

Oversight of Oranga Tamariki System Legislation Amendment Bill

Submission of the New Zealand Law Society Te Kāhui
Ture o Aotearoa

6 December 2024

1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Oversight of Oranga Tamariki System Legislation Amendment Bill (**Bill**), which seeks to amend the Oversight of Oranga Tamariki System Act 2022 and the Children and Young People's Commission Act 2022 in order to enhance oversight and monitoring of the Oranga Tamariki system.¹
- 1.2 This submission has been prepared with input from the Law Society's Family Law Section and Public Law Committee.²
- 1.3 The Law Society wishes to be heard in relation to this submission.

2 Proposed changes to the Children and Young People's Commission

- 2.1 The Children and Young People's Commission (**Children's Commission**) is responsible for advocating for the interests, rights, and wellbeing of all children and young persons, including those in the Oranga Tamariki system. It was established in July 2023 following the enactment of the Children and Young Persons Commission Act 2022.
- 2.2 The Oversight of Oranga Tamariki System and Children and Young People's Commission Bill 2021, which was ultimately enacted as two separate statutes including the Children and Young Persons Commission Act 2022, recognised the broad scope of children and young people's issues and the impracticality of a single individual managing these responsibilities. The Explanatory Note of that Bill stated:

In recognition of the importance of children's issues generally in society and that it is no longer possible for a single individual to be across the broad scope of issues, the Commissioner sole model will be replaced with a Children and Young person's Commission.
- 2.3 Consequently, the Children and Young Persons Commission Act 2022 repealed and replaced the sole Commissioner model with a Children and Young People's Commission governed by a board led by the Chief Children's Commissioner. These changes were intended to ensure comprehensive oversight and advocacy, with the Commission being an independent Crown entity with the flexibility to hold the Government to account and to be independent of Government policy.
- 2.4 The current Bill seeks to revert the Children's Commission from a board-led structure to a sole Children's Commissioner (**Commissioner**).³ This proposed change contradicts the reasons given in the Oversight of Oranga Tamariki System and Children and Young People's Commission Bill 2022 for shifting away from the Commissioner sole model. As a result, it is unclear:
 - (a) why it is believed that one person can effectively fulfil the role which previously required a board;

¹ Explanatory Note of the Bill.

² See the Law Society's website for more information about this Section and Committees: <https://www.lawsociety.org.nz/branches-sections-and-groups/>.

³ New section 11 in clause 15 of the Bill.

- (b) whether the proposed changes will improve advocacy for children and young people if the original concern (i.e., that it was no longer possible for a single individual to effectively manage these responsibilities) remains an issue; and
 - (c) if so, whether and how such concerns will be addressed by the changes proposed in the Bill.
- 2.5 These concerns are heightened because the Bill does not seek to address resourcing issues recently raised by the Children’s Commission, as discussed in [5.1] to [5.3] below.
- 2.6 We also note the Bill will replace Aroturuki Tamariki (the current Independent Children’s Monitor) with a new Independent Monitor of the Oranga Tamariki System (**Monitor**), which will be governed by a board of three members.⁴ If it is important for the Monitor to have a board, it raises questions about why the same logic does not apply to the Children’s Commission.
- 2.7 We therefore recommend that the Select Committee seek advice from officials on these points, and consider whether it would be more appropriate to maintain the current structure of the Commission in order to ensure comprehensive oversight and advocacy for children and young people’s issues.

3 Appointment of Deputy Children’s Commissioner

- 3.1 New section 14 (clause 15 of the Bill) provides for the appointment of a Deputy Children’s Commissioner. The appointment is to be made by the Governor-General on the recommendation of the Minister for Social Development (**Minister**).
- 3.2 While the Bill requires the Minister to consult the Commissioner before making a recommendation to the Governor-General,⁵ it does not include any provisions on the matters the Minister should take into account when making such a recommendation. This contrasts with new section 12(2), which sets out matters the Minister must have regard to when making a recommendation about the appointment of the Commissioner.
- 3.3 If those matters are relevant to the appointment of the Commissioner, it follows that they are equally relevant to the appointment of the Deputy Commissioner, who may perform or exercise all the functions, duties, and powers of the Commissioner, including in the Commissioner’s absence.⁶
- 3.4 We therefore recommend amending clause 15 of the Bill to:
- (a) provide that the Minister may have regard to the matters in section 12(2) when appointing a Deputy Commissioner; or
 - (b) alternatively, set out any other matters the Minister must have regard to when making a recommendation about the appointment of the Deputy Commissioner.

⁴ Clause 9, and Schedules 1 and 2 of the Bill.

⁵ New section 14(2).

⁶ New section 14(4) and (5).

4 Review of amendments made by the Bill

- 4.1 The Bill requires the Minister to arrange independent reviews of the operation and effectiveness of the Commissioner and the Monitor no later than five years after the Bill is enacted and the new Act comes into force.⁷ The reviews must consider whether the functions, duties, and powers of the Commissioner and Monitor are effective, whether the Commissioner and Monitor are working effectively with relevant agencies and parties, and whether any further amendments are necessary or desirable. The following concerns arise in relation to these provisions:

Review timeframe

- 4.2 The Law Society considers that the proposed five-year period may be too long. While five years would allow time for systems to bed down and for a comprehensive assessment to be undertaken, the period between the Oversight of Oranga Tamariki System Act and the Children and Young People's Commission Act coming into force (1 July 2023) and the introduction of this Bill, would suggest a shorter review period may be more appropriate. In light of Minister Karen Chhour's recent announcement about the establishment of a new independent Child Protection Investigation Unit, the effectiveness of the proposed amendments may be better understood sooner rather than later (i.e., before the Unit becomes operational).
- 4.3 The Law Society therefore recommends amending the Bill to reduce the five-year review period for both the Commissioner and the Monitor to a three-year review period. This would ensure a timely evaluation of the operation and effectiveness of the amendments to the principal Acts, and allow for necessary adjustments to be made.

Consultation requirements

- 4.4 The Bill includes a requirement for the Minister to consult with other Ministers 'with relevant portfolios' as necessary in relation to each review.⁸ Absent a definition, the term 'relevant portfolios' could give rise to uncertainty as to which Ministers should be consulted.
- 4.5 We assume this drafting is intended to keep the statute flexible to suit the description and nature of portfolios set by the Government of the day. However, it would be helpful to set out at least some of the portfolios the drafters have in mind (for example, the Minister for Children, and the Minister for Māori Development) so there is greater clarity on who it is intended will be consulted in practice. Such a provision could be drafted inclusively to allow further consultation to be undertaken with other Ministers with relevant portfolios at the time of consultation (if such consultation is necessary).

5 Resourcing issues

- 5.1 The amendments proposed in the Bill do not address the resourcing concerns recently raised by entities such as the Children's Commission and the Ombudsman during the

⁷ Clause 13 in Schedule 1, and Clause 20 in Schedule 3 of the Bill.

⁸ Clause 13 in Schedule 1, and Clause 20 in Schedule 3 of the Bill.

Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions.

- 5.2 The Royal Commission's final report, *Whanaketia – Through Pain and Trauma, from Darkness to Light Whakairihia ki te tahi o Maungārongo* highlighted that resource constraints limited entities such as the Children's Commission to monitoring only 'some, but not all' cases.⁹ Similarly, the Ombudsman indicated that while he could inspect places of detention at least once every four years, more frequent inspections would require additional resources.¹⁰ The Royal Commission recommended the Government review existing entities' roles and functions to:¹¹
- (a) identify and address any unnecessary duplication of effort as an immediate priority, potentially consolidating care and protection and youth justice independent monitoring into a single entity; and
 - (b) determine whether existing entities are sufficiently resourced and enabled to maintain a consistent focus on individuals at risk in the care system, ensuring that those about whom a complaint or concern has been raised remain visible throughout the investigation and do not fall through the gaps.
- 5.3 As previously noted, this Bill will reduce the Children's Commission's capacity by reverting the Children's Commission from a board-led structure to a sole Commissioner (see [2.2] to [2.5] above). We therefore invite the Select Committee to consider whether this Bill presents any opportunities to address some of these resourcing concerns, and to recommend any appropriate amendments. The Law Society remains available to provide further feedback to the Select Committee on such amendments.



David Campbell
Vice-President

⁹ Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions *Whanaketia – Through pain and trauma, from darkness to light* (June 2024) at page 233, paragraph 515.

¹⁰ Above n 9 at page 233, paragraph 516.

¹¹ Above n 9 at page 234, paragraph 521.