

15 February 2017

Mr Alfred Ngaro
Chairperson
Social Services Select Committee
C/- Committee Secretariat
Parliament Buildings
Wellington

Via email: social.services@parliament.nz

Dear Mr Ngaro

The Royal Australasian College of Physicians (RACP) welcomes the opportunity to submit feedback on the Children, Young Persons and Their Families (Oranga Tamariki) Bill (the Bill).

The RACP works across more than 40 medical specialties to educate, innovate and advocate for excellence in health and medical care. Working with our senior members, the RACP trains the next generation of specialists, while playing a lead role in developing world best practice models of care. We also draw on the skills of our members, to develop policies that promote a healthier society. By working together, our members advance the interest of our profession, our patients and the broader community.

We support the core intention and purpose of the proposed Bill, which is to meet the complex needs of children in care and protection and youth justice services in New Zealand, and welcome the shift in philosophical emphasis to a child-centred model focused on prevention.

Social determinants of health and health equity

The social determinants of health are the conditions in which people are born, grow, live, work and age, and include the health system¹. When these conditions are suboptimal – including poor quality or overcrowded housing, lack of access to health and social services, socio-economic disadvantage, and unemployment – there is a greater risk of adverse physical and mental health outcomes. These can be chronic conditions, such as asthma, metabolic disorders, and depression; or acute illnesses, such as pneumonia, or skin and soft tissue infections from overcrowded living environments. Greater resourcing is urgently required to address health outcomes determined by these gradients, and ultimately prevent illness and chronic disease.

It is essential that children are supported to live, learn and grow up in an environment which is loving, nurturing and responds to their individual needs. Early environments influence individual children's development independent of and in combination with a child's biological characteristics and specific time periods (including the prenatal and perinatal periods) affect children's health outcomes over time^{2 3}. Socio-economic gradients in health across the life

¹ World Health Organization. Social determinants of health. 2015; Geneva: World Health Organization. Available from http://www.who.int/social_determinants/en/

² Wadsworth MEJ. Health inequalities in the life course perspective. Soc Sci Med. 1997; 44:859-69.

course begin as socio-economic gradients in early child development³. Children and young people who enter into the care and protection system may have experienced material hardship, neglect, abuse and disadvantage, which places them at a greater risk of experiencing physical and mental health inequities through the life course. A commitment to achieving health equity for all children and young people in care and protection would strengthen this Bill.

The Ministry for Vulnerable Children – Oranga Tamariki

The RACP agrees with the concerns raised by the Office of the Children’s Commissioner and others over the naming of the new Ministry. The phrase “vulnerable children” may be interpreted as labelling or stigmatising the children and young people the Ministry is seeking to protect and assist. Vulnerability can be dynamic: children and young people may experience periods where their needs and situation requires additional care, protection or support, as well as periods of relative stability. Furthermore, the Ministry’s proposed name does not reflect the intention to enable transformative change for the new operational system, particularly for tamariki and rangatahi Māori. “High aspirations for Māori children” is one of the foundational building blocks of the new operating system. The Ministry’s Māori name, Oranga Tamariki, which translates to the health and wellbeing of children, is a more appropriate name for the Ministry, as it emphasises positive outcomes and aspirations, rather than the deficits suggested by “vulnerable”.

A child-centred system

We welcome the Bill’s proposed child-centred system, where the child’s interests, well-being and voice are central to decision-making processes. A child-centred system should promote equitable participation for children and young people. Children and young people who require additional support or advocacy to communicate their views and perspectives should have equitable access to these services.

This approach also recognises the child as being at the centre of a network of relationships including immediate and extended family and whānau, social and community connections. The child-centred approach is a positive move towards an operating model which enables Article 3.1 of the United Nations’ Declaration on the Rights of the Child (UNCROC) to be applied positively and more practicably in the New Zealand context:

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities of legislative bodies, the best interests of the child shall be a primary consideration”⁴.

The child-centred approach is a foundational principle in each of the five service areas (prevention, intensive interventions, care support, youth justice services and transition support). We recommend the development and dissemination of a clear definition of what the Ministry and the government means by child-centred. We look forward to the introduction of best practice guidelines for social workers, advocates and other practitioners on implementing children’s and young people’s participation.

Providing for a practical commitment to Te Tiriti o Waitangi

Tamariki and rangatahi Māori are overrepresented in care and protection, and youth justice statistics⁵. As tangata whenua, tamariki and rangatahi Māori are guaranteed the right to

³ Maggi S, Irwin LJ, Siddiqi A, Hertzman C. The socio determinants of early child development: an overview. *J Paed Child Health*. 2010; 46:627-35.

⁴ UN General Assembly. Convention on the Rights of the Child. 20 November 1989, United Nations, Treaty Series, vol. 1577, p.3, available at: <http://www.refworld.org/docid/3ae6b38f0.html> [accessed 11 January 2017]

⁵ Office of the Children’s Commissioner. State of Care 2016: What we learnt from monitoring Child, Youth and Family. 2016; Wellington: Office of the Children’s Commissioner. Available from <http://www.occ.org.nz/assets/Publications/OCC-State-of-Care-2016FINAL.pdf> [accessed 12 January 2017]

experience equitable health, education, employment outcomes, and equitable treatment under the justice system. A child-centred approach for tamariki and rangatahi Māori in contact with any of the five service areas should enable them to achieve rangatiratanga (self-determination) and positive outcomes.

In 1988, the Ministerial Advisory Committee on a Māori Perspective for the Development of Social Welfare released a report titled Puaote-Ata-tu (Daybreak)⁶. The report identifies the systemic and structural inequities contributing to endemic institutional racism towards Māori in the then Department of Social Welfare and in New Zealand society. Recommendations made by the Advisory Committee under point 4 (Deficiencies in Law and Practice) is particularly salient to the current consultation on the Bill:

(c) That the Children and Young Persons Act 1974 be reviewed having regard to the following principles:

- i. That in the consideration of the welfare of a Māori child, regard must be had to the desirability of maintaining the child within the child's hapu;
- ii. that the whānau/hapu/iwi must be consulted and may be heard in Court of appropriate jurisdiction on the placement of a Māori child;
- iii. that Court officers, social workers or any other person dealing with a Māori child should be required to make inquiries as the child's heritage and family links;
- iv. that the process of law must enable the kinds of skills and experience required for dealing with Māori children and young person's hapu members to be demonstrated, understood and constantly applied.
The approach in recommendation (iv) will require appropriate training mechanisms for all people involved with regard to customary cultural preferences and current Māori circumstances and aspirations;
- v. that prior to any sentence or determination of a placement the Court of appropriate jurisdiction should where practicable consult, and be seen to be consulting with, members of the child's hapu or with persons active in tribal affairs with a sound knowledge of the hapu concerned;
- vi. that the child or the child's family should be empowered to select Kai tiaki or members of the hapu with a right to speak for them;
- vii. that authority should be given for the diversion of negative forms of expenditure towards programmes for positive Māori development through tribal authorities; these programmes to be aimed at improving Māori community service to the care of children and the relief of parents under stress⁶.

The RACP recommends the Select Committee incorporates the Puaote-Ata-tu recommendations as suggested amendments to the draft legislation. While the recommendations highlighted above are relevant to the care and protection of Māori children and young people within social development and youth justice settings, Puaote-Ata-tu considers that "a substantial ideological change necessary if the Act were to adequately cater to Māori needs", and that the involvement of whānau, hapu and iwi as being

⁶ Puaote-Ata-tu: Daybreak. Report by the Ministerial Advisory Committee on a Māori Perspective for the Development of Social Welfare. 1988; Wellington: Department of Social Welfare. Available from <https://www.msd.govt.nz/documents/about-msd-and-our-.../1988-puaoteatatu.pdf> [accessed 26 January 2016]

foundational to positive outcomes for the child or young person⁶. The Bill represents an opportunity for Oranga Tamariki to embed the philosophical change in policy and best practice for the care and protection of tamariki and rangatahi Māori.

We interpret the new section 7A (Further duties of chief executive in relation to improvement of Māori outcomes) in the proposed legislation, and the “practical commitment to the principles of the Treaty of Waitangi”, as being an active commitment *in practice*, over and above a commitment to the principles of partnership, protection and participation.

Clause 2(g)(i) to (v) in section 7A set the key points for consideration in instances where a child or young person is removed from their caregivers. Point (v) notes that

“Children or young persons should be placed where they can develop a sense of belonging and attachment, and where their personal identity and cultural identity are maintained.”

This subclause appears to dilute the clear commitment in other clauses of this section around the acknowledgment and consultation with whānau, hapū and iwi, as well as recognition of mana tamaiti, whanaungatanga and whakapapa. The central importance of these connections is noted in clause (2)(l); yet given this new section considers the chief executives duties to improve Māori outcomes, clause (2)(l) should be incorporated as key points for consideration under clause 2(g).

Definitions

The RACP supports the inclusion of various definitions as part of the Interpretation in the Bill. In particular, the inclusion te reo Māori terms mana tamaiti (tamariki) and whanaungatanga embeds these as cornerstone-concepts to improving Māori outcomes in care and protection and youth justice.

Recommendations of the Expert Advisory Panel and other reviews of social services and welfare provision in New Zealand have noted the need for collaborative practices across multiple sectors and agencies. It would be useful to incorporate these definitions into future proposed legislation which concerns the treatment of Māori in health, education, social services, and housing under other ministries, departments or agencies. The centrality of cultural competence for all practitioners working across the five service areas is essential to improve outcomes for Māori, and embedding tikanga and kaupapa Māori in the proposed legislation and further in the implementation phases of the new Ministry is a useful starting point.

We welcome reference to UNCROC, and the United Nations Convention on the Rights of Persons with Disabilities. As a signatory, New Zealand has an obligation to uphold the conditions of both declarations, and report periodically on implementation. In its report on New Zealand’s progress, the United Nations Committee on the Rights of the Child called for urgent measures to be introduced to prevent violence, abuse and neglect, deprivation of a family environment and child labour. The report urges action to improve children’s standard of living, improve outcomes for Maori and Pasifika children, and children in youth justice services⁷.

⁷ United Nations Committee on the Rights of the Child. Concluding observations on the fifth periodic report of New Zealand. 2016; Geneva, Switzerland. Available from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fNZL%2fCO%2f5&Lang=en

Translating principles into practice

The UN Committee on the Rights of the Child recommended that New Zealand finalise and implement a child impact assessment: best practice guideline. We agree and believe this would assist in translating the principle of a child-centred approach into practice⁷.

The new operational model should be monitored and evaluated by Oranga Tamariki as the lead Ministry, with input from other departments (for example, the Ministry of Justice) where necessary. Independent monitoring and evaluation of the new model, as well as ongoing monitoring of the Ministry itself should continue to be the role of the Office of the Children's Commissioner (OCC), and the RACP endorses the UN Committee's recommendation for strengthening further the independence of the Office of the Children's Commissioner, and its resources.

We were concerned to read in the Regulatory Impact Statement on Enhancing children and young people's participation that "consultation with the OCC was not possible ahead of the Government's response to the Final report on Modernising Child, Youth and Family Expert Panel"⁸. It is imperative that an independent body with statutory responsibilities to advocate for the children and young people of New Zealand is consulted on legislative change which affects its core constituency.

The Bill makes significant changes to existing legislation, such as the principles and definitions highlighted above. We believe that Oranga Tamariki has the potential to make a real difference to the lives of some of New Zealand's most vulnerable children and young people. The evidence of the impact and efficacy of the new Ministry will be in the health, education, social, justice and employment outcomes of children and young people who come into contact with the Ministry and its services.

We are grateful for the opportunity to provide feedback on this consultation, and look forward to positive change in health and wellbeing outcomes for vulnerable children in New Zealand the proposed legislation will enable. The RACP do not wish to appear before the Select Committee. To discuss this submission further, please contact the NZ Policy and Advocacy Unit at policy@racp.org.nz.

Yours sincerely



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New Zealand President
The Royal Australasian College of Physicians

⁸ Ministry of Social Development. Modernising Child, Youth and Family: Enhancing children and young people's participation. Regulatory Impact Statement; 2016. Available from <http://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/regulatory-impact-statements/modernising-cyf-enhancing-childrens-and-young-people-s-participation.doc>.