PSA Submission on the Oranga Tamariki System Oversight Bill

to the Social Services and Community Select Committee

26 January 2022

PSA
For a better working life
New Zealand Public Service Association
Te Pūkenga Here Tikanga Mahi

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About the PSA

The New Zealand Public Service Association Te Pūkenga Here Tikanga Mahi (the PSA) is the largest trade union in New Zealand with over 80,000 members. People join the PSA to negotiate their terms of employment collectively, to have a voice within their workplace and to have an independent public voice on the quality of public and community services and how they're delivered.

We are a democratic and bicultural organisation representing people working in the Public Service including for departments, crown agents and other crown entities, and state-owned enterprises; local government; tertiary education institutions; and non-governmental organisations working in the health, social services and community sectors. Te Rūnanga o Ngā Toa Āwhina is the Māori arm of the PSA membership. The PSA is affiliated to Te Kauae Kaimahi the New Zealand Council of Trade Unions, Public Services International and UniGlobal.

We are the union for people working at Oranga Tamariki. We also represent people working for other organisations that are within the Oranga Tamariki System as defined by the Bill, including for DHBs and for community organisations delivering health, disability and social services; and people working at the Office for the Commissioner for Children. The Social Workers Action Network (SWAN) is a network of PSA members working in social work across the public and community sectors.

This submission

In preparing this submission we publicised the consultation with and sought the views of PSA members working at Oranga Tamariki and other parts of public and community services working with tamariki, rangatahi and whanau and the Oranga Tamariki system, including through SWAN.

Overall PSA response to the Bill

The Bill aims to improve outcomes for children and young people in New Zealand by strengthening the independent monitoring and complaints oversight of the Oranga Tamariki system; and advocacy for children's and young peoples' issues generally. PSA members working in the Oranga Tamariki system support these aims – they do the work they do because they are committed to improving outcomes for tamariki and rangatahi and their whanau and communities.

This work is demanding both professionally and personally. The changes and outcomes sought are complex and take time. This work requires perseverance and resilience and a commitment to decolonisation of how public services operate and in particular of social work practice. Alongside this there is a justified strong public and political focus on this work. Within this highly pressured context, it is vital that along with measures for scrutiny of the work of Oranga Tamariki and partner agencies, people working within the Oranga Tamariki system are supported and backed to do their work well. This has not always been the case and it is important that the measures introduced by this Bill do not repeat this.

We have concerns that the use of the term "Oranga Tamariki System, both to define that system as the title of the Bill, unfairly singles out Oranga Tamariki as an institution and risks implying that Oranga Tamariki alone is responsible for delivering the outcomes sought. **We recommend that another term is found for this system which captures that the other organisations in this system have a shared responsibility for outcomes and the effective operation of the system.**

Summary of PSA recommendations

We recommend:

- That a term other than "Oranga Tamariki System" is found for this system and used in the Bill which captures that the other organisations in this system have a shared responsibility for outcomes and the operation of the system.
- On balance, that the Committee consider further whether the departmental agency form provides for sufficient independence and whether, with appropriate resourcing, the Independent Monitor function should be carried out by the proposed Commission for Children and Young People.
- Clause 14(2)(b) of the Bill is amended to clarify the meaning of "practice".
- Clause 14(2)(b) is further amended to read: "assessing the quality and impacts of service delivery, service mix, service resourcing, *organisational systems, management approaches*

and support for development and practice on the experiences of children, young people, families, and whānau".

- Clause 16(2)(a) is amended to refer to key information about performance, rather than key indicators.
- Clause 16(4) is amended to also include in the list of those to be consulted in the development of monitoring tools and approaches, representatives of the workers to be monitored using the tools or approaches. It is important that these tools and approaches do not create oppressive surveillance of workers and that their right to personal privacy is respected.
- Clause 49(4), which specifies who the Monitor must consult with in developing information rules should be amended to also include a requirement to consult with representatives of workers whose personal information might be gathered under those rules.
- Adding to the list of exceptional circumstances in S35(2) for limiting the Monitor's rights of entry the circumstance where the social worker or other professional believes in good faith that the presence of the monitor would have a detrimental impact on practice and engagement. We also recommend considering for inclusion in this list the circumstance where tamariki, rangatahi, whanau or guardians do not want the monitor present.
- Clause 54 should be amended to clarify that Cl 54(4)(n) does not enable the Ombudsman or Monitor to refer subject matter relating to professional practice directly to professional registration bodies., but rather that such matters should be referred to the relevant employer or funder.

Te Tiriti o Waitangi

We support the need for a te Tiriti o Waitangi model of governance for both the Commission and the independent monitor.

The best organisational form for the independent monitoring function

We recognise the need to put further measures in place to "support the evolution of the care and protection system through the monitoring and evaluation of its practices and the experiences of those who either come in contact with it, or are placed in its care, or who work within it. And, an accompanying need for safe and trusted avenues for complaint and investigation and, for making suggestions for improvement." We also support "the continuing need for strong systemic advocacy

to highlight and represent the rights and interests of all children and young people" and in particular in relation to the Government's initiatives around poverty reduction and wellbeing[1].

We also support the use of the Office of the Ombudsman to deal with complaints and investigations. The Office of the Ombudsman has strong and related experience and is trusted to carry out these functions.

While it is essential that the organisation monitoring and evaluating the Oranga Tamariki system is independent, we have questions about the proposal to establish a separate departmental agency to house the monitoring and evaluation function for the Oranga Tamariki System.

The question is whether this would provide for sufficient independence. While the Bill does provide some protections, including explicit limits on the Minister's power in relation to the Monitor, maintaining that independence would require very robust political management from the Monitor's chief executive. The proposal would also seem an unnecessary fragmentation of function in what is in reality a small public service system that already struggles to attract and maintain a workforce with the necessary skills and expertise for this kind of work.

In addition, tamariki and rangatahi are in the care of the State in a wider range of public systems than the Oranga Tamariki system. For example, in secure mental health units and forensic mental health and forensic intellectual disability facilities. It would seem to make sense to have one independent agency that monitors all of these significantly overlapping systems. The Office of the Children's Commission already carries out the function of monitoring a number of these services.

There is also the question of whether the departmental agency form would allow this function the benefit of operating within the scrutiny of the United Nations' human rights monitoring framework. Within this framework, the Office of the Children's Commissioner is a National Preventative Mechanism (NPM) – along with Human Rights Commission, Ombudsman and Independent Police Complaints Authority - and it monitors under the Optional Protocol on the Convention Against Torture (OPCAT). We are not experts in this area but it is our understanding is that a departmental agency could not be an NPM.

On balance we recommend that the Committee consider further whether the departmental agency form provides for sufficient independence and whether, with appropriate resourcing, the

[1] P11, https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/information-releases/strengthening-independent-oversight/post-consultation-report-independent-oversight.pdf

Independent Monitor function should be carried out by the proposed Commission for Children and Young People.

Concerns about how the monitoring and evaluation function is defined

Clause 14(2)(b) of the Bill provides that the functions of the Independent Monitor include "assessing the quality and impacts of service delivery, service mix, service resourcing, and practice on the experiences of children, young people, families, and whānau".

We have the following concerns with this:

- "Practice" is not defined. **It is not clear whether this means social work practice or includes other practice and practices. If it means social work practice, then it will be important that the monitoring agency has a strong understanding of this. We recommend that the clause is amended to clarify this.**

- This does not appear to include the impacts of management approaches, organisational systems or the provision or lack of provision of training, supervision and other support for professional practice. Each of these matters has a significant impact on outcomes for tamariki. Accountability is not just for individuals working with tamariki but must also include accountability of organisations working in the Oranga Tamariki system for having in place the organisational systems, management approaches and supports for ongoing development of professional practice that result in great practice and the best outcomes for tamariki. **We recommend that this clause is amended to read: "assessing the quality and impacts of service delivery, service mix, service resourcing, *organisational systems, management approaches and support for development and practice* on the experiences of children, young people, families, and whānau".**

Avoiding unintended consequences

It is important that the monitoring and oversight measures introduced by the Bill do not result in tick box compliance requirements that discourage effective social work practice. Clause 16(2)(a) concerns us. It provides that the tools and monitoring approach *must* include "key indicators of performance that will be used to assess compliance, quality of care, and changes over time;". This approach – the assessment of performance using KPIs – is a failed one. The Public Service's extensive use of this approach through the 1990's and into the 2000's taught us not only that it is difficult to develop meaningful KPIs for complex public services, but also that it in fact often works

against effective practice that actually achieves the outcomes sought, and that it creates compliance cultures and incentives for gaming.

We recommend that this clause is amended to refer to key information about performance, rather than key indicators.

Clause 16(4) provides a list of who is to be consulted when the Monitor develops its tools and approaches. **We recommend that this clause is amended to include in the list of who is consulted representatives of the workers to be monitored using the tools or approaches. It is important that these tools and approaches do not create oppressive surveillance of workers and that their right to personal privacy is respected.**

It is also important that workers' privacy and perspectives are considered in the development by the Monitor of their information rules. **We recommend that clause 49(4), which specifies who the Monitor must consult with in developing information rules should be amended to also include a requirement to consult with representatives of workers whose personal information might be gathered under those rules.**

Monitoring practices can intrude on the privacy of tamariki, rangatahi and whanau and create further oppression and anxiety which in turn impact on relationships with social workers and other professionals and so the effectiveness of their practice. **We recommend adding to the list of exceptional circumstances in S35(2) for limiting the Monitor's rights of entry the circumstance where the social worker or other professional believes in good faith that the presence of the monitor would have a detrimental impact on practice and engagement. We also recommend considering for inclusion in this list the circumstance where tamariki, rangatahi, whanau or guardians do not want the monitor present.**

Our final comment concerns the importance of both that the monitoring organisation holds expertise in the practice of the different professions within this system, and that any matters of practice that are identified during monitoring or investigations are referred to organisations with expertise in the relevant practice. Clause 54 (4) provides that the Monitor or Ombudsman can refer "subject matter" to the employers of most of those working within the system and also at Cl 54(4)(n) any other person or body that the Monitor or Ombudsman considers appropriate". We would not expect that this would mean that that the Monitor or Ombudsman can refer matter of practice directly to professional bodies such as the Social Workers' Registration Board or the Psychologists' Board. This would be inappropriate, and it is our view that any such matter should be referred first back to the worker's employer who could investigate using a process that ensures natural justice and

that a system perspective is able to be taken. That employer may of course in appropriate circumstances later refer the subject matter concerning practice to the relevant professional body. **We recommend that Cl 54 is amended to clarify this.**

For further information about this submission, please contact:

Kirsten Windelov
Senior advisor, policy and strategy
New Zealand Public Service Association
PO Box 3817
Wellington 6140

Phone: 04 816 5065
Email: kirsten.windelov@psa.org.nz