

Submission to the Social Services Select Committee

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

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Background Information

Platform Trust is the national network of non-government community organisations (NGOs) that provide a wide range of mental health and addiction support services across New Zealand. In 2015 almost 60,000 New Zealanders accessed support from NGO services.

Summary

Treaty principles

Platform supports the incorporation of Te Tiriti o Waitangi principles in this Bill in acknowledgement of the Crown's special relationship with Māori. Māori continue to be overrepresented in many areas and agencies need to reflect on whether their practices are culturally appropriate and meet the needs of tangata whenua.

Social investment

Generally, Platform has widely expressed positive views about a social investment approach that invests early in people's lives to make available to them the supports they need to improve their wellbeing. Social investment approaches and the measuring of outcomes resulting from social service delivery are complex emerging areas globally, but it is clear that investing early can help to prevent deterioration of people's circumstances. When New Zealanders identify that they need support, agencies should be available to provide it before more intensive and expensive supports are required in the event that the person's circumstances worsen. The social and fiscal costs of not providing support early are obvious. Early investment also has the ability to reduce the likelihood of many people in disadvantage experiencing the compounding effects of intergenerational hardship, distress and/or trauma.

Natural supports and participation in decision making

We appreciate that some effort seems to have been made in the Bill to acknowledging the important role of children's family/whanau and communities and the importance of

strengthening existing natural supports to provide a safe environment for children and young people. The aspects of the legislation that relate to the child or young person's participation are also encouraging to see for ensuring the child or young person's right to contribute to decisions that affect them in the most profound of ways.

Young people exiting the scope of the Act

Some acknowledgment is made in the legislation of the transition for young people into adulthood and away from the supports that are provided until the age of 18. We know that these transition points represent some of the most precarious times for young people and this must be an area of focus for the chief executive and the department.

Operationalisation of the Act

While much of the purpose expressed in the legislation appears to be well intentioned, along with many of our colleagues, we are concerned that the legislation in its current form leaves open too many opportunities for the purpose of the Act to shift as and when it is operationalised. We absolutely appreciate that the proposed Act is future thinking in its ideas, but unfortunately it is our view that the current state of agencies represents a dangerous environment in which to test these new ideas. We do not yet have a collective understanding of the future state of information sharing and the implementation of new data systems must take a phased approach so that the appropriate adjustments can be made and safeguards can be put in place. The learnings from implementation of these aspects of the Act have the potential to inflict consequences on the children and young people of New Zealand who least need to experience them.

Support for the proposed Act

- Section 2(1): Platform welcomes the raising of the age in the definition of a young person to 17 years old. There is no magical age where things change for young people, and individual circumstances vary, but we agree that the system should support young people to remain outside of systems designed for adults for as long as possible and to instead work with age appropriate services. However, we do not support the additional provisions to move 17-year-olds into adult court systems or facilities unless, in accordance with the *United Nations Rights of the Child (UNROC)*, it is 'as a measure of last resort and for the shortest appropriate period of time'.¹ We reiterate that young people should not be exposed to adult systems and facilities unless there is no other available option and that investment must be made in creating alternative options to prevent this.
- Section 7(3)(bab): We agree that more cross-government coordination is essential in social services delivery recognising the breadth of social determinants of health and wellbeing. Siloed thinking and approaches cannot adequately intersect with the complexity of people's lives.

However, we would caution that those who use government services should not need to navigate or fit within a preconceived set of strategies and outcomes that do not suit their circumstances and needs. While it is admirable that there is an intention expressed in Section 7 to coordinate, where possible, government-funded activities for children, young people and families, we believe that this surfaces a

¹ UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 10, available at: <http://www.refworld.org/docid/3ae6b38f0.html> [accessed 1 March 2017]

tension between the traditional model of government 'doing for' people rather than the intention articulated throughout the proposed Act to involve children, young people and their families in the decisions about the services they receive and in strengthening people to provide their own supports. The 'shared strategy and outcomes' should be co-developed with children, young people and their families, not solely across government agencies and should provide models that allow agencies to activate the most appropriate services and supports for individuals, not default to the agencies' preferred service or support according to predetermined frameworks.

Further we note that significant work is being done nationally and internationally on determining return on investment from social services interventions and on developing appropriate outcomes measures, but that this is still an emerging area of inquiry and cannot be the only measure for evaluating the success of services. Fundamentally, outcomes must be meaningful for the people that they are about.

We also caution that data that is used to identify 'early risk factors' must be utilised extremely carefully. Correlations in risk factors and outcomes do not denote causality and many factors need to be considered together. The evidence base for intervening, and for the types of interventions used, in all cases where risk factors are present needs to be substantial and robustly measured against the likelihood of those risk factors actually resulting in poor outcomes to avoid unnecessary harm from intervening.

Serious concern about the proposed Act and its implementation

- The health sector, and in particular the mental health and addictions sector, are familiar with collecting and providing data about people who use their services to government agencies. There are informed consent practices in place that support this practice.

However, the sharing of identifiable information across agencies and the aggregation and analysis of it, is still an emerging and untested area. While it may seem logical for information about vulnerable children and young people to be shared to protect their wellbeing, children and young people must not be the test case for this new way of working. At the third Data Hui in April last year, the Prime Minister gave a speech acknowledging that we cannot imagine how this data will be used and that sharing it cannot be at the risk of privacy.

*'Open access to data will in-effect create an information logistics platform that will be used in ways we can't yet envisage. I must emphasise that increasing access to data will not be at the expense of security or risk to privacy.'*²

We believe that the necessary systems with comprehensive checks and balances are not yet in place and that this Act is attempting to open possibilities that the current system is not mature enough to manage safely. The remit is very wide to promote 'the provision of services that advance positive long-term health, educational, economic, and social outcomes for children and young persons' and the list of child welfare and protection agencies listed in this document is extensive.

² Ministry of Social Development, Speech from Hon Bill English, Deputy Prime Minister and Minister of Finance, 19 April 2016, available on <https://www.msd.govt.nz/about-msd-and-our-work/newsroom/events/data-hui-2016/2016/speech-from-hon-bill-english-deputy-prime-minister.html>

The proposed Act does not refer to existing codes of practice around privacy and information sharing such as the *Health Information Privacy Code 1994* and the UNROC Article 16³ - 'no child shall be subjected to arbitrary or unlawful interference with his or her privacy..'. It appears that these pivotal changes to privacy and information sharing practice are being proposed without significant consultation with the people these changes will affect and the people who work closely with them. That the Privacy Commissioner has also indicated concern about these changes, and is actively investigating MSDs new requirement that non-government organisations provide individual client data, would suggest that there are sufficient grounds for these aspects of the legislation at least to be held back and consulted on further. In his speech, the Prime Minister also assured attendees that:

*'Access rules will be informed by the work of the Data Futures Partnership, as well as the **Privacy Commissioner** [emphasis added] and the Government Statistician'.⁴*

Conclusion

The work that the expert panel and authors of this legislation have done has the ability to vastly change the nature of services provided to children and young people in vulnerable situations. Some of the changes are undoubtedly positive such as the emphasis on the participation of children and young people in decision making about their lives and futures.

New Zealand is world leading in many aspects of service delivery and innovation. However, the advent of big data should bring with it comprehensive and deep considerations about the ethical and social implications of data sharing. The appropriate safeguards must be in place both within individual agencies and between agencies. We therefore cannot give our unequivocal support for the Bill that, in our opinion, opens government agencies and the individuals that work within them too wide a scope to begin to explore this work before the appropriate systems and safeguards are in place.

Platform would also take this opportunity to express a view held by many in the sector, and the Office of the Children's Commissioner, that the title of the new department is unsuitable and has the potential to unnecessarily stigmatise those under the new Ministry's purview. It seems to signal a deficit-based view which is counterintuitive to those in the social services sector, and especially those working in the mental health and addictions sector that take an asset-based, recovery-focussed approach to working with New Zealanders.

Platform supports the submissions made to the Select Committee by Social Service Providers Aotearoa and Birthright New Zealand. We also support the submission by the Privacy Commissioner on the information sharing aspects of the Bill.

³ UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, pp. 4-5, available at: <http://www.refworld.org/docid/3ae6b38f0.html> [accessed 1 March 2017]

⁴ Ministry of Social Development, Speech from Hon Bill English, Deputy Prime Minister and Minister of Finance, 19 April 2016, available on <https://www.msd.govt.nz/about-msd-and-our-work/newsroom/events/data-hui-2016/2016/speech-from-hon-bill-english-deputy-prime-minister.html>