

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

## Save the Children:

Organisation Name:	Save the Children New Zealand (SCNZ)
Geographical location	National and international
Target group/focus	Children
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**Our Organisation:** Save the Children was founded in 1919 and is the world's leading independent organisation for children. We work in 120 countries to save and improve the lives of children around the world.

**Vision:** Save the Children's vision is a world in which every child attains the right to survival, protection, development and participation.

**Mission:** We work to inspire breakthroughs in the way the world treats children and to achieve immediate and lasting change in their lives.

Save the Children New Zealand was established in 1947 in Christchurch. We work to uphold the rights of children both in New Zealand and overseas.

**Our Ambition:** We commit to doing whatever it takes to ensure by 2030 ALL children, especially the most marginalized and deprived, survive, learn, and are protected.

Save the Children New Zealand (SCNZ) welcomes the opportunity to comment on the Oversight of Oranga Tamariki System and Children and Young People's Commission Bill (the Bill). We request the opportunity to make an oral submission.

## Introduction

New Zealand has made some positive and significant gains in putting children on the political agenda in recent years. Some examples include, the development and implementation of the Child and Youth Wellbeing Strategy<sup>1</sup>, the recommitment to the Convention on the Rights of the Child – 2019<sup>2</sup>, the Child Poverty Reduction Act 2018<sup>3</sup>, the Healthy Homes Standards<sup>4</sup>, and some notable

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<sup>1</sup> Retrieved from <https://dpmc.govt.nz/our-programmes/child-and-youth-wellbeing-strategy>

<sup>2</sup> Retrieved from <https://community.scoop.co.nz/2019/11/child-rights-advocates-pleased-with-government-recommitment/>

<sup>3</sup> Retrieved from <https://www.legislation.govt.nz/act/public/2018/0057/18.0/LMS8294.html>

<sup>4</sup> Retrieved from <https://www.hud.govt.nz/residential-housing/renting/healthy-homes-standards/>

consultations with children - *The Education Conversation*<sup>5</sup> or *What Makes a Good Life?*<sup>6</sup> Given some of these positive gains and seemingly increased focus on children, it is surprising to us that the proposed *Oversight of Oranga Tamariki System and Children and Young People's Commission Bill*<sup>7</sup> misses the opportunity to build on strengthening our commitment to children and to deliver on our promise to uphold their rights including to participate in decision making.

In our submission we discuss why we do not support the Bill in its current form and why it does not sufficiently uphold children's rights nor treat them as equal citizens. In development of our submission we have consulted with experts across the children's sector such as the Children's Rights Alliance Aotearoa, Youth Law, Community Law Aotearoa, Dr Judith Aitken QSO, Whakarongo Mai VOYCE, Rosslyn Noonan CNZM, Child Wise and Simon Jefferson QC. The views in this submission are our own.

### **Save the Children does not support the Oversight of the Oranga Tamariki System and Children and Young People's Commission Bill in its current form.**

Save the Children supports the broad policy objective of the Bill to improve outcomes for children and young people in New Zealand.

However, we do not support the Bill in its current form as we believe this Bill has critical gaps when it comes to its intention to strengthen the oversight of the Oranga Tamariki system and does not live up to its promise to strengthen advocacy for children and young people's issues generally.

Furthermore, there is no guarantee that the Purpose set out in Clause 83 will be achieved by establishing a new Children and Young People's Commission rather than by retaining the Children's Commissioner role with amendments to strengthen the current Children's Commissioner Act 2003.

#### *83 Purpose of this Part*

*The purpose of this Part is to establish the Children and Young People's Commission to promote and advance the rights, interests, and participation of children and young people and to improve their well-being within the context of their families, whānau, hapū, iwi, and communities.*

### **Children are all persons under the age of 18 years**

We would like to draw the Select Committee's attention to the conflicting definition of children in this Bill. The Bill defines young people in Clause (86) Interpretation;

*'young people' under Section 86 (a) of Bill, young person means*

*(a) A person aged 14 years or over but under 18 years.*

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<sup>5</sup> Retrieved from <https://conversation.education.govt.nz/conversations/education-conversation/what-you-told-us/voices-of-young-people/>

<sup>6</sup> Retrieved from <https://www.occ.org.nz/publications/reports/what-makes-a-good-life/>

<sup>7</sup> Retrieved from <https://legislation.govt.nz/bill/government/2021/0094/latest/whole.html#LMS591576>

Save the Children does not agree with this description of young people as it conflicts with the definition of children as all persons under the age of 18 years as defined by Article 1 in the Convention on the Rights of the Child.<sup>8</sup>

Young persons should be referred to as persons aged 18-25 years, and in this Bill, it needs to be made clear that young people are only those that are or have been in care, or custody.

The name of the Bill and proposed Children and Young People's Commission confuses this interpretation.

### **This Bill has a significant impact on the role and Office of the Children's Commissioner**

In regard to the impact of this Bill on the current Children's Commissioner role and Office of the Children's Commissioner, we are most concerned that:

- The Bill does not guarantee a named Children's Commissioner with a designated term, and appears to replace this critical role for children with a Board of three to six members,
- The power of the Children's Commissioner to report with or without request directly to the Prime Minister on important children's issues has been removed,
- There has been no consultation with children on the removal of the named role of Children's Commissioner, how that role will be replaced, or the development of a new Children and Young People's Commission and how the Commission will support them now and into the future.

**For these three key reasons, we call for the Bill to be paused until robust public consultation, in particular with children, is undertaken on the role of the Children's Commissioner and shape of the new Commission.**

### **There is clear public support for these key asks**

A petition led by Save the Children was launched on the 5<sup>th</sup> of January 2022. On the 26<sup>th</sup> of January we had 7158 signatures supporting these asks with many anecdotal comments expressing disappointment and disbelief that the removal of the role of named Children's Commissioner is being considered. In addition to this written submission, we will be formally delivering our petition to Parliament on the 10<sup>th</sup> of February as the House will have resumed sitting at this time. The petitions remains open until the 9<sup>th</sup> of February 2022.

### **A named Children's Commissioner is a champion for our children**

Whilst we recognise that there are complex and serious children's issues in New Zealand, we do not agree with the assumption stated in the disclosure statement of the Bill that, "In recognition of the importance of children's issues generally in society and that it is no longer possible for a single

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<sup>8</sup> The UN Convention on the Rights of the Child. Retrieved from, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

individual to be across the broad scope of issues, the Commissioner sole model will be replaced with a Children and Young People's Commission (the Commission).<sup>9</sup> Departmental Disclosure Statement.

The history of New Zealand's Children's Commissioners show that from our first Children's Commissioner, Dr Sir Ian Hassall, through to today's Judge Frances Eivers, every Commissioner has worked to promote children as citizens in their own right, urging New Zealand to do better in the ways we regard and treat our children. They have tackled and achieved change on a range of serious issues such as, the impact of unhealthy homes on children's health, ending detention of children in police cells, prohibiting the physical punishment of children for any reason, helping to establish the Child Poverty Monitor and calling for urgent attention to uplifts of newborn babies at birth by Oranga Tamariki. The Office is an established independent institution working on behalf of the rights and wellbeing of children for more than three decades.

*"The Office was intended to provide a voice for children and was given functions and powers which were very broadly defined, leaving it to each Commissioner to establish his or her own priorities having regard to the issues of the day affecting the lives and well-being of the children in this country." John Barrington (2004).<sup>10</sup>*

The loss of a named Children's Commissioner is a significant change and undermines the gravitas and mana of the role and does not live up to the promise to strengthen advocacy for children's and young people's issues. The ability of the Commissioner to report directly to the Prime Minister on important children's issues, with or without request, instils public trust and confidence in the Office and that children's issues will be given attention at the highest levels of government.

The weakening of this Office does not support the aspiration that *New Zealand will be the best place in the world to be a child.*

### **Children have the right to a voice**

The UN Convention on the Rights of the Child accords children the right to a voice on issues that are important to them and to have their voice taken into account, Article 12.<sup>11</sup>

Although there has been consultation with the NGO sector and others in 2018 on strengthening oversight of the Oranga Tamariki system, the results of which were published in the Beatie (2018) Post Consultation Report,<sup>12</sup> there has never been any consultation on the removal of a named Children's Commissioner with a designated term of office. There has been no consultation with children and young people on the removal of the role or the proposed Children and Young People's

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<sup>9</sup> Departmental Disclosure Statement for the Oversight of Oranga Tamariki System and Children and Young People's Commission Bill, retrieved from <http://disclosure.legislation.govt.nz/bill/government/2021/94>

<sup>10</sup> Barrington, J. (2004). A voice for children. The Office of the Commissioner for Children in New Zealand 1984-2003. Dunmore Press.

<sup>11</sup> The UN Convention on the Rights of the Child. Retrieved from, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

<sup>12</sup> Beatie, S. (2018). Post Consultation Report. New Zealand Government: Online. Retrieved from, <https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/information-releases/strengthening-independent-oversight/post-consultation-report-independent-oversight.pdf>

Commission. It is our view that this failure to consult with children on these important issues, is a clear breach of their rights under Article 12 of the Convention on the Rights of the Child.<sup>13</sup>

The timing for submissions on this Bill has excluded consultation with children. Submissions on the Bill opened on the 22<sup>nd</sup> of December and closed 26<sup>th</sup> January, a time when all schools are on holiday from December through to late January, making it all but impossible to participate in a large-scale consultation on the Bill at this time.

Lack of consultation with children is in direct conflict with the government-led Child and Youth Wellbeing Strategy, failing to uphold **Principle 3: Children and young people’s rights need to be respected and upheld**, or **Outcome Areas 5 and 6 that Children and Young People are Accepted, Respected and Connected** or **are Involved and Empowered**.<sup>14</sup>

Save the Children calls for a pause on the Bill to allow for robust consultation with children, young people and their whānau, according children their right to a voice on these important issues, and to hear from children themselves on how the Children’s Commissioner and proposed Commission should support and represent them now and into the future.

### **Establishment of the Commission’s Board**

It is our view a sole Children’s Commissioner can be supported by the development of the proposed Board.

SCNZ supports the establishment of a Board to;

- guide, inform and support the named Children and Young People’s Commissioner in carrying out their duties,
- provide governance support to the Children and Young People’s Commission, and
- support stability of the Commission during the transition periods when a new Commissioner is appointed.

Furthermore, we recommend greater transparency required when appointing members to the Board. It should be a requirement that all vacancies are publicly advertised, with applicants invited to submit an application.

In relation to upholding and giving effect to Te Tiriti o Waitangi, we recommend that a proportion of the Board members are required to be whakapapa Māori rather than the lesser requirement stated in the Bill.

*Clause 92(2)*

*At least half of the board members must—*

*(a)*

*have Māori knowledge; and*

*(b)*

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<sup>13</sup> The UN Convention on the Rights of the Child. Retrieved from, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

<sup>14</sup> The Child and Youth Wellbeing Strategy, 2019. Retrieved from <https://childyouthwellbeing.govt.nz/sites/default/files/2019-08/child-youth-wellbeing-strategy-2019.pdf>

*have experience in, and knowledge of, tikanga Māori.*

We do not support the Board as a replacement for a named Children and Young People's Commissioner with a designated term of office.

It is our view that a Board is not able to bring to the role the same gravitas, mana and recognition as a named Commissioner who has national visibility particularly for our children to recognise as the appointed champion of their rights, be a powerful and independent voice for children, and to hold the State to account on behalf of children.

A powerful and independent voice to uphold and promote the rights of children is recommended by the Committee on the Rights of the Child (the Committee). According to the Committee, additional justifications exist for ensuring that children's rights are given special attention.

*"These include the facts that children's developmental state makes them particularly vulnerable to human rights violations; their opinions are still rarely taken into account; most children have no vote and cannot play a meaningful role in the political process that determines Governments' response to human rights; children encounter significant problems in using the judicial system to protect their rights or to seek remedies for violations of their rights; and children's access to organisations that may protect their rights is generally limited." The Committee on the Rights of the Child. <sup>15</sup>*

### **The Bill significantly impacts the role and Office of the Children's Commissioner**

Despite assertions that the Bill does not intend to substantially change the functions presently carried out by the Commissioner and to be inherited by the Commission, it is the view of Save the Children that the Bill does significantly impact the role and functions of the Children's Commissioner, and that this statement is, in fact, misleading.

### **Receiving Complaints**

Save the Children strongly recommends the Commission/er's authority to receive complaints from children, and act on those complaints where necessary, is an important function that needs to be retained.

The ability for children to make complaints is essential if we are to ensure that children are treated in ways that uphold their rights and supports their wellbeing. In reality, too often children are the victims of poor treatment. An independent authority designated to support and uphold the rights of children such as the Children's Commission/er is best placed to engage with children and hear their complaints.

While we note the Ombudsman also has the authority to receive and act on complaints, it need not be the only avenue, and currently is the lesser-known avenue for children and their whānau. The Bill

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<sup>15</sup> General Comment No.2 on the UN Convention on the Right of the Child. Retrieved from, <https://www.refworld.org/docid/4538834e4.html>

has the opportunity to strengthen the ways the Ombudsman and Commissioner can work together to receive complaints from children and act accordingly to investigate and resolve these complaints.

Currently, the Bill excludes the Commission/er from receiving complaints and sharing information with the Ombudsman and Monitor. It is our view this weakens the functions of the Commission/er and is not in the best interests of children, Article 3.<sup>16</sup>

It is important to note that the Commissioner currently receives complaints on a variety of issues outside of Oranga Tamariki and from children not connected with the Oranga Tamariki system. Removal of the Commission/er's power to receive complaints will deny children in and out of the Oranga Tamariki system the opportunity to raise complaints over a range of issues.

We recommend that both the Ombudsman and Commissioner can continue to receive complaints and that Commission/er can refer serious Oranga Tamariki related complaints to the Ombudsman.

### **Subpart 1 - The Monitor**

Save the Children supports the establishment of a robust monitoring system to have oversight of the Oranga Tamariki system;

*“... providing assurance that outcomes for children and young people are improving, and providing independent scrutiny of the use of coercive powers, particularly in regard to the removal of children from whānau; and strengthening the resilience of systems through supporting improvements in services, practices, and processes.*

*Independent monitoring also promotes transparency and builds public trust and confidence that the well-being and safety of children and young people is paramount.”<sup>17</sup>*

However, we do not support the splitting of the functions and the exclusion or at the very least separation of the Children's Commission/er from this monitoring system. In addition to those already stated, we have a number of concerns that we call on the Select Committee to address before the Bill can progress.

We support the greater attention to requirements to recognise and respect the Crown's responsibility to give effect to Te Tiriti o Waitangi and to improve the wellbeing of children and young people in the context of their whānau, hapu and iwi and communities, and that a key priority of the Monitor is the need to support improved outcomes for tamariki and rangatahi Māori.

Whilst we support the establishment of robust and independent monitoring, we call on the Government to uphold its original intention to locate the Monitor within the Office of the Children's Commissioner/Children and Young People's Commission to ensure the Monitor truly is independent of government.

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<sup>16</sup> The UN Convention on the Rights of the Child. Retrieved from, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

<sup>17</sup> Retrieved from the Oversight of Oranga Tamariki System and Children and Young People's Commission Bill, <https://legislation.govt.nz/bill/government/2021/0094/latest/d8775064e2.html#LMS591371>

In the event the Monitor is not located within the Office of the Children’s Commissioner or proposed Commission, we call for the monitor to be an Independent Crown Entity.

We are concerned the Monitor lacks true independence while it is located within a government department.

In consideration of the damning findings of the ongoing Royal Commission into abuse of children in State and faith-based care, we see that it is critical that monitoring, investigating and reporting on the Oranga Tamariki system by the Monitor is independent of Government. We call for the Bill to include that the Commission/er be more closely linked to this process to ensure a strong and independent voice for children in care and protection of their rights.

In separating out the functions of monitoring, complaints and advocacy, we are concerned this Bill proposes a complex and overly bureaucratic system, making it harder for those with the most marginalised voices to speak up – in essence our most vulnerable children, to be heard and receive the help and protection they may desperately need.

### **Common Duties**

Clause 7 states a requirement for the Monitor and Ombudsman to work together, while excluding the Children’s Commission/er from the Common Duties. We believe this risks creating a serious gap in advocacy and child rights expertise to support the voices of children and whānau in the routine application of Monitor and the Oranga Tamariki system.

### **Tools and Monitoring Approaches**

Under Clause 16 in developing Tools and monitoring approaches, Save the Children recommends an additional sub-clause to require a child rights approach that will ensure children’s rights are understood, respected and upheld throughout the monitoring process.

Under Clause 16(4) we also call for the inclusion of the Children’s Commission/er to be consulted in the development of these tools and monitoring approaches. This is particularly important given their history of upholding the monitoring role, their expertise in children’s rights and in consulting with children in ways that are safe, uphold their rights, and protects their wellbeing.

### **Code of Ethics**

Save the Children calls for the inclusion of a requirement to respect, protect and uphold children’s rights in the Code of Ethics of the Monitor, Clause 20.

### **Reports and Reviews**

Clause 21 requires a State of the Oranga Tamariki System report every three years. To strengthen this reporting process, Save the Children calls for additional information in the Bill to stipulate what the three-yearly report should contain. In particular, it should include outcomes for children who are in or have been in the Oranga Tamariki system. We call for an increased focus on children rather than the heavily weighted system focus in the current Monitor’s reporting requirements.

Clause 23 requires the Monitor to provide an annual report on outcomes for Māori children and young people and their whānau. We would like to see the requirements extended to report on the outcomes being achieved for all children in care, and for the reporting to be disaggregated by age,



gender, ethnicity, and disability, and length of time in the care system. There may be other disaggregated data sets to consider within this reporting.

We are concerned that the Bill does not provide for the Children's Commission/er to report directly to Parliament. We call for this provision to be included within the Bill as this enables the Commission/er to provide advice and advocate direct to government.

### **Powers of Entry**

Clause 33 provides for powers to enter premises.

We are concerned that missing from this clause, is the ability for the Monitor to enter a premises without notice due to legitimate concerns that a child or children may be harmed or at risk of imminent harm in their place of State care.

We recommend that care be taken over the wording of Clause 35(1)(a) giving authority to limit power of entry if there is reason to believe that entering the premises may result in a child being at risk of being harmed.

We are concerned that harm to children may be hidden if the Monitor's powers to enter premises are not strengthened. Sadly, there have too many been accounts of harm to children being hidden resulting in prolonged and or escalated harm, and even avoidable child deaths while in the care of the State.

### **The Monitor's Information Rules**

As part of Clause 49 (4) Save the Children recommends the inclusion of the requirement for the Monitor to consult with Children's Commission/er when developing information rules relating to the collection of information from children. The Children's Commission/er has the expertise to advise on engaging safely with children and how to respect and uphold their rights and ensure their wellbeing throughout the process.

### **Content of Information Rules**

In Clause (50) consideration should be given to specific rules relating to how children, young people or adults that are or have been in the care of Oranga Tamariki System can access information held about them by the Monitor. We have seen through the Royal Commission that people (now adults) have had significant difficulties in accessing information held about them related to their time in care of the State, and or complaints they may have made about their treatment while in care.

### **Referrals**

Save the Children strongly recommends that Clause 54 be strengthened to include clarification on how the Monitor should respond to complaints made to them by children in the care of Oranga Tamariki in the course of performing their duties under the Monitor. These complaints may not take the form of a formal complaint and may be revealed in conversation or recounting to the Monitor what their life is like in care.

It is important that the Monitor is fully aware that complaints or important information from children may be received in this manner and that there is a clear legal requirement for the Monitor to be expedient in referring this information to the relevant authorities. We go further to recommend the requirement to refer important information that relates to harm or risk of harm to a child or children be timebound, or as soon as is practicable but not later than, for example, 24 hours.

Whilst there is a requirement to refer matters to the more appropriate persons or bodies, it is our view that referrals of complaints by children should be given special attention and be explicitly covered by the Bill given our history of failing to listen to and act on complaints from children in State care (as has been reported in evidence by survivors of abuse in care to the Royal Commission).

Our concerns relate to the potential for serious gaps when it comes to children raising concerns and complaints with staff from the Monitor. How will those complaints be addressed when the Monitor is not mandated to hear complaints from children? Will the Monitor be required to pass those complaints directly on to the Ombudsman that will then be acted on by that office, or will children be required to raise complaints themselves independently with the Ombudsman?

Who will then speak up on behalf of a child/children when the advocacy function is further separated out to the Commission who is not mandated to receive complaints?

We are seriously concerned that the bureaucratic separation of the functions will make it extremely difficult for children in vulnerable circumstances, particularly without close adult support such as a parent or immediate guardian, to make complaints about the way they are being treated in care, particularly if their complaint is about how they are being treated or harmed by their State appointed carer. Again, we recommend the Commission/er retains their role to receive complaints. There is a far greater likelihood that a child and or their family will identify with the Children's Commissioner as a role officially designated to support them and therefore feel more comfortable to lay a complaint and to seek support from that Office.

### **Review of the Act (57)**

We strongly recommend that the impact of the Act on outcomes for children in or close to the Oranga Tamariki Systems be included in the Review. It is concerning and shocking that there is no reference to reviewing outcomes for children in or who received care and or services from the Oranga Tamariki system in Clause 57.

The impact of the Act on children must be of critical importance as, *the Purpose of the Act (S4) is to uphold the rights and interests and improve the wellbeing of children and young people who are receiving or have previously received services or support through the Oranga Tamariki system and promote the effectiveness of that system.*

### **Conclusion**

A number of serious concerns have been highlighted in relation to this Bill by many organisations and individuals experienced in and concerned with upholding the rights and wellbeing of children. As a leading child rights organisation, Save the Children calls for the Bill to be paused and for the significant concerns that have been raised through the Select Committee process to be thoroughly addressed. To do this, further amendments to the Bill will be required, along with a robust consultation process that must include children, young people and their whānau. Save the Children is very willing to offer our child rights expertise as part of this process.

This submission has been prepared on behalf of Save the Children New Zealand by Jacqui Southey, Child Rights Advocacy and Research Director. For any queries related to this submission, please contact Save the Children, [info@savethechildren.org.nz](mailto:info@savethechildren.org.nz).