

# Submission on the Child, Young Persons and Their Families Bill

## Introduction

1. The National Collective of Independent Women's Refuges (NCIWR) is a non-governmental organisation delivering services to women and children affected by domestic violence in New Zealand. NCIWR provides support, advocacy, legal, and health services to 16,507 clients annually. 52 percent of these are women, and 48 percent are children. Last year, 2,852 women and children needed to be admitted into our safe houses to protect them from ongoing violence.
2. Please note we wish to appear before the Select Committee for this Bill.
3. In principle, NCIWR supports intention behind this Bill, and the impetus generally to prevent harm to children and young people. We particularly commend the extension of support to young people aged up to 25. However, we have residual concerns about the potential implications of the Bill, particularly in regard to the constraints of the child-centred practice model at the exclusion of consideration of the integral role of family/whānau, responsiveness to Māori, the purposes and consequences of information-sharing, and the narrow definition of vulnerability and corresponding system response.

## Changes to Youth Justice Approaches

4. Women's Refuge supports raising the age at which young offenders are managed under the youth justice process to 18. This aligns more closely with internationally agreed upon age definitions, as 18 is the agreed age at which a young person becomes an adult according to the United Nations Convention on the Rights of the Child. In addition, it reflects growing international commitment to regard young offenders as children and young persons during this critical stage in their development. This acknowledges the body of knowledge around physiological development and corresponding impulse control, which clearly outlines the differences in decision-making between adolescents and adults. In addition, there are more options under youth processes, including rehabilitative options and addressing the causes of offending – both of which are likely to reduce the likelihood of future offending and corresponding costs to the state. Accordingly, the Ministry of Justice (2014) found a significant reduction in reoffending when young people participated in youth court processes. This is particularly important for Māori, who represent over half of District Court appearances of 17 year olds, and are grossly overrepresented in the justice system. It is also important to recognise that social situations are heavily influential in young people's decisions. While this does not excuse offending, it should be taken into account when blame is being attributed to young people.

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5. We also support the strengthening of young people's right to legal representation while they are involved in youth justice processes, as their level of social power and ability to navigate bureaucratic systems are not comparable to those of adults. Accordingly, they should be given additional and periodical assistance in decision-making regarding legal actions and pathways open to them.
6. We support the increased focus on providing community-based alternatives to youth justice residences, in accordance with the guidelines of the United Nations Convention on the Rights of the Child. Article 37 of the UNCROC states that "the arrest, detention or imprisonment of a child... shall be used only as a measure of last resort and for the shortest appropriate period of time", heralding the need for alternative practices that locate the liberty of the child or young person as paramount unless it is absolutely unavoidable that he/she/they be detained for public safety. However, we argue that any perpetration of violence against intimate partners needs to be regarded as a risk to public safety when alternatives to secure residences are being considered. This is supported by the growing demand for Women's Refuge services by adolescent girls seeking support after experiencing rapidly escalating abuse by their adolescent male partners. This appears to be particularly problematic when the young person perpetrating the violence is also using methamphetamine. We would therefore like to see this risk being specifically codified as a significant factor to inform decisions regarding appropriate placement.

### Increased Focus on Child-Centred Practice

7. We have heard in recent years that the failure to achieve positive outcomes for children and young people whose circumstances have precipitated their involvement with Child, Youth and Family can be attributed to the organisation not being sufficiently 'child-centred'. We acknowledge that child-centred practice is gaining momentum as it, as a term, appears to embody the principle of the paramountcy of child well-being. However, we argue that the failure of Child, Youth and Family to achieve good outcomes can in reality be attributed to a range of factors which, when synergistically in play, remove the focus of the work from the child and whānau and place it instead on bureaucratic indicators of achievement and numerically measurable successes. These ridged structures result in the obliteration of the child and whānau from the work completely. Recent research into child protection strongly suggests that family-centred practice encapsulates a wider range of considerations that are interdependent in shaping the safety of the child or young person.
8. While child-centred practice focuses on the deficits of the child's surrounding structures and imposes a uniform approach of intervention based on an initial assessment for the child, family-centred practice seeks to identify protective factors within the child's whanau. Additionally, it

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supports parents and caregivers to optimise their caregiving approaches using a collaborative approach, and involves the whole of the family to identify life goals and opportunities for the child beyond immediate well-being (Child Welfare Information Gateway, 2016; Madsden, 2009). Furthermore, we do not regard this model as being 'culturally authentic', as the explanatory note states that it is intended to be. We invite the committee to consider alternative models that lend themselves more easily to cultural authenticity.

9. Given the increasing body of knowledge and corresponding commitment to best practice regarding attachment between children and parents/caregivers, we submit that a commitment to improving and maintaining well-being of family and whānau, as opposed to the well-being of the child in isolation, yields the greatest potential for sustainable wellness, realising of potential, and subsequent full participation of each child across their lifespan. Accordingly, we argue that the narrowed focus inherent in child-centred practice may induce short-term positive outcomes only. A true investment approach would be one that aligns with a model of practice aimed at strengthening the family as an entire unit, as this is ultimately determinative of long-term outcomes.

### Transitional Framework for Care-Leavers

10. NCIWR strongly supports the introduction of a framework to support the transition from statutory care arrangements to adult living, up to the age of 25. While current provisions can be extended to young people beyond age 17 in extenuating circumstances, this largely minimises the extended need for care and support experienced by all young people in late adolescence and, for many, in their early twenties. 'Transition' in this context can be understood as the shift away from complete dependence and toward personal identity, self-responsibility, personal and social responsibility, goal-directed behaviour, and self-management in financial, social, physiological, and emotional arenas (MacDonald & Marsh, 2005; Thomson et al., 2004; Henderson et al., 2007). However, this is far from a linear process and success in navigating transitory demands of adolescence and young adulthood are markedly impacted by socio-economic factors, social support networks, and consistency (Dixon & Stein, 2005). The shift toward continuing support throughout adolescence and early adulthood is also consistent with neuroscientific findings regarding brain development and corresponding expectations of non-linear development of autonomy and capacity for decision-making.
11. For those leaving care in the mid-to-late teens, this process is hastened, sudden, and lacks sufficient preparatory support for objectively the successful measures of adult life-skills, autonomy, and full participation in society to be realistically obtained (Stein, 2006). Such young people are

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therefore disproportionately more likely to ultimately depend on the State in other ways. However, these poor outcomes may be mediated by the quality of support available during this transition period; in particular, by an extended period of consistent and adequate support for several years so that the more gradual transitions experienced by adolescents who have not been in care may be replicated with this highly vulnerable population group. NCIWR therefore applauds the investment inherent in mandating this transitional framework and the commitment to long-term positive outcomes that it infers.

### Responsiveness to Māori

12. While we acknowledge and support the rationale behind the modifications to the imperative to seek whānau/hapu/iwi placements for children removed from their families or origin and taken into care, we submit that the significant cultural inequities evidenced within the care and protection and youth justice systems (and, later, Corrections and social welfare systems) require careful and cautious consideration of potential unintended impacts of policies disproportionately affecting Māori; in particular those that affect children and young people and consequently set the scene for the development of their cultural identities.
13. Initial introduction of concepts such as whānaungatanga and manaakitanga were purposefully introduced to the original Act following the publication of the 1988 report Te-Puau-Te-Ata-Tu, which highlighted the presence of institutional racism within the statutory system of child protection. The 1989 Act therefore sought to prevent the pervasive effects of cultural alienation and the widespread removal of Māori children and subsequent placement into Pākehā families, effectively disconnecting them from their cultural roots and identities, by imposing an expectation that social workers would first seek out-of-home placements for children within, ideally, the hapu or iwi the child was raised in, or at a minimum, a family with the same cultural background.
14. The United Nations Committee on the Rights of the Child (UNCROC) recommended in its concluding observations of the fifth periodic report of New Zealand that efforts to preserve Māori identity be intensified, particularly in regard to language and to children adopted to non-Māori families having regular and consistent access to information about their cultural identity. They further comment that the collective dimension of Māori cultural identity should be a principal consideration, which is undeniably best served by on-going relationships with Māori children's families of origin.
15. The NCIWR recognises and witnesses the long-term effects of institutional racism and concurrent cultural alienation and disenfranchisement. Equally, we also witness the long-term and inter-generational impacts of child abuse and neglect, and recognise that all attempts to 'stop the cycle' of abuse and neglect must be undertaken and that an ideal, culturally appropriate placement is not



always available for all children. The competing paramountcy of each of these imperatives unquestionably creates tension for policymakers and practitioners.

16. We therefore recommend that while the well-being of the child (and consequent commitment to placements within environments that promote safety, consistency, and ability to thrive) is prioritised above all other considerations, safeguards to ensure that a replication of pre-1989 institutional racism and cultural alienation does not occur and incorporated into legislative changes. This could be achieved for example, by way of a category-based test to measure suitability of whānau/hapu/iwi versus external placements, taking into account cultural gains; mandated collaborative decision-making with iwi in recognition of their right to equal participation in the protection of children and young people; and specific procedural actions that adhere to cultural values such as whānaungatanga and manaakitanga to ensure standardise culturally competent practice and protect against incidental re-creation of insidious cultural disenfranchisement.

## **Information Sharing**

17. In contrast to the ubiquitous and sensationalised media headlines and consequent public attention to the topic of large-scale information sharing, the NCIWR does not yet have sufficient clarification regarding how information will be collected, analysed, used, and disseminated.
18. We support in principle the use of large-scale data to form the basis of research and evaluation initiatives, in recognition of the often disconnected arms of service provision and the need for research that provides linkages between specific service engagement sequences and outcomes. However, we remain concerned that data gathered will be used for punitive or investigative purposes and are awaiting reassurance on this matter from Government. Should the parameters of information-sharing initiative be made absolutely transparent and provide no scope for additional applications of this information to be used, we would wholeheartedly endorse the initiative.

## **System-Led Responses and Drivers of Vulnerability**

19. We commend the aspiration to reduce harm to children by strengthening the child protection system. However, we also note that the majority of amendments and foci are individualistic and address the issue of child harm as a symptom of deficient families. Without detracting from individual responsibility and accountability for harm to children, we would like to raise the overarching structural issues that are key determinants of child harm; namely, family violence and poverty. Part 1:6:4 of the Bill states as one of its purposes: “ensuring that children and young persons who come to the attention of the department have a safe, stable, and loving home from the earliest opportunity”. Implicit in this is the assumption that ‘safe and stable’ are created

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through intention rather than through active distribution of resources for families in need, such as income support and responsiveness of statutory systems to caregivers who are subjected to violence by partners.

20. The NCIWR routinely bears witness to the harm caused to children by family violence. Further, we recognise family violence as being structurally situated, and underpinned by pervasive gender inequality and societal acceptance of the use of male power and control over female partners. Given the intersection between harm to children and intimate partner violence between adults, it is essential that this is identified as an issue requiring immediate, comprehensive, and long-term attention and intervention. This should occur simultaneously on a number of levels: upskilling frontline practitioners to be able to correctly determine primary offenders and respond in a way that supports family (particularly mothers') safety, rather focuses solely on immediate danger to the child; ensuring resources are accessible to mothers with children who are intending to leave abusive relationships; building strong and collaborative relationships between the child protection system and national providers of services to survivors and/or offenders of family violence; and dedicating resourcing to societal-level prevention of abuse within relationships.
21. Poverty is widely recognised as being a key precipitant to child abuse and neglect. Given the correlations between low-income families and rates and seriousness of child abuse, ameliorating structural disadvantages to families such as poverty (for example, through supportive social welfare), and housing should be prioritised.

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