of information. No guidance is provided in the Bill as to the reasons for which a request can be declined. Difficulties government agencies face in sharing client/personal information are well understood and documented. More so, are the obstacles these present to ensuring enhanced outcomes for those needing support. It is essential that the lack of clarity in this area is addressed in the Bill, to avoid fragmentation or delays in the investigation of incidents, or the provision of support to children and young people.
- In South Australia, the 2016 Royal Commission into Child Protection Systems noted that a consistent theme in the Commission was that collaboration and cooperation needed to be improved between agencies providing service delivery to children. It made the following observations:¹⁰

Caution about information sharing between government departments and other non-government services has created administrative barriers to meeting the needs of children. The current balance assumes that information is confidential except in certain circumstances.

This balance should shift to give greater emphasis to information sharing as a responsibility of those working in the child protection system.

Improved information-sharing powers will enable more efficient action, and smooth the way for better collaboration and coordination in service provision.

- We recommend the Committee include in the Bill clear guidance about who (ie, the position within the entity) has the power to decline a request for information, the

⁹ Beatie, *Strengthening independent oversight of the Oranga Tamariki system and of children's issues in New Zealand - Post Consultation Report*, p.20.

¹⁰ Child Protection Systems Royal Commission Report, Volume 1: Summary and Report, August 2106, p.29.

specific, and limited, grounds for refusing to share information, and, where appropriate, an avenue for reconsideration of a refusal to share information.

We thank you for the opportunity to contribute to this legislation.

Kind regards

A handwritten signature in black ink, appearing to read 'Natalie', with a mouse cursor icon pointing to the top left of the signature.

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