PSA

CYPF (Oranga Tamariki) Legislation Bill

Submission to the Social Services Select Committee

March 2017

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

Children, Young Persons and their Families (Oranga Tamariki) Legislation Bill

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Introduction

Who we are

The New Zealand Public Service Association Te Pūkenga Here Tikanga Mahi (the PSA) is the largest trade union in New Zealand with over 62,000 members. We are a democratic organisation representing members in the public service, the wider state sector (the district health boards, crown research institutes and other crown entities), state owned enterprises, local government, tertiary education institutions and non-governmental organisations working in the health, social services and community sectors.

The PSA has been advocating for strong, innovative and effective public and community services since our establishment in 1913. 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 an organisation that is committed to the principles of the Treaty of Waitangi.

The PSA represents approximately 3500 social worker members who work in the government and community sectors. This submission has been informed by consultation with our members who work as social workers (both inside and outside of CYF) and with the Māori governance branch of the PSA, Te Rūnanga o Ngā Toa Āwhina. Comments from members that are quoted in this submission are derived from this feedback and are anonymous.

We have seen, and support, the submission to this bill of the Social Services Providers Aotearo.

Please note the views in this submission do not necessarily represent the views of all PSA members.

The PSA is an affiliate of the New Zealand Council of Trade Unions.

PSA submission

E ngā mana, e ngā reo, e rau rangatira. Kei te mihi, kei te mihi i runga i ngā āhuatanga e pā ana ki tēnei kaupapa CYPF Bill. E tika, ko te mea tuatahi, me mihi ki to tātou Matua nui i te rangi. Ko ia te timatanga o ngā mea katoa. Kororia ki ae ia whakapainga tōna ingoa tapu. Tēna koutou, tēna koutou, tēna tātou katoa.

Executive Summary

The Children, Young Persons, and Their Families (CYPF) (Oranga Tamariki) Legislation Bill represents a fundamental shift in New Zealand's approach to child protection and youth justice services. While there are many aspects of the legislation that our members support, we have significant concerns about the overall direction of the reform programme. We also note, that improving outcomes for vulnerable children and their families will rely on significant improvements in their socio-economic circumstances – which includes access to affordable, secure, quality housing and secure employment with decent pay and conditions. Unfortunately the Government is doing little to address these needs.

Our social worker members who contributed to this submission are particularly concerned that this bill represents a significant (and in their opinion, unnecessary) departure from the original principles of the CYPF Act which aimed to empower and support families, whānau, hapū and iwi to care for their children. The new purposes section of the legislation signals a focus on time-limited intervention and speedy permanent placement which is likely to undermine attempts to rehabilitate families and whānau to enable them to care for the children.

Our members are concerned that the combined effect of these reforms will be to increase risk-averse practice that results in higher numbers of children removed from their families and placed in permanent, non-kin care. Similar adoption-focused child protection reforms in the UK have been associated with a significant increase in the number of children living with adopted or special guardians and an increase in the number of children in care.[1]

The bill embeds the so-called "social investment" approach into legislation. We argue that this is an unwise development, given the untested nature of this policy tool, and the potential for many families to be denied services if they don't represent a healthy "return on investment (see new section 7(3)(bab)(ii)). The social investment approach appears to focus on short-term rather than long-term outcomes and to minimise the complexities involved with attributing long-term outcomes to service inputs. We therefore recommend that this not be embedded in legislation.

We are concerned that the implications and risks of the proposed new information sharing framework have been inadequately canvassed in government papers and we recommend that these proposals be removed from the legislation.

We support in principle the raising of the youth justice age to 17 years but our members are concerned

[1]Laville, Sandra, "Children unnecessarily removed from parents, report claims", *Guardian* newspaper, 18 January 2017, accessed 24 February 2017, from https://www.theguardian.com/society/2017/jan/18/children-parents-foster-social-care-families-adoption

that, unless properly supported and resourced, staff and working in youth justice residences are likely to be placed at greater risk of assault and harm.

The bill significantly widens the scope for state intervention in families' lives, and has far-ranging practice and resource implications that we do not think have been adequately considered in government papers. In our opinion this represents a high level of risk to the Ministry of Vulnerable Children (MVOT) and to the children, young people and families that rely on their services. Risks to the integrity of the service are likely to be exacerbated by the de-professionalisation of child protection and youth justice services which has occurred through the removal of social workers from the CYPF Act.

In general, we think more comprehensive analysis of the fiscal and practice implications of the proposed legislation is required. More attention also needs to be paid to the coherency of the policy objectives with the likely impact of the legislation, and the capacity and capability of the wider sector – both government and non-government – to implement the proposed reform. We draw the committee's attention to The Treasury's document "Best Practice Regulation: Principles and Assessments" (February 2015) which includes as an indicator of concern that "regulator(s) [are] facing conflicting or unclear objectives; lacking the necessary resource, enforcement tools, discretion and/or expertise to implement the regime

Our members are deeply disappointed that these proposals have been developed with very limited consultation with Māori and that the mana of Poua-te-ata-tu - the watershed document that underpinned the original CYPF Act - has been lost in the process.

1. Summary of recommendations to the Select Committee

The PSA recommends that:

	Clause	Section in CYPF Act	Recommendation
1.			Request further and detailed advice from officials on the resourcing and practice implications of the changes to child protection and youth justice services that the bill seeks to introduce; including (but not limited to) forecasts of: • any anticipated shift in demand for government provided and funded services; • anticipated impacts on numbers of children being placed in state care as a result of the changes; • the anticipated numbers of children likely to be placed in non-kin care as a result of the changes; • the anticipated number of non-kin caregivers that may be needed under the new practice model and how these will be recruited; • the numbers of young people aged 17 who will be placed in youth residential and community services and the staff and services that will be required to safely support their placements.
2.	4	2 (Interpretation)	Delay increasing the youth justice age until adequate resourcing has been put in place to meet the increased volume of young people requiring youth justice residential and community placements
3..	6	4. (Purposes)	Remove new section 4(e) "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", as this will rely on subjective assessments of what constitutes a "loving" home. This clause significantly expands one of the most coercive powers of the state (that of removing children) and needs to be very carefully worded. . The emphasis on "earliest opportunity" undermines the rehabilitative functions of the Act. We agree with the recommendation of the SSPA in its submission to: "amend the Purposes section to include recognition of family material circumstances as a significant contributor to child and young person well-being".
4..	8	5a (Principles)	As it stands the proposed new section 5(a) is problematic, containing a mix of principles, purposes, procedures and duties. We recommend the following changes: • delete s5(a)ii – this is covered in the draft Purposes section • delete s5(a)(iii) – see above • delete s5a(vi) – this is a procedural duty, not a principle, and imposes an impracticably broad duty on individuals and the state. • delete s5a(vii)– procedural duty, not a principle • move principle 5(a)(x) to sit directly under the other rights based principles, (i), (iv) • Insert a new section 5(a) principle that "the mana and well-being of the child or young person are protected by recognising the whakapapa, whanaungatanga and family connection rights of the child and by assisting and supporting their family, whānau, hapū, iwi and family group to care for them wherever possible.

	Clause	Section in CYPF Act	Recommendation
5.	8	5	Include reference to the Treaty of Waitangi, to ensure consistency with new section 7A stating the duties of the CE in relation to Māori outcomes.
6.	8	5	Replace draft new section 5(b)(v) with existing principle 5(a) "the principle that wherever possible, a child's or young person's family, whānau, hapū, iwi, and family group should participate in the making of decisions affecting that child or young person, and accordingly that, wherever possible, regard should be had to the views of that family, whānau, hapū, iwi and family group."
7.	8	5	Amend new principle 5(d)(i) as follows (amendments in italics): the mana and well-being of the child or young person are protected by recognising the whakapapa and whanaungatanga *rights of the child and* responsibilities of their whānau, hapū, and iwi.
8.	8	5	Amend new principle 5(d)(ii) by replacing the word "can" with "should".
9.	11	7 (Duties of the Chief Executive)	The language in this section is and complicated and convoluted, and the sense unclear. We suggest the section needs re-writing for clarity. Remove the reference to "return on investment" from draft section 7(2)(b)(bab)(ii), as the social investment approach is an untested and limited funding tool.
10.	12	7(A)(3)	Provide for an external independent Māori monitoring body to be set up to report on the Ministry's performance in delivering outcomes for Māori children and young people.
11.	13	13 (Care and Protection principles)	Restore, as principle s13(b) in the new legislation the existing s13(2)(b) principle "that the primary role in caring for and protection of a child or young person lies with the child's or young person's family, hapū iwi and family group and that accordingly – (i), a child's or young person's family, whānau, hapū, iwi or family group should be supported, assisted and protected as much as possible".
12.		13	Amend new section 13(2)(b) to include the following words in italics "…should reflect the child's or young person's views and input, *and those of their parents, guardians, or usual caregiver*".
13.		13	Restore after new s13(f) the existing sf(i) principle that "wherever practicable, the child or young person should be returned to, and protected from harm within, that family, hapū, iwi and family group"
13..		13	Add to new s13(g) the principle that "a child's or young person's links with his or her family, whānau, hapū , iwi and family group should be maintained and strengthened."
14.	38	New section 66 (Government departments may be required to supply information)	Remove the entire new section 66 on information sharing from the draft legislation, and restore the existing section 66.
15.	97	New section 248A	We support the recommendation of the SSPA in its submission to this bill that: "the bill should extend the legal protections available to young people by providing the right to mandatory legal representation in situations such as arrest, Police interview, child offender family group conferences (FGCs).

	Clause	Section in CYPF Act	Recommendation
			This should not be limited, as proposed in the Bill, to intention to charge FGCs"
16..			We also support the recommendations of the SSPA that: "Additional community-based options be funded and supported as an alternative to remand in custody.
17..	93	Section 238 (Custody of a child or young person pending hearing)	Remove from the legislation: • the ability to detain a young person in police custody; • the ability to detain a young person aged 17 years in a prison.

2. Overview

The CYPF (Oranga Tamariki) Legislation Bill 2016 proposes many positive amendments to the original Act. Together, these amendments signal a more compassionate orientation of the state towards children and young people in need of care and protection and youth justice services.

The PSA welcomes those amendments to the Act that:

- strengthen the voice and participation rights of children and young people;
- emphasise the importance of early identification and prevention of harm;
- extend the age of the youth justice jurisdiction to 17 years and that extend the best interests of the child/young person principle into youth justice proceedings;
- enable ongoing support and care for children and young people as they transition out of support and into adulthood;
- incorporate recognition and support for mana tamaiti (tamariki), whakapapa and whanaungatanga into the legislation and require the Chief Executive to be accountable to these principles; and that
- provide additional support to carers and establish a national framework of care standards.

However, three main aspects of the legislation are of significant concern to our members. The first is the dilution of the rights of family and whānau that will arise from this bill; the second is the strong emphasis that this bill gives on the speedy placement of children in permanent homes. Thirdly, the legislation also significantly broadens the scope for the state's intervention into children's welfare and wellbeing, and introduces some responsibilities for practitioners, that in our opinion, are unrealistic.

Together these paradigmatic shifts are likely to lead to an increase in risk-averse practice that favours speedy removal of children, into permanent, non-kin placements over attempts to rehabilitate family and whānau and support them to care for their children. One likely outcome of this will be an increase in the number of children removed unnecessarily from their whānau and placed into permanent, out-of-family care. In addition, the proposed broadening of the state's mandate to intervene will lead to an increase in the numbers of children and families who come to the attention of the state. Government papers do not demonstrate whether these impacts have been considered and whether this is a desired outcome of the legislative amendments.

The shift in scope and practice envisaged by the bill will have fiscal and operational impacts that we do not consider have been adequately addressed in government papers. The RIS (Investing in in Children: Foundations for a child-centred system) for instance, notes that "there will be no specific fiscal impact to implementing these changes" (p.17).

Recent research into care and protection reforms in the UK – which have been underpinned by a similar goal of reducing the numbers of children in care by increasing and speeding-up permanent placements – revealed a significant increase in the number of adoptions, and an increase in the number of children in care since the reforms were introduced. Between 31 March 2001 and 2016 the number of children from care living with adopted or special guardians increased by 65%; over the same period, the number of children in care increased by 7.5%.[2] The report found that the "number

[2] Laville, Sandra, "Children unnecessarily removed from parents, report claims", *Guardian* newspaper, 18

of looked-after children in England is the highest it has been since 1985; one in five children under five are referred to children's services […] and adoptions are higher than in any other European country, and not stand at the highest level since data was first collected. More than 90% of adoptions are done without the consent of the family"[3].

Whilst we understand that the motivations behind the proposals are to create a more child-centred approach to child protection and to enhance the wellbeing of children, we are concerned that the new legislation swings too far away from the important original intention of the CYPF Act which was to empower families and communities for care for their children. The whānau empowerment principles of the CYPF Act were intended to address decades of harm to children and their whānau arising from paternalistic and euro-centric approaches to the wellbeing of children that saw large numbers of Māori children permanently alienated from their whānau, hapū and iwi

We agree that the aspirations of the CYPF Act have not always been met in the years since 1989, however our members' experience is that neither they, nor the department, have been sufficiently resourced or managed to support the sophisticated and complex social work required by the Act. This was experience was reflected in the report of the *Workload and Casework Review* that we undertook in partnership with CYF in 2014. A key finding of this review was that workload and staffing levels have been critical factors in the agency's performance:

> *Ultimately, to consistently deliver quality work, Child, Youth and Family will need to consider increasing the number of frontline care and protection social workers available for the most vulnerable children and young people, and reducing the work they are currently managing*[4].

As we have commented throughout the review process, we are deeply disappointed with the lack of meaningful and comprehensive consultation with Māori on the proposed reforms. The historical significance and mana of the watershed document, Puao-te-ata-tu is deeply embedded in the values and practice of many of our social work members, both inside and outside of CYF. Many of our members feel that this policy process, and the resulting legislation dishonours the mana of Puao-te-ata-tu.

The contrast with the policy process that led to the CYPF Act with the current process is stark: the CYPF Act was a product of widespread, lengthy consultation with Māori throughout New Zealand. By comparison, consultation with Māori in the current legislative reforms has been limited and highly targeted. Our members feel very concerned that the resulting reform ignores the lessons of the past and may repeat the harms of the past. They feel that the process used to develop this policy – and its shift away from the whānau empowerment principles – will undermine attempts to improve outcomes for Māori children, young people and their families. One member made a lengthy comment on this point:

January 2017, accessed 24 February 2017, from https://www.theguardian.com/society/2017/jan/18/children-parents-foster-social-care-families-adoption

[3] ibid

[4] CYF (2014), "Workload and Casework review: Qualitative Review of Social Worker Caseload, Casework and Workload Management", retrieved 1 March 2017 from https://www.msd.govt.nz/documents/about-msd-and-our-work/newsroom/media-releases/2014/workload-and-casework-review.pdf

It is important that we learn the lessons of history. In Aotearoa, we had a period when significant numbers of children – and disproportionate numbers of Maori children - were removed from their whanau under the framework of child welfare. History has shown that this largely monocultural response to children's welfare created a further set of problems related to the alienation of children from their identity. We have a much better understanding now of the key part that cultural connection and identity plays in the maintenance of self-esteem and a healthy self-concept.

In a similar vein, Aotearoa has experienced high numbers of children paced for adoption. Our adoption rates in the late 60s and early 70s were the highest rate of adoption per numbers of live births of any country in the world. These high numbers of children who were raised in non-biological families were the adopted adults who lobbied for and achieved law changes in 1985 – to give them access to their birth information – allowing them to trace and locate their birth families. The adoption law and practice was based on the assumption that children could be successfully placed into non related families and that there would be no disadvantages for the children involved. The reality was far more sophisticated – and again – we have a much better understanding now of how identity, belonging and attachment play a critical role in the health and well-being of the individuals involved.

In our submission to the CYPF (Workforce Amendment Bill) the PSA opposed the changes to the CYPF Act that allows the Chief Executive to delegate all functions of at agency to individuals inside and outside of the state. We consider that removing social workers from the legislation has placed the integrity and quality of our child protection and youth justice services at significant risk. In light of the increase in demand for services that we think we occur as a result of the new operating model, we are concerned that the new agency the MVCOT and its partnering agencies will need to employ workers with significantly less training than social workers. The deliberate de-professionalisation of the key workforce working with vulnerable children, young people and their families seems at odds with the Government's desire to improve outcomes for these vulnerable children. One member commented that:

It is ironic that while the Minister is committed to the step of mandatory registration for social workers – for the reasons of providing public safeguards and accountability for social workers who are carrying out work with vulnerable populations – the step of removing social workers from the CYP&F Act and leaving open the ability of the CE to delegate statutory functions to a wider range of occupational groups leaves the public with fewer protections.

In general, we think more comprehensive analysis of the fiscal and practice implications of the proposed legislation is required. More attention also needs to be paid to the coherency of the policy objectives with the likely impact of the legislation, and the capacity and capability of the wider sector – both government and non-government – to implement the proposed reform. We draw the committee's attention to The Treasury's document "Best Practice Regulation: Principles and Assessments" (February 2015) which includes as an indicator of concern that "regulator(s) [are] facing conflicting or unclear objectives; lacking the necessary resource, enforcement tools, discretion and/or expertise to implement the regime".[5]

[5] The Treasury (2015), "Best Practice Regulation: Principles and Assessments", retrieved 1 March from

3. Specific concerns

As noted above, the draft legislation introduces many positive initiatives that the PSA fully supports. The following section highlights specific areas of concern for our members.

3.1 Duties of the Chief Executive

Clause 12 (section 7 Duties of the Chief Executive):

The wording in this clause is convoluted and the intended meaning is unclear.

This clause embeds the so-called "social investment" approach into legislation. We argue that this is an unwise development, given the untested nature of this policy tool, and the potential for many families to be denied services if they don't represent a healthy "return on investment (see new section 7(3)(bab)(ii)). The social investment approach appears to focus on short-term rather than long-term outcomes and to minimise the complexities involved with attributing long-term outcomes to service inputs. We therefore recommend that this not be embedded in legislation.

The language in the clause which describes measuring "return on investment" is concerning when combined with the bill's emphasis on speed of intervention. Our members' experience is that family/whānau rehabilitation can be a lengthy process, and that long-term and sustainable improvements in outcomes may take some time to achieve.

Further duties of the chief executive in relation to improvement of Māori outcomes (new s7a))

The PSA is pleased by the Government's recognition of the disparity in outcomes between non-Māori and Māori children in the care and protection and youth justice system. While the inclusion of the duties to require the Chief Executive to support the mana and whakapapa of children and the whanaungatanga responsibilities of whānau, hapū and iwi is a positive step, we argue that these duties will be undermined by other parts of the bill which seek to reduce participation rights of family, whānau, hapū and iwi. We consider that the retention of the principles of whānau and cultural empowerment that exist in the current CYPF Act should be retained and that practitioners be resourced and supported to enact them.

3.2 Dilution of the rights of family, whānau, hapū and iwi

New s5 and s13 principles

This bill purposely re-orients the CYPF Act in order to empower children and young people, and endeavours to improve outcomes for children and young people in care. The PSA wholeheartedly agrees with the need to improve outcomes for children and young people. We are supportive of the amendments that enhance children and young people's rights and that extend the principles of welfare and best interests to the youth justice system.

However, the legislation unfortunately, and in our opinion, unnecessarily, introduces a concomitant reduction in the participation and caring rights of families, whānau, hapū and iwi. This occurs primarily

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http://www.treasury.govt.nz/regulation/bpr/bpregpa-feb15.pdf, p. 81.

through amendments to the s5 and s13 principles.

The existing s5(a), principle states that:

> "*wherever possible a child's or young person's family, whānau, hapū or iwi, and family group* should *participate in the making of decisions affecting that child and accordingly that, wherever possible, regard should be had to the views of that family, whānau, hapū, iwi and family group"*

The draft legislation significantly dilutes this principle, replacing it with new s 5(b)(v) that states that a child's or young person's *"family, whānau, hapū iwi, and usual caregiver* can *participate in decisions about the child or young person".* The replacement of the word "should" to "can" is a significant reduction in the rights of family, whānau hapū and iwi to be part of decision-making regarding their children.

The existing section 13 care and protection principles contain a number of clauses that demonstrate presumption in favour of children remaining or returning to the care of family, whānau, hapū, iwi or family. The draft legislation dilutes or removes those principles altogether.

Table One: changes to s13 principles

Existing s13 principles regarding the rights and responsibilities of families to care for their children	**Draft legislation**	**Effect**
s13(2)(b), the "*principle that the primary role in caring for and protection a child or young person lies with [their] family, whānau, hapū, iwi and family group"* and that accordingly "*a child's family, whānau, hapū, iwi group should be supported, assisted, and protected as much as possible"* s.13(2)(b)(i)	Replaced with: Where a child is at risk of being removed, the family, whānau, hapū and iwi should be assisted to care for them "*unless it is unreasonable or impracticable in the circumstances" (*s13(2)(c).	Our members are concerned that the wording allows for very a broad interpretation of the grounds for not working to keep a child with family, whānau, hapū and iwi.
s13(2)(c), the principle that it is "*desirable that a child or young person live in association with his or her family, whānau, hapū, iwi or family group"*	Removed	Significantly dilutes the rights of families, whānau, hapū and iwi to care for their children and young people.
s.13(f)(i) the principle that where a child has been removed from their family whānau, hapū iwi and family group, *"wherever practicable [the]y should be returned to, and protected from harm within that "family whānau, hapū iwi and family group"*	Removed	Reverses the rehabilitative underpinnings of the CYPF Act

Our members are concerned that the overall impact of these amendments will be an increase in the numbers of children and young people permanently removed from their family, whānau, hapū, iwi and family group.

In its Regulatory Impact Statement (Foundations for a child-centred system) the Ministry of Social Development links the family-involvement principles established by the CYPF Act (1989) with system-wide failure. High numbers of notifications to CYF, children cycling through care and entering the youth justice system, demonstrate that the "results [of the 1989 reforms] have not been as envisaged"[6].

The members who contributed to this submission disagree with the proposition that the existing legislation is the cause of poor decision-making: the CYPF Act has a presumption in favour of family care, but only *if* the child will be safe. In instances where conflict may arise between the interests of the family and those of the child, the legislation contains clear guidance to practitioners and decision-makers that the welfare and interests of the child must be the paramount consideration in the administration and application of the Act (ss6 and 13).

Our members argue that when poor decision-making occurs it is a symptom of an over-loaded and under-resourced system, as described in the following quote from a member:

> *There is no doubt that in a minority of situations, expedient social work practice and decision-making has resulted in placement decisions that have not been in the best interests of the children involved. I believe that this is a symptom of a care and protection system that has been under pressure – which has been well described in the CYF Qualitative Review that was completed by the CYF Office of the Chief Social Worker.*

One of the key pieces of evidence that sits behind the removal of the family-empowerment principles in the CYPF Act appears to be the findings of higher levels of re-abuse and re-entry into care of children and young people who are returned to the care of their biological parents or placed in kin or whānau placements, compared to non-kin placements. This was highlighted by the Modernising Child, Youth and Family Expert Panel: Interim Report:

> *In 2010 twenty three per cent of children who exited care and returned to their biological parents were re-abused and ten per cent of those who exited care to kin or whānau placements[1] were re-abused within 18 months. By contrast, re-abuse rates are one per cent for those exiting care in non-kin or non-whānau placements[7]. (p.7)*

Ideally, no child would be re-abused or re-enter care following state intervention. The very low rate or re-abuse for those exiting into non-kin or non-whānau placements, provides *prima facie* justification for a shift in policy and practice towards non-kin placement. However, the data does not show us the trauma that can occur to children and their parents and family when children are permanently removed. Nor does it give us any information on the long term outcomes for these children, young people and their families.

The logical corollary of the data above is that 77% of children who were returned to their biological parents, and 90% of children placed in kin and whānau placements were not re-abused within 18

[6]MSD (2016) "Regulatory Impact Statement. Investing in Children: Foundations for a child-centred system".(p.7)

[7] MSD (2015), "Modernising Child, Youth and Family Expert Panel: Interim Report", retrieved 3 March 2017 from https://www.msd.govt.nz/documents/about-msd-and-our-work/work-programmes/cyf-modernisation/interim-report-expert-panel.pdf. P.7.

months. Given the likely vulnerabilities and complex needs of these families, the figure of 77% provides evidence of successful family rehabilitation, and successful practice by CYF social workers.

Our preferred approach to reducing re-abuse would be to identify the elements of good practice with the 77% and 90% of families, whānau and kin where re-abuse didn't occur within 18 months. We are concerned that the proposed new model will see fewer families afforded this opportunity to rehabilitate and care for their children. One of our members wrote that:

> *"The way forward is to resource appropriate and safe kin care, wherever possible. This goal relies on staff time, relationships and partnership with Maori networks – and has proved difficult to achieve and maintain in the current child welfare world. However, that is the right thing to do – and successful outcomes depend on this. There will always be a place for non kin care for children who cannot be raised within their whanau, hapū, iwi. However, the priority on kin care needs to be retained.*
>
> *Substituting the principle of whanau, hapū and iwi connections for children who need alternative care with the principle of safe, stable loving families as soon as possible - risks re-creating another generation of alienated adults who do not have the connection they need to achieve strong and healthy identities. It is not consistent with treaty obligations."*

3.3 Significant broadening of the role of the state

The legislation significantly broadens the role and scope of the state's power to intervene in families, and the responsibilities of practitioners to identify and prevent harm. The overall effect of this will be to increase risk-averse practice as practitioners seek to meet the new legislative requirements, and t an increase in the unnecessary removal of children from their families.

<u>New Purposes section</u>

The draft legislation has a strong emphasis on early intervention and prevention of harm, which the PSA supports. We are supportive of section s4(a) of the bill that describes the purpose of the Act as being to promote the "*provision of services that advance positive health, education and social outcomes for children and young persons"*. We note however, that achieving this aim will rely on significant improvements in the socio-economic circumstances of vulnerable children and their families – which includes access to affordable, secure, quality housing and secure employment with decent pay and conditions – that are beyond the ambit of this legislation.

However, our members are concerned by the inclusion in the legislation of the new purpose 4 (c) "*that children and young persons who come to the attention of the department have a <u>safe, stable, and loving</u> home from the <u>earliest</u> opportunity".* This is problematic for two reasons:

a. This is a significant expansion of the power of the state to intervene in families' lives. The original legislation outlines the role of state as being to provide "*protection of children and young persons from harm, ill-treatment, abuse, neglect and deprivation" (*see s4 Objects). While we agree with the aspiration that all children should be cared for by loving, stable and safe families, placing into legislation a requirement that families should be *stable* and *loving*

appears to under-estimate the gravity of the power that is being ascribed to the state through this bill. The power of the state to remove children from their parents is one of its most coercive and must therefore be very carefully described in legislation.

The Legislation Advisory Committee "Guidelines on Process and Content of Legislation 2014 Edition", advises that the creation of a new statutory power should be guided by the principle that "legislation should not create a power that is wider than is necessary to achieve the policy objective" (p.66). Although this bill doesn't create a new power, it does significantly re-write an existing power and should be informed by the same principles. The extension of the state's statutory powers into ensuring "stability and love" in families risks opening the floodgates to state intervention that may be beyond the original policy intention, and beyond the intended scope, and resourcing capabilities of MVCOT.

Determining whether a child's home is "stable and loving" will require practitioners to make highly subjective judgements on what constitutes love and stability. Cultural and class bias is likely to affect these judgements: families who sit outside dominant cultural and class groups will be disproportionately affected by the increased power of the state to intervene in their lives and remove their children. For instance, a family who is homeless and living in car may well be judged as not proving a "stable" home for their children.

Recent research into care and protection reforms in the UK – which have been underpinned by a similar goal of reducing the numbers of children in care by increasing and speeding-up permanent placements – identified a significant increase in the number of adoptions, and an increase in the number of children taken into care since the reforms were introduced. The reports' authors note the impact on low income women, and women experiencing domestic violence of the increased emphasis on permanent removal of children: "charges of neglect are used to punish, especially single-mother families, for their unbearably low incomes…the fundamental relationship between a mother and child is dismissed as irrelevant to a child's wellbeing and development, and the trauma of separation, and its lifelong consequences, are ignored"[8].

The report's author, Dr Andy Bilson, emeritus professor of social work at the University of Lancashire noted that the increase in numbers of children in care "is very unlikely to be due to an increase in abuse…the vast majority of this is about neglect or emotional abuse, often through witnessing domestic violence"[9].

b. Second, we are concerned that the emphasis on <u>early</u> placement will increase the pressure on practitioners to remove children into permanent care at a speed that does not allow adequate time to work with families to restore their ability to care for their children, or to find someone in the broader family, whānau, hapū iwi to care for the child(ren).

We understand that the proposed changes to the purposes/objects of the legislation have been

[8] Laville, Sandra, op. cit.
[9] Ibid.

developed, in part, as a response to research and consultation with children that identified multiple, and inadequate care placements as being a key failing of the current model. We agree that this needs to be addressed, however we are concerned that the proposed legislative amendments have far-ranging implications that have not been adequately considered.

New principle (5(a)(vi)

Section 5(a)(vi) of the bill's principles places a very broad responsibility on practitioners to identify and prevent "current harm and risk of future harm to the well-being and development of a child or young person (including the risk of offending)". We consider this an unrealistic and impractical duty to impose on the department and on individual practitioners. Again, practitioners are likely to become more risk-averse in their practice, as they endeavour to meet this duty.

4. Youth Justice

We support in principle the raising of the youth justice age to 17 years but are concerned that, unless properly supported and resourced, staff and working in youth justice residences are likely to be placed at greater risk of assault and harm.

Inadequate mental health and education services for young people in residential care mean that many of their needs are not currently being met; we are concerned that the influx of more, and older young people with complex needs, and could decrease the safety of both staff and other residents. Safety is of a particular concern with regards to the potentially violent behaviour of these older aged young people.

Our members are also concerned about the current shortage of appropriate youth justice placements for young people, and the potential that this will be exacerbated unless sufficient resourcing is put in place to fund appropriate placements. One member noted that there often such a shortage of youth justice appropriate placements in their region that CYF staff "have to stay overnight either in motels with youth or in our office".

The PSA also disagrees with the clause 93.2(f) which amends s238 of the legislation to allow 17 year olds to be remanded in prison. Appropriate youth facilities must be provided for all young people.

5. Information sharing

As noted in the RIS (Investing in Children: Information Sharing), current arrangements for the sharing of information about at-risk children can hamper effective practice. Our front-line social worker members (working both inside and outside of CYF) are generally supportive of initiatives aimed at facilitating an easier flow of information concerning vulnerable children and their families. We are not clear as to the extent that the problem arises from privacy legislation rather than from practitioners understanding and use of existing provisions for information.

The PSA supports initiatives that will enable its members to work in a more effective and productive way. At the same time, as the union with a remit across the public and state sector, the PSA has broader role in scrutinising the integrity of the legislative framework that governs our public services. In this capacity we have some concerns regarding the significant changes to information sharing

practice and protocols proposed in the bill for the following reasons:

- It legislates out of some of the principles of the Privacy Act, establishing a precedent for this to happen in other sectors;
- The proposed information sharing procedures may discourage vulnerable families from seeking help from state and community agencies;
- It creates a two-tier system of rights that reduces the privacy rights of some members of society. As low-income, Māori and sole parent families are over-represented amongst the population who comes to the attention of CYF, a class and cultural bias to the system of rights will arise.

There is little information in government papers as to the operationalization of the proposed information sharing framework. Without detail on the scope and range of organisations that will have access to the private information, and how this information will be stored and treated – and in view of the significant expansion in the outsourcing of core services mandated through CYPF (bill 1) – we don't think this legislation should be supported before more detail is made available to legislators. We are not convinced that creating a bespoke and parallel privacy framework is legitimate or fair/equitable way to address the challenges identified

In the context of the significant expansion of state information gathering on private individuals that is occurring under this government – including the enforced disclosure of individual client details by community organisations that have contracts with MSD - more comprehensive public debate is required before legislative amendments are made.

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