

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

Tēnā koe,

1. The Mental Health and Wellbeing Commission (the Commission) is pleased to submit on the Oversight of the Oranga Tamariki System and Children and Young People's Commission Bill (the Bill).
2. We would welcome the opportunity to present to the Committee on our submission, to support improved wellbeing for all children and young people, including those involved with Oranga Tamariki, and particularly Māori tamariki, rangatahi, and whānau who are over-represented in that system.

General Comment

3. The Commission endorses the overall aim of the Bill, to improve outcomes for children and young people by strengthening the independent monitoring and complaints oversight of the Oranga Tamariki system, and advocacy for children's and young people's issues. It is good to see that the Bill expands the Children and Young People's Commission to include young people who have been in the care of the State up to the age of 25 years.
4. The Commission is concerned that the Bill relegates Te Tiriti o Waitangi obligations to a few specific clauses, rather than an overarching responsibility that guides the Bill and the improvements it seeks. Greater partnership should be laid out in the Bill, to uphold the Crown's obligations and improve outcomes for tamariki, rangatahi, and whānau.
5. The Bill should do more to involve the voices of children and young people in the design, delivery, and monitoring of services. This should include ensuring that monitoring and advocacy functions are as accessible, safe, and supportive as possible. The Commission has written to the Select Committee with our concern that the timeframe for submissions on the Bill is too short to include the voices of young people in its design.
6. The Commission advocates for meaningful independence for the proposed Oranga Tamariki system monitor, but is concerned that the Bill, as currently drafted, does not support this. We are of the opinion that a different organisational form would strengthen advocacy for children's rights and give effect to greater independence of the Monitor from Ministers and government agencies.

Partnership with Māori and honouring Te Tiriti in the Bill:

7. It is our view that monitoring, complaints investigation and the advocacy system for children and young people requires co-design with iwi and Māori representatives. Such co-design is based in equitable sharing of resources, power, and authority. The proposed provisions in the Bill are deeply concerning in their segregation of the partnership under Te Tiriti to an advisory group, separate from the ownership of system design (Clauses 17 and 18). This does not reflect the Crown's commitment to genuine partnership with Māori, and honouring Te Tiriti o Waitangi.
8. As currently drafted, the Bill proposes a system that perpetuates the structural and institutional racism as reported by the Waitangi Tribunal in the findings of its report **He Pāharakeke, he Rito Whakakīkinga Whāruarua - Oranga Tamariki Urgent Inquiry**. The Waitangi Tribunal report articulates the need for tamariki, rangatahi, whānau, hapū and iwi Māori to be central partners in the design and monitoring of any future care system. Additionally, we also support the Tribunal's demand that the legislation governing oversight of Oranga Tamariki must reflect the abilities of iwi and hapū to care for and support the wellbeing of their tamariki.
9. Additionally, Clause 18 proposes collaboration with a Māori Advisory Group. This is a model that has been frequently used in the past and should be relegated there. Under this model, power and authority are not shared, and inequities persist.
10. Clause 19 of the Bill states that the Monitor is to "make reasonable efforts to develop arrangements with iwi and Māori organisations ..." This reflects recommendations made by Cabinet that the Monitor is not required to enter partnership with organisations it may be overseeing. However, the Monitor can be in partnership with Māori and still act in a judicial role, and we recommend that this requirement be re-included in the Bill.
11. We recommend that the clauses giving effect to Te Tiriti o Waitangi for the Children and Young People's Commission are strengthened by requiring that at least half of the board members have whakapapa Māori, and all Board members have knowledge of tikanga Māori to reflect commitment to Te Tiriti o Waitangi (Clause 92(2)). This advice ensures that the governance of the Commission has the required partnership, skill, diversity, and expertise to drive meaningful and relevant system design and monitoring.

Having children and young people at the centre

12. The voices and views of children and young people need to be at the centre of the monitoring and advocacy systems that impact them, particularly tamariki and rangatahi Māori. People with lived experience of Oranga Tamariki involvement, including children and young people currently involved, have knowledge and understanding of the system that is essential for monitoring.

To ensure that children and young people are at the centre, we recommend that:

- a) The monitoring and advocacy system should be co-designed with Māori, including tamariki and rangatahi Māori.
- b) The investigation and complaints functions of the Children's Commissioner should be retained in the new Children and Young People's Commission to ensure that children, young people and whānau have access to specialist expertise held within the Commission, and to strengthening the Commission's advocacy.
- c) A straightforward complaints mechanism is established that can be easily accessed by children and young people who are in state care, including those in secure residences. This would be best housed within one independent organisation, alongside monitoring and advocacy functions. This 'one stop shop' would provide ease of access to the Ombudsmen and make use of their powers and experience, as outlined in the Bill.

13. In providing opportunities for children, young people and whānau to be heard, simplicity is key. Through engagement with communities, the Commission has heard of the overwhelming trauma, fatigue and undue burden on people having to approach multiple agencies. An independent organisation that houses monitoring, complaints, and advocacy, would avoid confusion and provide ease of access.

14. The Monitor, the Ombudsman and the new Children and Young People's Commission should all be supported to effectively engage with children and young people. This support must include adequate funding and resourcing to be able to successfully undertake the functions and activities laid out in the Bill.

15. Resources, training, and advice are essential for ethical, authentic, and sustainable engagement, for all children and young people, particularly those who are marginalised. The code of ethics (Clause 20) needs to be developed with expert guidance on engagement with children and young people, for engagement and participation to be appropriate and safe.

Independence of the Monitor

16. It is essential that the Monitor is truly independent, well-resourced and have sufficient powers to be able to hold the Oranga Tamariki system to account. Both the 2018 consultation report and the Ministry of Social Development (MSD) options analysis identified that independence is crucial for public trust and confidence, particularly from Māori. This is critically important given the high proportion of tamariki and rangatahi Māori involved with Oranga Tamariki, and systemic discrimination experienced by Māori.

17. With this in mind, we think that the Committee should strongly consider housing the monitoring and advocacy functions in one fully independent body, such as an Independent Crown Entity, and ensure it is properly resourced to undertake all functions.
18. While the Bill's supporting Cabinet paper refers to the "inherent tension in one organisation being both advocate and monitor," there are multiple examples, (including the Mental Health and Wellbeing Commission), of Independent Crown Entities that hold both monitoring and advocacy functions. Holding both functions would be advantageous for the following reasons to:
- a) help boost the independence of the Monitor
 - b) ensure that the advocacy work of the Children and Young Peoples Commission is as fully informed by the monitoring function as possible (rather than depending on the final report for information from the Monitor)
 - c) ensure that the monitoring function is as fully informed by the input and concerns of affected young people as possible
 - d) support the 'common duties' in the Bill, including reduced burden and risk on individuals
 - e) potentially reduce overheads
 - f) contribute to the improved accessibility and approachability for complaints, as described above.
19. We note that establishment of an Autonomous Crown entity was one of three options considered by the MSD's options analysis.⁴ The key reasons for dismissing the Crown Entity option included increased "fragmentation for all aspects", and highest cost to establish and operate including new Board and Chief Executive and corporate systems.
20. We are of the opinion, however, that this options analysis is flawed. Combining monitoring and advocacy could reduce fragmentation, and establishment and operation costs may be impacted with the proposed creation of a new Board for the Children and Young People's Commission.
21. The options analysis also raised a concern that the Monitor needs to be a "trusted advisor" for decision makers and advised against using an Autonomous Crown Entity. This assumed that such an entity prevents Ministers from seeking specific reviews or priorities and possibly reduces the effectiveness of the Monitor in advising Ministers. However, we do not agree that independence should make a monitor less of a trusted advisor, in fact the opposite is true. Further, there is no reason that the Ministers could not still hold the ability to request investigations of current interest, as included in the draft Bill (clause 24).

22. It is our opinion that the combination of monitoring and advocacy in an Independent Crown Entity is the most effective way to deliver on the objectives of this Bill and ensure the wellbeing of tamariki. However, such an arrangement requires adequate power and resourcing for the Monitor to hold the state accountable for its responsibilities to children in care. The legislation establishing the Commission is a useful and relevant benchmark.

23. As a minimum, the Bill should ensure that the Monitor is required to make recommendations for change where necessary. Likewise, the scope of the Monitor's powers to obtain information should be strengthened so that it can properly exercise its watchdog function. We recommend the Committee reviews Section 45 of the Bill and expands the powers to obtain information from all relevant state service agencies and private organisations providing services under the Oranga Tamariki Act.

Further changes that would improve the draft Bill

24. Section 54(4) should include the Mental Health and Wellbeing Commission as one of the named bodies who the Monitor or Ombudsmen might refer to.