



15 February 2017

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

Feedback from: New Zealand College of Midwives
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The New Zealand College of Midwives is the professional organisation for midwifery. Members are employed and self-employed and collectively represent 90% of the practising midwives in this country. There are around 2,900 midwives who hold an Annual Practising Certificate (APC). These midwives provide maternity care to on average 60,000 women and babies each year. New Zealand has a unique and efficient maternity service model which centres care around the needs of the woman and her baby. It provides women with the opportunity to have continuity of care from a chosen maternity carer (known as a Lead Maternity Carer or LMC) throughout pregnancy and for up to 6 weeks after the birth of the baby, and 92% of women choose a midwife to be their LMC. Primary maternity services provided by LMC midwives are integrated within the wider primary care and maternity services of their region or locality. The College offers information, education and advice to women, midwives, district health boards, health and social service agencies and the Ministry of Health regarding midwifery and maternity issues. Midwives interface with a multitude of other health professionals and agencies to support women to achieve the optimum outcome for their pregnancies, health and well-being.



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The opportunity to provide feedback to the 'Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Bill' was welcomed by the New Zealand College of Midwives (the College). The wellbeing and welfare of infants/children and their mothers/parents in Aotearoa, New Zealand, are of great interest and concern to the College. Midwives are involved in the care of women in their pregnancies and also postnatal care of mothers and infants, in their homes, up until the age of six weeks post-birth.

The College considers the mother and child as a dyad, and mother-child separation as a situation to be avoided in all but the direst of circumstances. We support preventative and family/whānau supportive work, rather than the removal of children from their families, and consider this approach to be a critical societal investment. Interventions and policies need to be family/whānau focused (inclusive of the needs of children) as opposed to focused exclusively on children. The wellbeing of children is closely linked to the wellbeing of mothers and the ability of families/whānau to care for their children.

The College strongly supports any changes that strengthen the capacity for parenting, and which are embedded within policies that recognise the importance of actively supporting parents and whānau, when necessary, to take care of their own children. The 'Families and Whānau Status Report 2016', highlighted how financial and psychological stressors impact on the ability of families to function well.¹ Boston and Chapple drew attention to the combination of policy changes and societal trends, which have led to dramatic increases in child poverty.² They also pointed out that effective policies to tackle this problem are long overdue, and that there are no signs that economic growth has helped to resolve this issue.

This then is the climate of inequity, increasing poverty, and homelessness in which the 'Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Bill' is being discussed and debated.

¹ Social Policy Evaluation and Research Unit. (2016). *Families and Whānau Status Report*. Wellington, Superu.

² Boston, J., Chapple, S. (2015). *The Child Poverty Debate: Myths, Misconceptions and Misunderstandings*. Wellington, Bridget Williams Books, BWD Texts

A recent publication from the UK, 'Suffer the Little Children and their mothers' reports that children are increasingly being removed from their birth families in the UK for reasons of 'neglect', and that this 'neglect' is, in reality, often a "combination of poverty and overwork."³ The College would be greatly concerned if this 'trend' in the UK of punishing poor mothers and families because of structural disadvantage was repeated in Aotearoa New Zealand. We see some concerning signs that we are following a similar path, when we hear of plans to privatise child protection services, and understand that Māori Tamariki in need of care and protection may be removed from whānau and iwi care.⁴

Feedback from the College related to the legislation bill is below.

1.0 Extending the youth justice jurisdiction to cover those under 18 years old (apart from those charged with certain serious or repeat offences, who would be dealt with in the adult courts)

- 1.1 The College supports a change towards bringing Aotearoa New Zealand into line with the United Nations Convention on the Rights of the Child which recognises that: "... a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."⁵

2.0 Improving outcomes for Māori

- 2.1 The College notes that the 'United Nations Declaration on the Rights of Indigenous Peoples' aims to "enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith."⁶
- 2.2 Improving outcomes for Māori requires that issues of structural racism and inequity are addressed within society and also within care and protection services. Paora Moyle identified issues with cultural responsiveness within family group conference (FGC) practice.⁷ A significant finding in Moyle's work about Māori families' views on FGC was that "by and large, mainstream non- Māori social workers did not know how to engage with them." Moyle notes "little bicultural capability (cultural competence)" within the "youth justice and child protection sectors" and an overall lack of valuing of "fundamental elements of a Māori worldview (i.e. whakapapa – genealogy/family connections)."⁸
- 2.3 The College wishes to express concern about a system that appears to be moving further towards undervaluing the Māori worldview, and which does not appear to recognise that issues of cultural and spirituality identity are intrinsically linked to short and long-term health, development, welfare and wellbeing.

³ Neale, A., & Lopez, N. (2017). *Suffer the little children and their mothers: A dossier on the unjust separation of children from their mothers*. Legal Action for Women, London, Crossroads Books. <http://legalactionforwomen.net/wp-content/uploads/2017/01/LAW-Dossier-18Jan17-final.pdf>

⁴ #Hands Off Our Tamariki : An Open Letter. *Hands of Our Tamariki Network, Aotearoa Te Wharepora Hou: Māori Womens' Network*, October 9th 2016. <https://tewhareporahou.wordpress.com/2016/10/09/hands-off-our-tamariki-an-open-letter/>

⁵ United Nations Convention on the Rights of the Child. (1989). <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

⁶ New Zealand Human Rights Commission. (2016). *The Rights of Indigenous Peoples: What you need to know*. Wellington, HRC. https://www.hrc.co.nz/files/5814/5618/4456/NZHR_Booklet_12_WEB.pdf

⁷ Moyle, P. (Undated). *New Zealand family group conferencing and the Māori-Lived-Experience*. *Academia*. https://www.academia.edu/10578356/M%C4%81ori-Lived-Experiences_of_the_Family_Group_Conference_A_selection_of_findings

⁸ Ibid

- 2.4 The New Zealand Health Strategy⁹ states that services must be provided more effectively for Māori because of their poorer health experiences, (foreword, page iii). The College recommend that this stated aim to “*achieve the sort of future that you want*” (page 2) and to “*improve the health of people and communities*” (page 2) needs to encompass a wider understanding of the issues that affect health, welfare and wellbeing.
- 2.5 The NZ Health Strategy states that, “*Health is defined by the World Health Organization as ‘a complete state of physical, mental and social well-being, not merely the absence of disease or infirmity’*” and the College recommends the conditions that underpin Māori welfare and wellbeing are urgently taken into account within child protection services, as well as health systems.
- 2.6 The New Zealand Health Strategy states that it is “*focused on health but is set within this wider context, recognising the connections between health and other aspects of people’s lives*” (page 4). It also states, “*recognising this wider context is consistent with wai ora, which is an element of He Korowai Oranga, the Māori Health Strategy. Wai ora captures the idea that the environments in which we live have a significant impact on the health and wellbeing of individuals, whānau and communities*” (Page 4). Whānau ora – putting whānau at the centre of service delivery is critical.
- 2.7 Moyle highlights the already disturbing trend of an increasing rate of Māori infants being uplifted and placed in non-Māori environments. Data requested under an Official Information Act process for the 2012-2013 year found that 80 Māori infants (n= 157) were removed from their mothers within 30 days of birth.¹⁰ In the UK report previously referenced, ‘Suffer the Little Children’, institutional racism was found within the UK child protection system, and closer to home in Aotearoa New Zealand, Dame Tariana Turia has said, in regards to the potential removal of the prioritisation of placement of Māori children with whānau, that this is a further act of institutional racism.¹¹
- 2.8 As previously mentioned, the College has observed some concerning signs that Aotearoa New Zealand may be following a path towards the privatisation of child protection services, and we would be gravely concerned if Māori Tamariki in need of care and protection were to be removed from whānau and iwi care.

⁹ NZ Government. (2016). *NZ Health Strategy: Future Direction*.

<http://www.health.govt.nz/system/files/documents/publications/new-zealand-health-strategy-futuredirection-2016-apr16.pdf>

¹⁰ Moyle, P. (Undated). *New Zealand family group conferencing and the Māori-Lived-Experience*. *Academia*.
https://www.academia.edu/10578356/M%C4%81ori-Lived-Experiences_of_the_Family_Group_Conference_A_selection_of_findings

¹¹ #Hands Off Our Tamariki : An Open Letter. *Hands of Our Tamariki Network, Aotearoa Te Wharepora Hou: Māori Womens’ Network*, October 9th 2016. <https://tewhareporahou.wordpress.com/2016/10/09/hands-off-our-tamariki-an-open-letter/>

- 2.9 Bilson et al, (2015) identified a range of studies that aimed to identify the causes of over-representation of minorities in child protection in Western Australia. This work suggests that child protection overlaps with issues of social exclusion, poverty, and the attitudes and beliefs of workers.¹² The longitudinal work by Bilson et al concluded that:

“The key findings of high levels of surveillance of all children and very high and growing proportions of Aboriginal children coming under scrutiny combined with much lower levels of findings of maltreatment and significant harm highlight a severe over-reaction in the current system. The paper identifies the likelihood that this occurs in other countries with Anglo-American forensic child protection systems. This level of surveillance creates one more stressor on parents who, in the main, require our help rather than blame.”

The College respectfully suggests that work of this calibre and focus carried out by independent researchers is necessary, in Aotearoa New Zealand, and that changes to child protection services need to be informed by work that looks at the negative societal impact of racism, prejudice, surveillance, poverty and inequity.

- 2.10 A community care approach recognises that child protection systems are embedded within broader family/ whānau and community services.¹³ Partnership with Māori whānau, hapu and iwi, and Māori organisations, is necessary to support Māori children to stay within their hapu. The Maori Women’s Welfare League filed a claim in December 2016 to the Waitangi Tribunal challenging policy changes proposed for the care and protection of children and young persons.¹⁴ This claim highlights the paramountcy of rangatiratanga, which encompasses fundamental relationships between Maori culture and identity within the context of a Māori community, and that the responsibility of the Crown under the Treaty of Waitangi is to enhance rangatiratanga.¹⁵

3.0 Family group conferences - availability for those who need support but not in need of care and protection

- 3.1 In regards to family group conferences, the College would be interested to be informed about the mechanisms that are being proposed to identify this group of families/whānau, and what will be done to protect their privacy.
- 3.2 The College has noted that early supportive intervention and preventative work has been seriously underfunded, and this has unfortunately led to the main intervention focus of child protection and the removal of children from their families/whānau. Alongside this is a focus on what is described as the ‘most vulnerable children.’ Extending the focus to support and protection of families/whānau and early help, requires a serious commitment on behalf of government to adequate funding and recognition that whānau who are struggling need support before their situations become acute. It signifies a failure of the system if it becomes concerned only when the family/whānau are at the point where social workers and services are unable to support them to ‘turn the curve.’

¹² Bilson, A., Cant, R. L., Harries, M., & Thorpe, D. H. (2015). A longitudinal study of children reported to the child protection department in Western Australia. *British Journal of Social Work*, 45(3):771-791.

¹³ Social Policy and Evaluation Research Unit. (2016). *In focus: Modernising child protection in New Zealand: Learning from system reforms in other countries*. Wellington, Superu.

¹⁴ Maori Women’s Welfare League. (2016) *Te Ropu Wahine Maori Toku I Te Ora/Maori Women’s Welfare League Inc concerning investing in children legislative reform outlining legislative changes to Children, Young Persons and Their Families Act 1989 and related legislation*. <http://img.scoop.co.nz/media/pdfs/1612/CCF04122016.pdf>

¹⁵ Ibid page 5.

3.3 The College notes that research work by Paora Moyle on family group conferences (FGC) and the Māori lived-experience suggests that for FGCs to work as a culturally responsive, empowering and whānau inclusive process they must be held and delivered from within the community. Moyle also notes that to be effective, Māori need to be involved in all aspects of the programme, or any intervention with Māori.¹⁶

4.0 Agencies' sharing of information about children or young people.

4.1 The College has some concerns about some of the proposed changes to information sharing *provisions*.

4.2 In particular, midwives are concerned that there will be unintended negative consequences if agencies or individuals are *expected to always* disclose information "relating to the safety, welfare or wellbeing of a particular child or young person, or class of children or young persons, and their families." This is an extremely broad definition and open to over-protectionism that could be harmful to the family/whānau.

4.3 We note that:

- The definition of information about a child or young person includes information about a family member or anyone else in a domestic relationship with the child or young person.
- The purposes for which the information can be used, are to prevent or lessen the risk of a child or young person being subjected to harm, ill-treatment, neglect or deprivation, making an assessment of the risk or need, contributing to, or monitoring support plans, reviewing plans and services for that child or young person.

4.4 The proposed changes are broad. Meaning that there are many possible circumstances when midwives may be approached to provide information about women they are caring for, or about a family/whānau member they have had contact with during the course of their care. Quantifying ill-treatment, neglect and vulnerability of children can be challenging, potentially subjective, and contextual. It is entirely possible that midwives will be asked to share information without consent, for spurious purposes, on a suspicion that a child may be at risk of harm, when there is no actual risk of harm or ill-treatment.

4.5 Although the College supports the underlying intent of improving outcomes for vulnerable children, care needs to be taken that this does not occur at the expense of the safety and wellbeing of women. Child protection interventions can have potentially negative consequences for women when statutory agencies such as CYFS become involved, as the focus is always to keep the child safe, but the nature of the response can increase risk to women who are often also victims.

4.6 Our concern is related to the crucial relationship of trust that exists between a midwife and her client woman. The willingness of a client woman to confide in her midwife underpins midwifery care. Even the perception of a lack of confidentiality can have a negative effect. Midwives must be seen as an intervention in themselves and trusted to make a judgement to refer when their ability to influence is no longer possible.

¹⁶ Moyle, P. (Undated). New Zealand family group conferencing and the Māori lived-experience. http://www.academia.edu/10578356/M%C4%81ori-Lived-Experiences_of_the_Family_Group_Conference_A_selection_of_findings

- 4.7 The Lead Maternity Carer model of care, which works on the principle of partnership and shared responsibility between the midwife and the woman, assists a woman to strengthen her sense of self-responsibility and autonomy over her actions. Pregnancy can be a catalyst for change for women who are living in difficult circumstances, which can lead to positive and healthy lifestyle choices which impact positively on pregnancy outcomes.
- 4.8 An effective relationship between a midwife and a pregnant woman, based on a respectful, non-judgmental, honest and transparent communication, will ultimately be more effective in creating positive changes, than a surveillance or authoritarian approach. A positive experience of pregnancy and childbirth also supports both parents to bond with their baby, make positive parenting choices, and ultimately love and nurture their child. Maternity care is considered a foundation or building block for families/whānau to become effective parents. The model of maternity care in Aotearoa New Zealand is recognised internationally as a model to aspire to.
- 4.9 The proposed information sharing provisions set out in the draft legislation have the potential to undermine this model of care by destabilising the trust between the woman and her midwife. Women may be reluctant to share information about their lives with midwives if they are aware of the onus on the midwife to share this information with child protection agencies or services. A high level of trust is required between the midwife and a woman for the women to feel confident to disclose issues such as drug abuse, family violence, or mental health concerns. Midwives are referral agents to a range of services during pregnancy and cannot function effectively in their role if women do not feel confident to share important information about their circumstances with their midwives.
- 4.10 The College also notes the proposed changes to the legislation to enable greater information sharing between agencies to link datasets across agencies to detect patterns of abuse early.
- 4.11 There are a number of monitoring and surveillance activities already underway such as, the Child Protection Alert System (available in DHBs) and the Memorandum of Understanding between CYFS and DHBs. Although monitoring and surveillance activities can support vulnerable families/whānau to access services and support, (if this is the underlying intention, and the services and systems are in place to enable this) monitoring that occurs for the sake of surveillance can be counterproductive. Monitoring without the knowledge of families/whānau, or individuals who are being monitored, can invoke suspicion and distrust with agencies and individuals undertaking the monitoring. In many cases the families/whānau being monitored may be difficult to engage and have little trust in agencies to begin with. Covert surveillance may further alienate and stigmatise families/whānau who need to be engaged in a trusting and supportive way. Monitoring systems need to be transparent to all and well implemented with adequate education for those using them so they achieve the desired outcome and do not become punitive and stigmatising.
- 4.12 The College is supportive of the proposed two-way exchange between CYFS and other agencies, or health care providers, involved in family/whānau care. It is not uncommon for midwives to be told that CYFS are unable to share information about a family/whānau that is relevant to the care they are providing for that family/whānau, yet they are expected to provide information to CYFS to facilitate investigations.

4.13 The Privacy Commissioner John Edwards expressed concern about the information sharing changes, and the College agrees with these concerns, *“The Bill was developed without consultation with the children, families and their advocates whose information will be shared and those who will be required to share information such as doctors, midwives, women’s refuge, truancy officers and others.”*¹⁷ John Edwards considered that the changes were complex, fragmented and *“harder, rather than easier, to understand than the current legislative regime.”*¹⁸

5.0 Terminology change – wellbeing and welfare (*The Bill promotes a holistic approach to understanding what is in the interests of the child or young person by replacing “welfare” with “well-being”*)¹⁹

- 5.1. The College has major concerns about the replacement of the word ‘welfare’ with ‘wellbeing’.
- 5.2 Wellbeing refers to a state of being comfortable, healthy and happy, whereas welfare expands this definition into security and safety, but more importantly into a meaning that relates to the obligation of the state for the welfare of its citizens. Dictionary definitions include the provision of social effort to promote the wellbeing of people in need, and the rights to protection for education, housing and welfare.
- 5.3 Where rights exist there are state obligations. The College considers that the state has an obligation to protect the rights of citizens and this protection of welfare is considered in various human rights treaties including, the UN Convention on the Rights of the Child and the Rights of Indigenous Peoples.
- 5.4 With state obligations to citizens in mind, the College strongly recommends that the word ‘welfare’ be reinstated.

Conclusion

The New Zealand College of Midwives is grateful for the opportunity to provide feedback on the ‘Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Bill’. We fully support changes that will strengthen capacity for parenting, which include attention to poverty and conditions of inequity, and we support policies that recognise the importance of actively empowering, enabling and supporting parents and whānau, where necessary, to take care of their own children.

The College is, however, reserving its support for the information sharing provisions. We are concerned there is significant potential for unintended negative consequences if midwives are always expected to share information about women they are caring for, or family/whānau members they come into contact with during the course of their care, if the threshold for sharing this information remains as broad as indicated.

Sincerely,



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Alison Eddy Midwifery Advisor

¹⁷ <https://www.privacy.org.nz/news-and-publications/statements-media-releases/privacy-commissioner-comments-on-oranga-tamariki-bill/>

¹⁸ Ministry of Social Development. (2016). *Departmental Disclosure Statement. Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Bill*, P. 25. <http://disclosure.legislation.govt.nz/assets/disclosures/bill-government-2016-8.pdf>

¹⁹ <http://www.legislation.govt.nz/bill/government/2016/0224/latest/d56e2.html>