Vulnerable Children's Bill

SUBMISSION BY THE CHILDREN'S COMMISSIONER TO THE SOCIAL SERVICES SELECT COMMITTEE

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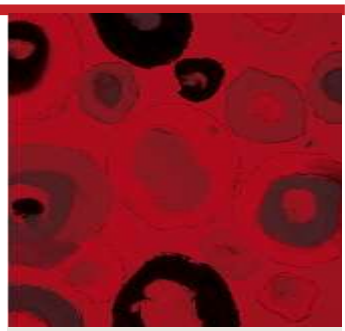
Children's Commissioner

Legislative steps to enhance the wellbeing of our most vulnerable children



Thank you for the opportunity to contribute this submission on the Vulnerable Children Bill (the Bill)

The Bill is a sensible and welcome package of measures to enhance the wellbeing of our most vulnerable children, and I am broadly supportive of the overall direction.

I am pleased that this legislation elevates of the rights and needs of children.

I have made a number of suggestions to improve and strengthen the Bill.

INTRODUCTION[1]

The Vulnerable Children Bill is a very significant piece of legislation for children in New Zealand. The Bill will drive many of the policy initiatives that make up the Children's Action Plan, which itself represents the culmination of the extensive policy development process embarked upon by the Green Paper on Vulnerable Children in late 2011.

As omnibus legislation, the Bill contains a diverse set of provisions across four pieces of legislation (including two new enactments) linked by a single broad policy objective. It brings together non-binding policy obligations on government ministers and departmental heads, new legal compliance requirements for practitioners, timely amendments to the child protection system and a new civil sanction – the Child Harm Prevention Order.

SUMMARY OF MY POSITION

The Vulnerable Children Bill provides a range of legislative changes to protect vulnerable children and I believe it represents an important shift in the balance between respecting a parent's rights and ensuring a child's right to be safe. I am pleased that this legislation elevates of the rights and needs of children, and signals a welcome change in social norms in New Zealand by clearly focusing on the behaviour of adults to help keep children safe.

The Bill is a sensible and welcome package of measures to enhance the wellbeing of our most vulnerable children, and I am broadly supportive of the overall direction, including the:

- cross agency measures signalled in the Vulnerable Children's Plan;
- changes to workforce requirements for state sector organisations;
- introduction of Child Harm Prevention Orders as a mechanism to offer additional protection to our most vulnerable children; and
- many of the proposed amendments to the Children, Young Persons and their Families Act 1989 (CYPF Act)

I have also identified some elements not covered by the Bill that I believe are critical to its overall success. I have made suggestions about how these can be incorporated so as to refine and strengthen the Bill. These elements include:

- having a clear definition of "vulnerable children"
- embedding elements of the Children's Action Plan in legislation
- extending the age of jurisdiction for CYPF support and services to 17 years
- enabling presumptive information sharing in the care and protection sector

[1] The Children's Commissioner has statutory responsibility to advocate for children's interests, rights and welfare, including advancing and monitoring the application of the UN Convention on the Rights of the Child (UNCROC) by departments of State and other Crown instruments. The Commissioner's powers, functions and responsibilities are contained in the Children's Commissioner Act 2003

These elements fit well with the Bill's broad policy objective to protect and improve the well-being of vulnerable children.

The Bill had been identified as having the potential to signify an important advancement in the government's performance of its UNCROC obligations. In some areas such advancement is likely and is to be welcomed. However, there are areas of the Bill which represent a lost opportunity and I have made suggestions for how to address this.

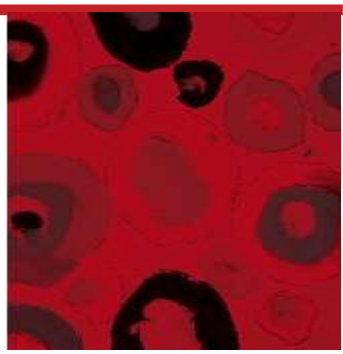
Ensuring that we get the required legislative changes right is critical to the overall success of this work to improve outcomes for our most vulnerable children. My comments and suggestions in this submission are intended to strengthen this legislative package so that it enhances the wellbeing of our most vulnerable children.

STRUCTURE OF THIS SUBMISSION

I have structured this submission as follows:

- Part A: Children's Action Plan – non-legislative initiatives
- Part B: The Vulnerable Children Plan
- Part C: Changes to workforce requirements
- Part D: Child Harm Prevention Orders
- Part E: Amendments to the CYPF Act.
- Annex: Summary of Recommendations

Part A: Children's Action Plan – non-legislative initiatives



Given that the Bill is intended to embed the reforms to be brought about by the Children's Action Plan, should any elements of the Plan be included within the Bill?

CHILDREN'S ACTION PLAN

Several of the Children's Action Plan initiatives are non-legislative[2]. This includes the establishment of:

- cross-sector Children's Teams overseen by Regional and National Directors
- a Vulnerable Children's Board comprised of social sector chief executives
- a comprehensive children's workforce action plan
- a new CYF Strategy for Children in Care
- more "comprehensive and systematic" tracking of adults who pose a risk to children

Given that the Bill is intended to embed the reforms to be brought about by the Children's Action Plan, a question arises as to whether any of these above initiatives should be included within the Bill.

It is arguable that a legislative basis may be required to ensure that they are sufficiently systematically entrenched to drive the "sustained action over a number of years" necessary to "enable sustained change", as described by the Bill's General Policy Statement.[3]

This question is particularly relevant when considering both the Children's Teams and Vulnerable Children's Board.

EMBEDDING CHILDREN'S TEAMS AND VULNERABLE CHILDREN'S BOARD IN LEGISLATION

The Green Paper posited that:

> *"the New Zealand Government could make changes to legislation that would…*
>
> - *create cross-agency responsibility for implementing the Plan, allocating responsibility for it to a group of government chief executives…*
> - *Make specific policy changes (such as requirements for sharing information"*[4]

The Green Paper also referred to two overseas statutes as examples of legislation that enables cross-agency practice, accountability and oversight – the Children Act 2004 (UK) and the Child Safety and Wellbeing Act 2005 (Victoria, Australia).

The Children Act 2004 (UK) sets in place a legal platform for co-ordinated government activity in the UK. It provides that children's services authorities and their relevant partners (such as the police, probation, youth offending services and strategic health) must make arrangements to promote co-operation[5]. It also establishes the role of 'director of children's services' with responsibility for health, education and social services delivered to children by local authorities[6].

[2] General Policy Statement to Vulnerable Children's Bill p3-4

[3] ibid p4

[4] Ministry of Social Development (2011), *Green Paper on Vulnerable Children*, p16

[5] Part 2, Section 10, Children Act 2004 (UK)

[6] ibid s18

The Child Safety and Wellbeing Act 2005 establishes a Children's Services Co-ordination Board, comprising of the Secretaries of the Departments of Treasury, Human Services, Justice, Education, Victorian Communities, Premier and Cabinet and the Chief Commissioner of Police. The Board is charged with reviewing the outcomes of government actions regarding children, particularly vulnerable children, and reporting to the Minister on an annual basis.

Given that the Vulnerable Children Board and the Children's Team initiatives have similar functions to the above overseas legislative models cited by the Green Paper, it is notable that neither initiative is accorded legislative status under the Vulnerable Children Bill.

Both entities are innovations to arise from the Green and White Paper processes. The Board will have a central function in driving government policy and the Children's Teams will lead the development of cross-agency service delivery to vulnerable children.

They are also likely to have important roles in work designed to meet the Better Public Services Results for Vulnerable Children[7]. These relate closely to the measures set out by Clauses 6(a)-(c) of the Bill that provide for government measures to improve the well-being of vulnerable children[8].

Given the Bill's close links to the wider Better Public Services framework and its purpose to enable a policy approach leading to sustained change, I recommend the Social Services Committee should consider providing these entities with legislative status.

Recommendation 1:

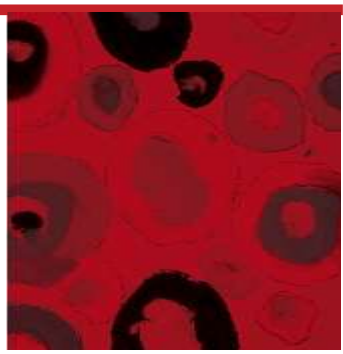
I recommend that the Social Services Committee incorporate provisions within the Bill to:

- Set out the purpose, membership and functions of the Vulnerable Children Board
- Set out the purpose, functions and powers of Children's Teams, Regional Directors and the National Children's Director

[7] State Services Commission: Better Public Services: Vulnerable Children - Results 2-4, http://www.ssc.govt.nz/bps-supporting-vulnerable-children

[8] Result 2 concerns increasing participation in early childhood education (cf. clause 6(c)), Result 3 concerns improving immunisation rates and reducing instances of rheumatic fever (cf. clause 6(b); Result 4 concerns reducing the number of assaults on children (cf. clause 6(a))

Part B: The Vulnerable Children's Plan



The Vulnerable Children's Plan is a significant development for children's policy in New Zealand, and it can be strengthened even further

The development of a Vulnerable Children's Plan is a significant development for children's policy in New Zealand and it is likely to enhance government efforts in improving outcomes for vulnerable children. There are a number of issues that arise from this part of the Bill that I believe warrant further consideration.

DEFINITION OF VULNERABLE CHILDREN

Defining what constitutes a 'vulnerable child' was a major point of debate during the Green Paper process. Many submitters called for an expansive definition which recognised the inherent vulnerability of children generally or which included socio-economic disadvantage, such as poverty. However, the eventual White Paper definition indicated that the government's policy preference was to focus on child protection:

> *"children who are at risk of significant harm to their well-being now and into the future as a consequence of the environment in which they are being raised, and in some cases, due to their own complex needs."*[9]

The Bill does not provide a prescriptive definition of 'vulnerable children', although it does use the White Paper definition when referring to 'vulnerable children' in its general policy statement.

Instead, Clause 5 leaves the definition open-ended, defining vulnerable children as "children of a kind or kinds (may be or, as the case requires, have been or are currently) identified as vulnerable in the setting of Government priorities under section 7)." The government priorities under section 7 are then applied to the development of the Vulnerable Children Plan.

While there may be some benefit in providing the government with flexibility in choosing a definition that links with its priorities, the Bill's overall approach is somewhat confusing as it points to two possible definitions - one being the current White Paper definition, which regards a specific group of at-risk children for the purposes of the child protection sector (and, by association, the operation of the Children's Team service delivery model); and the other being a currently unspecified definition linked to the broader priorities and purposes of the Vulnerable Children Plan.

In my view, the White Paper definition should be incorporated in the Bill. This provides clarity as to its intended scope, certainty for the sector it is aimed at and is appropriate given the extensive policy process that led to its formation.

Recommendation 2:

I recommend that clause 5 of the Bill is amended to define 'vulnerable children' in the same terms as that contained in the White Paper on Vulnerable Children.

[9] Ministry of Social Development, White Paper on Vulnerable Children, Volume 1, Chapter: Tackling the Problem, http://www.childrensactionplan.govt.nz/the-white-paper/tackling-the-problem

CLAUSE 6 – MEASURES TO IMPROVE WELL-BEING

Clauses 6 and 7 of the Bill relate to the establishment of government priorities to be included the Vulnerable Children Plan. Clause 6 sets out the terms of these priorities, which derive from an overarching objective to improve the well-being of vulnerable children and promote their best interests "*having regard to the whole of their lives*".

I support this life-course approach, which appears to reflect an intention to implement a long-term, investment approach to policy and service development for children across a range of sectors.

This approach also aligns with current international thinking. In its major 2009 report on child well-being, Doing Better for Children, the OECD concluded:

> *"Since children have the longest life expectancy of any group, child policy needs a stronger future focus than any other population group. This includes a clear, simple and comprehensive strategy…The approach could start by mapping the existing national system in a child life cycle and risk context. It could then consider, in an evidence-based manner, discrete and specific policy changes, which aim to develop the system as a coherent set of complementary and mutually reinforcing policies."* [10]

I also support the measures towards improving the well-being of vulnerable children specified in clause 6(a)-(f). They are broad enough to cover the social services and community sectors and reflect the departmental jurisdictions of the children's agencies defined by clause 5(1). I am also encouraged by the inclusion of measures to increase the participation of vulnerable children in decision making processes that affect them.

I am further encouraged by clause 6(f), which provides for government measures to improve *"the social and economic wellbeing"* of vulnerable children. To my knowledge, this is the first time that a direct reference to the social and economic well-being of children has been made in primary legislation. This provides a basis to explore some of the more systemic recommendations of the Expert Advisory Group on Solutions to Child Poverty, such as the development of a policy framework for reducing child poverty[11].

Development and implementation of the measures set out in clause 6 should help further align government policy in this area with government obligations under UNCROC. However, it is notable that there is no direct reference to UNCROC or the rights of children in clause 6, or indeed in the Bill itself.

The Bill strikes me as a unique opportunity to establish a more systematic approach by government towards implementation of its UNCROC obligations in line with the approach recommended by the UN Committee on the Rights of the Child in 2011.

Recommendation 3:

I recommend inserting a new clause 6(g) in the Bill to provide that:

"…improving the well-being of vulnerable children in relation to the setting of government priorities…and the preparation of the vulnerable children's plan, means promoting the best interests of vulnerable children, including taking measures aimed at -
(g) progressing the implementation of their rights under the UN Convention on the Rights of the Child."

[10] OECD, *Doing Better for Children* (2009) p 179

[11] Expert Advisory Group on Solution to Child Poverty (2012), *Solutions to Child Poverty in New Zealand: evidence for action*, Office of the Children's Commissioner, Wellington p35,36

VULNERABLE CHILDREN'S PLAN AND GOVERNMENT PRIORITIES

Clauses 7-13 establish the statutory framework for the development and implementation of the Vulnerable Children's Plan, its status and effect, and review and accountability mechanisms.

Clauses 7 and 8, concerning the setting of government priorities and preparation of the Plan, do not contain any requirement on the responsible Minister or the chief executives of the specified 'children's agencies'[12] to undertake any consultation process with external stakeholders, including my Office.

This leaves external stakeholders somewhat disconnected from the Vulnerable Children Plan's development. I have some concern that a lack of external stakeholder analysis, expert commentary and buy-in may compromise the Plan's effectiveness and reduce its mandate.

Further to this point, I am also of the view that expert professional input into the development of the government priorities and Vulnerable Children Plan is crucial to its successful design and implementation. I consider this could be facilitated through the establishment of a new cross-sector Expert Advisory Group that advises the designated children's agencies via the Vulnerable Children Board.

Recommendation 4:

I recommend that clauses 7 and 8 of the Bill are amended to provide a duty on the responsible Minister to consult with, and invite submissions, from the Children's Commissioner and any other persons or organisations that the children's agencies consider should be consulted[13], in respect of:

- Proposed government priorities (clause 7)
- The draft vulnerable children plan (clause 8).

Recommendation 5:

I recommend formation of a cross-sector Expert Advisory Group of professionals to advise the children's agencies about the setting of government priorities and development of a draft Plan.

LIMITING FISCAL AND LEGAL REACH

It is also notable that the Bill curtails any instrument that records either the government priorities or the Vulnerable Children Plan from having any legislative status under the Legislation Act 2012[14]. Accordingly, neither the Vulnerable Children Plan, nor the government priorities set under clause 7, are required to be presented to the House of Representatives.

In addition, the Bill also prevents the designations of Ministerial and chief executive accountability for the Vulnerable Children Plan from having any impact on the operations of the Public Finance Act 1989, or any other legislation or legal rules that concern the functions of the legislative or executive branches of government.

This approach means the Vulnerable Children Plan does not have any legal or fiscal leverage. While it is enabled by statute, its actual status is essentially that of an inward-facing government policy document, albeit one enhanced by statutory criteria regarding its preparation and review.

Neither the explanatory note to the Bill, nor the Regulatory Impact Statement on this part of the Bill shed much light on the rationale for this approach.

I refer to the government's obligations under Article 4 of UNCROC[15] and, in doing so, note that international reports indicate that Government spending on

[12] Vulnerable Children Bill, Clause 5 - – in effect the Ministries of Social Development, Health, Education and Justice, and the Police

[13] Wording modelled from s96O Privacy Act 1993 – concerns consultation requirements for development of cross-agency Approved Information Sharing Agreements

[14] Clauses 7(3) and 11(2)

[15] Provides that States Parties *"…undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources.."*

children in New Zealand is relatively low compared to other OECD countries[16].

Given the Bill's stated intention of achieving *"sustained change"* for vulnerable children, the degree of caution it exercises in this respect is unwarranted. While fiscal restraint is an essential element in the current economic environment, I do not see any justification for placing such explicit statutory restrictions around the Vulnerable Children Plan.

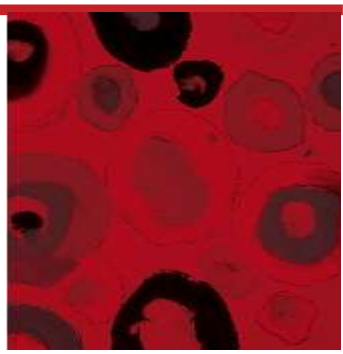
In addition, this approach does not align with the Better Public Services Results for Vulnerable Children, which as I have noted above, links with government measures under clauses 6 that correspond with the Plan. In my view, clauses 7(3) and 11(2) risk constraining the potential of the Vulnerable Children Plan to enhance related cross-agency work under the Better Public Services framework.

Recommendation 6:

I recommend that clauses 7(3) and 11(2) of the Bill are deleted.

[16] OECD (2009), Doing Better for Children, Country Highlights: New Zealand, http://www.oecd.org/dataoecd/20/42/43589854.pdf

Part C: Changes to workforce requirements



Ensuring added rigour, consistency and wider coverage of child protection policies by school boards, District Health Boards, prescribed state services and state-funded children's services

CHILD PROTECTION POLICIES

I support this component of the Bill, which will have the effect of requiring school boards, District Health Boards, prescribed state services and contracted children's services to implement written child protection policies.

The child protection policies concerned must contain provisions that pertain to the notification requirements under s15 of the Children, Young Persons and their Families Act 1989, as regard the identification and reporting of child abuse and neglect[17].

In many respects, these provisions will reinforce current practices in DHBs and other state services. It will, however, address current gaps in state-sector service delivery by ensuring that individuals or non-government organisations that provide services to children and receive some state funding for this purpose (either partially or in whole) are required to carry this responsibility.

However, non-government organisations, private individuals and professional groups that work with children, but do not enter into contract or funding arrangements with school boards, DHBs or prescribed state services, will be exempt from this requirement.

I am concerned that this will lead to a two-tiered approach to service delivery and safety standards in the children's sector. I consider that all children's services should be required to adopt child protection policies, regardless of whether they contract to the state sector or not.

[17] Clause 19(1)(b)

CHILDREN'S WORKER SAFETY CHECKING

I welcome the added rigour, consistency and wider coverage that the proposed safety checking regime will add to practice in the state sector and, subject to further regulation, the local government children's workforce.

However, I note that the differential safety standards in subpart 2 are largely carried over into this aspect of the Bill, further entrenching a two-tier approach to child safety standards across the children's sector.

Private or non-government entities that are not partly or wholly funded by central or local government are exempt from the proposed safety check regime. This is a large group and would cover many sports clubs and recreational organisations, volunteer organisations providing community activities that involve children, private early childhood care and education/tuition providers, youth groups and faith-based organisations.

Under clause 33 of the Bill, regulations will be able to passed through Order-in-Council to broaden the scope of regulated activities that are covered by the regime under Schedule 1. There is, however, a drafting error in clause 33(a) which will need to be corrected. Clause 33(a) currently refers to 'specified activities'. This should be amended to 'regulated activities' in order to correspond with the definitions contained in clause 23.

Organisations that are purely voluntary will remain outside the safety check regime. Under clause 33, only organisations or individuals that are

funded to provide a 'regulated activity' may be declared by Order-in-Council to be a 'specified organisation' for the purpose of worker safety checks.

The potential implication of the Bill's differential approach to child safety in the workforce is obvious – persons with ill intent towards children will more likely be drawn towards taking up roles in non-regulated environments.

I am concerned by this implication. It clearly accords with the best interests of children[18] that all reasonable steps are taken towards ensuring a safe environment exists across the children's workforce, regardless of whether services are located in the public or private sectors.

In order to address this, I would recommend that the Chief Executive of the Ministry of Social Development develop educative protocols for non-government, private sector or voluntary organisations, pursuant to his or her existing duties under s7(2)(ba) of the CYPF Act 1989. While these duties are more directly associated with identifying and reporting child abuse, in my view they are broad enough to cover workforce screening.

Section 7(2)(ba) of the CYPF Act provides:

> ***7 Duties of Chief Executive***
>
> *(2)(ba) in relation to child abuse,—*
>
> *(i) promote, by education and publicity, among members of the public (including children and young persons) and members of professional and occupational groups, awareness of child abuse, the unacceptability of child abuse, the ways in which child abuse may be prevented, the need to report cases of child abuse, and the ways in which child abuse may be reported; and*
>
> *(ii) develop and implement protocols for agencies (both governmental and non-governmental) and professional and occupational groups in relation to the reporting of child abuse, and monitor the effectiveness of such protocols:*

Ideally, any education campaign or release of protocols made under this section should be timed to coincide with the commencement of the Vulnerable Children Act. This would encourage uptake of best practice approaches across the whole sector.

Recommendation 7:

I recommend that all 'children's services' defined by clause 15 of the Bill are required to adopt a 'child protection policy' as specified by clause 19.

Recommendation 8:

I recommend that 'specified organisations' under clause 24 is amended to include:

> any organisation or independent person who is funded by a faith-based entity or philanthropic funder to provide regulated activities

> any volunteer organisation or independent person who provides regulated activities

Recommendation 9:

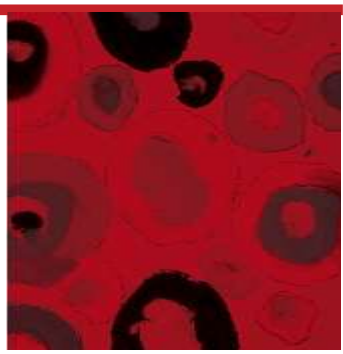
I recommend that that 'specified activities' under clause 33(a) is amended to 'regulated activities'

Recommendation 10:

I recommend that the Chief Executive of the Ministry of Social Development undertake under s7(2)(ba) of the CYPF Act, a public awareness campaign and development of protocols for the private and voluntary sectors regarding child protection policies and worker safety checking

[18] Furthermore, Articles 3.1 and 3.3 of UNCROC provides that all actions undertaken by public and private institutions responsible for the care, protection and welfare of children must ensure that the best interests of UNCROC are a primary consideration.

Part D: Child Harm Prevention Orders (CHPOs)



A CHPO is essentially a special protective measure that restricts high-risk adults from contacting, or having contact with children

CHILD HARM PREVENTION ORDERS

Part 2 of the Bill seeks to introduce a new civil order, named a Child Harm Prevention Order (CHPO), the purpose of which is to *"enhance the safety of children by imposing restrictions on persons who pose a high risk of causing serious harm to* them."[19]

A CHPO is essentially a special protective measure in the form of a preventive mechanism that restricts high-risk adults from contacting, or having contact with children. It is not a unique concept. As noted in the Regulatory Impact Statement, similar models currently operate in the United Kingdom and in Australia[20].

I support the introduction of CHPOs. The principles established by clause 45, which must be applied by a court when determining whether to impose a CHPO, reflect a measured approach.

Anticipated numbers of CHPOs are relatively small – it is assumed that approximately 200 people will be subject to these orders per year – and that they will lead to 25 less abuse cases per year[21]. It is likely that CHPOs will only be issued to the most high-risk adults in the community and therefore should consequently reduce the numbers of cases of serious offending against children.

My principle concern with the CHPO framework proposed by the Bill is that it does not set out any specific requirement that relevant organisations, such as DHBs or school boards, are notified when a CHPO is issued. I consider that this is problematic, as it risks these organisations being unaware of the identity of persons subject to a CHPO, leading to inadvertent breaches that compromise the safety of children.

I also note that the penalty for breaching a CHPO is set at a maximum of two years imprisonment. Given that the penalty for breaching a protection order under the Domestic Violence Act 1995 has recently been extended to three years[22], the Committee may wish to consider whether this is an adequate sanction, given that a CHPO is a high level preventative measure, its fundamental purpose being to prevent the risk of serious harm occurring to children.

Recommendation 11:

I recommend that the Bill is amended to insert a new clause 62A that places a duty on the Secretary of Justice to notify prescribed state services, school boards, DHBs and children's services of any instance where the Court orders a CHPO, an interim CHPO, directions relating to a CHPO, or of any decision by the Review Panel under s66.

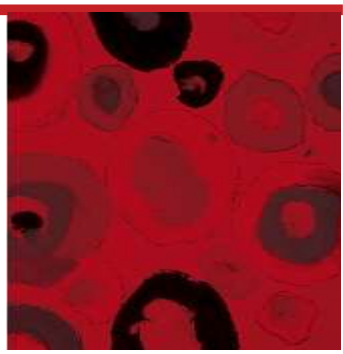
[19] Clause 44(1)

[20] Ministry of Justice (2013), *Regulatory Impact Statement: Vulnerable Children's Bill – Child Harm Prevention Orders*, paras 106-108

[21] Ministry of Justice (2013), Regulatory Impact Statement: Vulnerable Children's Bill – Child Harm Prevention Orders, para 111

[22] Section 49(3) Domestic Violence Act 1995

Part E: Amendments to Children, Young Persons and their Families Act 1989 (CYPF Act)



The Bill provides the most significant redrafting of the principles and care and protection provisions of the CYPF Act since the introduction of the CYPF No 6 Bill in 2007

CYPF ACT

Many of the proposed Bill's amendments, such as the introduction of extended transition from care provisions are to be welcomed. However, I consider that two crucial areas due for reform stand out as being unaddressed. These are:

> Extension of the CYPF Act's jurisdiction to cover 17 year olds in need of care and protection and youth justice interventions
> Allowing presumptive information sharing practices by designated agencies.

EXTENSION OF THE CYPF ACT JURISDICTION

One of the fundamental deficiencies of the CYPF Act is its failure to ensure that the special protection measures contained within New Zealand's care and protection and youth justice jurisdictions extend to all children aged under 18, thus rendering both systems in breach of the government's international obligations under UNCROC.

At present, 17 year olds are excluded from the CYPF Act's definition of 'young person' and thus are not entitled to care and protection interventions under the Act in the event their welfare is at risk, nor youth justice interventions should they offend. This is fundamentally inconsistent with the age definition of 'child' under Part 1 of the Bill[23].

The Bill provides a rare opportunity to rectify this inconsistency and, in doing so, implement the recommendation of the UN Committee on the Rights of the Child in its 2011 Concluding Observations on New Zealand[24].

Recommendation 12:

I recommend that the upper age of the CYPF Act is brought into line with New Zealand's obligations under UNCROC and is amended to include 17 years olds.

INFORMATION SHARING

Information sharing was a key policy issue raised by the Green Paper on Vulnerable Children. This was eventually reflected in the Children's Action Plan which includes the "introduction, if required, of legislation to support greater information-sharing between government agencies and also with NGOs."

Despite this objective, the Bill does not seek to make any changes to current information-sharing legislation. The current policy position relies on the formation of Approved Information Sharing Agreements ('AISAs) to drive information sharing practices in the child protection sector.

I have some concern with the practicalities of this position. AISAs were recently introduced into the Privacy Act regime through the enactment of the Privacy (Information Sharing) Act 2012. While AISAs provide the legal means to authorise the information sharing practices envisaged by the Children's Action Plan, their formation involves a complex, resource-intensive process and,

[23] Clause 5

[24] UN Committee on the Rights of the Child, 56th session, Consideration of Reports Submitted by State Parties under Article 44 of the Convention - Concluding Observations: New Zealand, paragraphs 10 and 11(a)

in my view, may not be responsive enough to meet the immediate needs of the sector.

In my submissions on the Green Paper and the Privacy (Information Sharing) Act, I recommend the implementation of a presumptive information sharing regime in the care and protection sector, along the lines of the New South Wales system.

The New South Wales system, vested under Chapter 16A of the Children, Young Persons (Care and Protection) Act 1998, authorises information sharing without consent between certain "prescribed bodies" (government agencies and NGOs) with the objective of *"facilitating the provision of services to children and young persons by agencies that have responsibilities relating to the safety, welfare or well-being of children and young persons"*[25]. This model contrasts with the AISA regime, which requires that agencies instead must opt-in through the formation of an agreement.

AISAs enable agencies to enter into legally enforcable information sharing agreements and I believe are well-suited to developing data-matching capabilities that enable service providers to assess whether a vulnerable child (particularly those in transient living situations) has received the full range of services to which they are entitled.

However, the Privacy Act process required to approve an agreement may be too cumbersome for care and protection casework purposes. In my view, a presumptive right to share information, such as that set out in the New South Wales legislation, would work better in the care and protection sector, where multiple agencies are working with one child per case.

The necessity of a flexible, responsive information sharing regime in the care and protection sector was also a key finding of the Ministerial report by Mel Smith CNZM. The report reported the general view of stakeholders that *"any information that might impact on the safety or welfare of a child is not withheld by any limitation of law, perceived or otherwise"* [26] and noted:

> *"The sharing of information and dialogue between holders of information is a critical, if not the most critical, component of multi-agency and inter-professional liason and co-operation..."* [27]

Mel Smith found that the CYPF Act would be the most appropriate vehicle to bring in such amendments, a position supported by the Law Commission[28]. I support that conclusion. This would require amending s66 from a directive power under which Child, Youth and Family can request information, to a mechanism under which prescribed agencies are mandated to share information.

Recommendation 13:

I recommend, as my preferred option, that the CYPF Act is amended to enable a presumptive information sharing model along the lines of that which operates in New South Wales.

Recommendation 14:

In the alternative, I recommend that two-stage process is undertaken:

- a review of the effectiveness of AISA-mandated information sharing in the child protection system is undertaken 12 months from the enactment of the Bill.
- if the review finds that the AISA regime is not fit for this purpose, I recommend that legislative steps are taken to provide for a presumptive information sharing mechanism vested under the CYPF Act.

[25] Section 245A(1)

[26] Mel Smith, *Report to Hon Paula Bennett Minister of Social Development, Following an Inquiry of Serious Abuse of a Nine Year Old Girl and other Matters Relating to the Safety, Welfare and Protection of Children in New Zealand*, 31 March 2011, para 8.4 - http://www.beehive.govt.nz/sites/all/files/Smith_report.pdf

[27] ibid para 8.5

[28] ibid paras 8.36-8.37

PRINCIPLES OF THE CYPF ACT

I support the amendments the Bill makes to the principles under ss5 and 13 of the CYPF Act.

I welcome the inclusion of a new s5(g) requiring that decisions made about children and young people adopt *"a holistic approach that takes into consideration, without limitation, the child's or young person's age, identity, cultural connections, education, and health"*. This aligns well with the multi-dimensional approach of the Vulnerable Children's Plan, the Children's Action Plan and, in particular, the work of Children's Teams.

I support the proposed amendments to s13 of the CYPF Act by clause 103. This provides that *"every court or person exercising powers…must adopt, as the first and paramount consideration, the welfare and interests of the relevant child or young person (as required by section 6)."* This is intended to ensure that the s6 paramountcy principle is consistently applied as the over-riding consideration by any CYPF Act decision-maker.

CARE AND PROTECTION OF 'SUBSEQUENT CHILDREN'

Clause 104 seeks to introduce a new care and protection ground under s14(1)(ba) of the CYPF Act. This essentially a preventative ground that can be invoked in cases where a person who has a previous conviction for the murder, manslaughter or infanticide of a child in their care, becomes the parent or caregiver of subsequent children (defined to include children yet to be born) .

The intention of these new care and protection grounds is to ensure that those parents or caregivers with the worst parenting histories are subjected to oversight and, if necessary, preventative intervention by CYF should they have a parental or caregiver role in respect of any further children.

Clause 106 introduces an assessment process that must be carried out before care and protection proceedings under this ground can be initiated. The assessment must determine whether or not the parent is unlikely (as opposed to likely) to inflict a similar degree of harm on their subsequent child or children.

This new ground differs from the existing criteria under s14 in that it does not require that there is evidence of current mistreatment or neglect. Other exceptions are also proposed, notably the bypassing of the Family Group Conference (FGC) process ordinarily provided under s19 in care and protection cases. Furthermore, a Family Court must[29] issue a s67 declaration in respect of a s14(1)(ba) subsequent children application if the assessment criteria are met.

Clearly, the subsequent children provisions have been drafted to ensure that proceedings in these cases are dealt with expeditiously. I am generally satisfied that the serious nature of these cases and the overall objective to ensure that subsequent children are safe, justifies the Bill's approach in this respect.

However, bypassing the FGC process may prove counter-productive in some cases, as it will remove the opportunities for wider family or whanau input and for consideration of any viable support options. In addition, these cases will require the development of a robust, balanced assessment process[30] and will raise issues concerning the rights of subsequent children to know and be cared for by their parents, per the provisions of Articles 7 and 9 of UNCROC.

Recommendation 15:

I recommend that clause 107 of the Bill is deleted in order to enable FGCs to be arranged under s19 of the CYPF Act for 'subsequent children' matters

[29] This contrasts to the Court's consideration of the other s14 care and protection grounds under s 67, whereby the court *may* issue a declaration

[30] Research indicates that there is a lack of firm evidence available concerning the form such assessments should take, as well as the tools and practices for working with these families – see Hendricks and Stevens (2012), *Safety of Subsequent Children: International Literature Review*, NZ Families Commission http://www.familiescommission.org.nz/sites/default/files/downloads/SoSC-international-literature-review.pdf

AMENDMENTS TO FAMILY GROUP CONFERENCES (FGC)

The Bill makes a number of technical amendments to the provisions of the CYPF Act concerning FGCs. I consider that these should ensure a tighter approach to the management and review of FGC procedures and plans. They may also provide a more focused approach to decision-making, given the amendments to enable both the chief executive and police greater weight to decline to comply with FGC decisions that are impracticable or unreasonable[31].

I also strongly support the addition of a requirement on care and protection co-ordinators to ensure that information about the health and education needs of the child or young person in question is available to the FGC.

It is important that professionals who have made a notification are adequately informed and consulted with by CYF of the steps taken to investigate, the processes undertaken and any decisions made. I recommend that s17(3) of the CYPF Act be amended to expressly provide for this.

The amendments under clauses 134 and 135 have the potential to improve outcomes through enabling a more diverse and thus more responsive approach to FGC co-ordination. The challenge, however, will be quality control - particularly given the more onerous obligations on FGC co-ordinators being introduced by this Bill. I would therefore recommend a review of non-CYF co-ordinated FGCs after the first three year cycle of appointments to identify any required improvements.

Recommendation 16:

I recommend that s17(3) of the CYPF Act is amended to place an additional obligation on a social worker or constable to inform a professional who, in the course of providing services directly or indirectly to a child has made a notification, of steps taken to investigate and any actions being taken.

Recommendation 17:

I recommend that a review of non-CYF co-ordinated FGCs is undertaken three years after commencement of the Bill's amendments to the CYPF Act.

SPECIAL GUARDIANSHIP ORDERS

I support in principle the Bill's provisions enabling permanent caregivers to apply for special guardianship orders. These provisions are designed to provide caregivers with a mechanism to seek a secure, certain and enduring legal status in respect of a child or young person in their care and, by implication, mitigate the impact of actions by birth parents designed to disrupt caregiver placements[32].

However, the proposed process for obtaining a special guardianship order under clauses 113A and 113B omits any formal requirement to obtain the consent or views of the child or young person concerned.

Given the significance of any such decision on a child young person, and in recognition of their rights under Article 12 of UNCROC to participate in decision-making processes that affect them, I would recommend that consideration is given to requiring that, where appropriate, the views of the child or young person are formally considered as part of any proceeding.

Recommendation 18:

I recommendation that clause 113A of the Bill is amended to provide that, where appropriate, the views of the child or young person must be ascertained and considered as part of any special guardianship proceeding.

[31] Clauses 111 and 112, amending ss34, 35 - The current criteria under ss34 and 35 provides that the chief executive and police must comply unless "clearly impracticable" to do so

[32] See Ministry of Social Development, Regulatory Impact Statement : Vulnerable Children's Bill: Specific care and protection changes, paragraphs 17-21

TRANSITION FROM CARE TO INDEPENDENCE

I strongly support the intention of clause 131 which seeks to introduce a statutory transition programme for young people aged 15-20 who have spent at least three months in a state care placement pursuant to a custody order. This addresses a long-standing gap in New Zealand's care and protection system and revives, to a degree, the 2007 provisions of the now defunct CYPF Bill No 6 which sought to establish a transition programme up to the age of 25, along the lines of models based in Australia[33].

At present, once a s101 custody order is discharged (usually at age 17), the state ceases to have any legal obligation towards that young person. If they were to fall into problems, there is no legal duty on the state to support them. The sole source of support is usually income available under the Youth Payment benefit. While care plans will contain transitional arrangements, and transition from care to independence programmes pilots have been funded (such as the Ka Awatea and Launch programmes in Auckland run by Youth Horizon Trust and Dingwall Trust respectively), these are not based on any legislative foundation.

Clause 131 provides for the provision of advice and assistance and, in exceptional circumstances, financial assistance for the purposes of living expenses or expenses related to employment, training or education. *"Advice and assistance*" is defined broadly and includes low-level support, such as giving information, through to assistance with obtaining accommodation, employment or training, as well as access to services such as counselling and legal advice.

Effective transitional arrangements are likely to mitigate the risk of problems (and associated costs) arising for young people leaving state care. Relative to their peers, they are more likely to experience adverse outcomes, such as unemployment, transience or homelessness, mental health problems and criminal offending. These outcomes are often related to their experiences prior to placement in care and as a result of unstable and disrupted living environments while in care[34].

It is important that sufficient investment is made to establish an effective service that provides young people leaving care with a level of support adequate to meet their individual needs. This should include a robust needs assessment, an ability to access personalised social worker support. The statutory framework proposed under the Bill appears to me to be broad enough to accommodate this, although I would recommend that an express provision is made in the Bill for such an appointment.

I would also recommend removing the requirement that financial assistance is only available in "*exceptional circumstances"* and instead leave it as a discretionary decision on the part of the chief executive. The Bill's current criteria put in place an unreasonably high barrier, in my view. Young people who leave state care are inherently in *"exceptional circumstances"* (and are in fact defined as such by the Social Security Act 1964 for the purposes of the Youth Payment). Guidelines for criteria and administration would be better developed and implemented at the policy level.

Recommendation 19:

I recommend that clause 131 is amended to:

- add to the definition of "advice and assistance" under s386A(5), "appointment of a social worker", and "a needs assessment".
- remove "exceptional circumstances" from the new s386(4)(b)

[33] In Western Australia, for example, a formal transition from care programme is available up to the age of 25 and includes state-funded leaving care services and a Transition to Independent Living Allowance - see Department of Child Protection, *Leaving Care to Independence*, Government of Western Australia, http://www.dcp.wa.gov.au/ChildrenInCare/Documents/LeavingCareToIndependence.pdf -

[34] Fauth et al (2012), *Supporting care leaver's successful transition to independence: Research Summary,* National Children's Bureau, London http://www.princes-trust.org.uk/pdf/NCB_RSCH_9_FINAL_FOR_WEB.pdf

KIWISAVER AMENDMENTS

Clause 140 of the Bill provides that a child under 16 years of age and who is under CYPF Act guardianship may opt-in to the KiwiSaver scheme. Their legal status in doing so would be that of an adult and they would be bound to the terms of the scheme accordingly. The clause provides, however, that all decisions pertaining to the scheme must be made by the child's guardian.

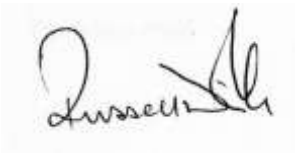
While I support this in principle, and recognise its potential benefit, I note that no provision is made requiring consultation with any affected child.

Some consideration of reserving the opt-out for the child should be considered.

CLOSING

Thank you for your consideration of this submission. I would welcome the opportunity to appear before the Panel to speak to these submissions.

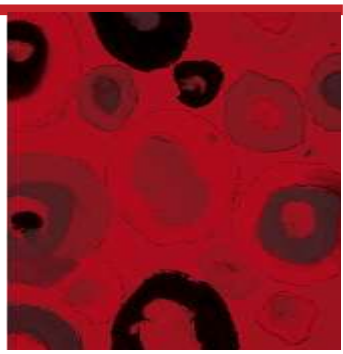
If you require further information, please contact Principal Advisor (Legal) John Hancock on (09) 374 6102 or at j.hancock@occ.org.nz.



Dr Russell Wills

Children's Commissioner

Annex: Summary of recommendations



This is a listing of the recommendations made in this submission

Recommendation 1:

I recommend that the Social Services Committee consider incorporating provisions within the Bill to :

> Set out the purpose, membership and functions of the Vulnerable Children Board
> Set out the purpose, functions and powers of Children's Teams, Regional Directors and the National Children's Director

Recommendation 2:

I recommend that clause 5 of the Bill is amended to define 'vulnerable children' in the same terms as that contained in the White Paper on Vulnerable Children.

Recommendation 3:

I recommend inserting a new clause 6(g) in the Bill to provide that:

"…improving the well-being of vulnerable children in relation to the setting of government priorities…and the preparation of the vulnerable children's plan, means promoting the best interests of vulnerable children, including taking measures aimed at -

(g) furthering the implementation of their rights under the UN Convention on the Rights of the Child."

Recommendation 4:

I recommend that clauses 7 and 8 of the Bill are amended to provide a duty on the responsible Minister to consult with, and invite submissions, from the Children's Commissioner and any other persons or organisations that the children's agencies consider should be consulted, in respect of:

> Proposed government priorities (clause 7)
> The draft vulnerable children plan (clause 8).

Recommendation 5:

I recommend formation of a cross-sector Expert Advisory Group of professionals to advise the children's agencies about the setting of government priorities and development of a draft Plan.

Recommendation 6:

I recommend that clauses 7(3) and 11(2) of the Bill are deleted.

Recommendation 7:

I recommend that that all 'children's services' defined by clause 15 of the Bill are required to adopt a 'child protection policy' as specified by clause 19.

Recommendation 8:

I recommend that 'specified organisations' under clause 24 is amended to include:

> > any organisation or independent person who is funded by a faith-based entity or philanthropic funder to provide regulated activities
> > any volunteer organisation or independent person who provides regulated activities

Recommendation 9:

I recommend that that 'specified activities' under clause 33(a) is amended to 'regulated activities'

Recommendation 10:

I recommend that the Chief Executive of the Ministry of Social Development undertake under s7(2)(ba) of the CYPF Act, a public awareness campaign and development of protocols for the private and voluntary sectors regarding child protection policies and worker safety checking.

Recommendation 11:

I recommend that the Bill is amended to insert a new clause 62A that places a duty on the Secretary of Justice to notify prescribed state services, school boards, DHBs and children's services of any instance where the Court orders a CHPO, an interim CHPO, directions relating to a CHPO, or of any decision by the Review Panel under s66.

Recommendation 12:

I recommend that the upper age of the CYPF Act is brought into line with New Zealand's obligations under UNCROC and is amended to include 17 years olds

Recommendation 13:

I recommend that consideration is given to amending the CYPF Act to enable a presumptive information sharing model along the lines of that which operates in New South Wales.

Recommendation 14:

I recommend that two-stage process is undertaken:

> a review of the effectiveness of information sharing in the child protection system is undertaken 12 months from the enactment of the Bill.
> if the review finds that the AISA regime is not fit for this purpose, I recommend that legislative steps are taken to provide for a presumptive information sharing mechanism vested under the CYPF Act.

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