



## Aotearoa New Zealand Association of Social Workers Submission on the Children, Young Persons, and Their Families Amendment Bill (No. 6)

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### **Submission on the Children, Young Persons, and Their Families Amendment Bill (No. 6) to the Social Services Select Committee**

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*ANZASW would welcome the opportunity to speak to this submission, to further represent and give voice to the views of Social Workers.*

#### **1. Background to ANZASW**

- 1.1. The Aotearoa New Zealand Association of Social Workers (ANZASW) is the professional body for Social Workers in Aotearoa New Zealand. It was formed in 1964 and currently has approximately 3500 members.
- 1.2. The ANZASW operates under a bicultural model in accordance with Te Tiriti o Waitangi. Some components of this include: the Tangata Whenua Takawaenga o Aotearoa (Māori caucus), a parallel Niho Taniwha (kaupapa Māori model) competency assessment tool and process, and principles of partnership, participation and protection of rights woven into and throughout the organisational structure. Through this, ANZASW is unique amongst professional bodies in its ability to provide specialist support to Māori members.

#### **2. Summary of key points**

- the Act that is the subject of this Bill is considered internationally as very advanced legislation and ANZASW members at international conferences are frequently consulted as to its operation.
- the ANZASW supports raising the age of jurisdiction for both care and protection and youth justice to the age of 17.
- the movement towards involving the NGO sector more in assessment activity should be carefully monitored.
- ANZASW strongly supported provisions relating to co-operation between agencies and increased information sharing.
- ANZASW members urge that there should be a strong distinction made between “supervision” i.e. oversight and monitoring of a young person’s offence-free behaviour, and “treatment” needs.
- ANZASW applauds initiatives around the transition from care to independence, and urges these should go even further.



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### 3. Introduction

- 3.1. As per the ANZASW response made to the Ministry of Social Development's Discussion Document *Safeguarding our Children* in 2007, the ANZASW wishes to acknowledge that the Act that is the subject of this Bill is considered internationally as very advanced legislation and ANZASW members at international conferences are frequently consulted as to its operation. Overall New Zealand is admired for adopting the explicit principles that underpin the Act especially the family involvement in decision making.
- 3.2. As noted by Māori Party MP, Dr Pita Sharples in the first reading of the Amendment Bill the 1989 legislation was in many respects before its time in the way in which it recognised the centrality and importance of whānau to the care and protection of tamariki and to youth justice.
- 3.3. This submission carries forward the ANZASW response to *Safeguarding our Children*, based on a close reading of those matters which have or have not surfaced in the Amendment Bill.
- 3.4. In the years since the passage of the Children, Young Persons, and Their Families Act 1989, the number of developments pertaining to related areas of legislation (particularly since 2000) has increased – as noted in the Amendment Bill's Explanatory Note. This gives rise to a general concern that the practice of those engaged in the care and protection and youth justice "sectors" is subject to and determined by a large set of legislative requirements that by their sheer volume can easily become unwieldy and confusing.
- 3.5. Without care and rigorous evaluation, there is a risk that practitioners who implement legislation such as the current Act are left to contend more with administrative legal limitations (the Act itself) rather than being able to focus on the core principles and desired outcomes. Situations can arise where the administrative structures/ actions are in conflict with the intent of the legislation.
- 3.6. The way the current Children, Young Persons, and Their Families Act is structured and drafted was identified in last year's MSD Discussion Paper as a significant issue to the point where this was identified as impeding best practice, with overly detailed wording that was too "practice prescriptive for a principle-driven child welfare Act".
- 3.7. It was reported that many practitioners reported some difficulty in navigating the Act, citing cross-referenced sections that were not grouped together in a logical manner.
- 3.8. While it is disappointing that work to redraft the Act to ensure it is expressed in plain English wherever possible could not be included in this phase of the Amendment process, the ANZASW holds to its view that ensuring good training to interpret provisions of the Act is just as important as simplification and streamlining.



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- 3.9. This doesn't negate the view that there would be much value in simplifying the Act for the benefit of the wider public in Aotearoa New Zealand so that this important set of laws can be communicated in a more accessible and transparent manner.
- 3.10. Areas that would benefit from clearer public understanding include the operation of family group conferences, and clearer understanding about the distinct set of provisions contained in this legislation for **care and protection** on the one hand (the wider issue of abuse and neglect), and for **youth justice** on the other.
- 3.11. The close party vote at the first reading of this Bill (59 ayes, 56 noes) was accompanied by a difference of stance regarding the technical nature of improvements and international obligations reflected in the Bill, and what appears to be a lack of recognition of the legislation's dual nature. It is hoped some stronger cross-party dialogue might emerge during the Select Committee process.

#### 4. **Response to substantive amendments to principal Act**

##### 4.1. **New definition of young person** (*page 8*)

As part of moving into line with international standards and obligations, ANZASW continues to support raising the age of jurisdiction for both care and protection and youth justice to the age of 17. As commented on by Green Party MP, Sue Bradford in the Bill's first reading 17-year-olds represent an age group that has "all too often been virtually abandoned". United Future MP Judy Turner's point is equally valid that there are a number of situations where young people are disadvantaged by the cessation of services, "purely because their birthday clocks in".

The exclusion of a young person from this new definition on the basis they may be, or have been, married or in a civil union has been considered questionable.

##### 4.2. **Duties of the chief executive of the Ministry of Social Development to establish and make known procedures to receive complaints** (*page 9*)

Given the mud-slinging directed at social workers, as evidenced by the publicity given to a name and shame website (the CYFSWATCH blog) in early 2007, it is considered that a more visible avenue for resolving individual complaints specific to the Ministry of Social Development (MSD) is a positive step.

It is in the interests of the profession and the public for there to be an open and transparent complaints service. Such a service should be prepared to handle complaints from caregivers as well as to children and young persons, their families, whanau and family groups; and to involve professional advice and input external to MSD.



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The ANZASW would expect the MSD to consult widely on the development of this service and to look to relevant procedures such as those of the Complaints and Disciplinary Tribunal established by the Social Workers Registration Board (SWRB). The complaints procedure operated by the ANZASW is based on our Code of Ethics and aspects of that procedure may also be relevant.

### 4.3. **Functions of the chief social worker, including practice reviews** *(page 10)*

The formal appointment or designation of chief social worker confirms a heightened responsibility for this position. ANZASW notes that the function of conducting a review of “any practice of the department in relation to this Act” is not limited to the chief social worker, and is of the opinion that all practice reviews should involve some external involvement.

ANZASW also notes the strict limitations – other than “findings of fact” - placed on the publication of certain types of information in any report of the proceedings of a review contained in Subsection (5) of 7C.

The wording in this Subsection – particularly given the scale of the fines set out in Subsection (7) for contravening Subsection (5) – is not sufficiently clear. It appears to exclude publication of information or statements even where they are not directly attributed. If information published of the proceedings of a review is limited only to the voice of the person conducting that review, there is a risk that any such report could be overly sanitised.

### 4.4. **Views of child or young person** *(page 12)*

The imperative to encourage and assist the child or young person to participate in processes covered by the Act is somewhat at odds with the discretion of deciding whether that is appropriate or not. The reference to “having regard to the matters to be heard or considered”, could be counterbalanced by a stronger direction to give weight to the wishes of the child or young person rather than automatically holding an opinion that has not considered those wishes. This should be a practice issue rather than a legal issue.

### 4.5. **Responses to reports of child abuse** *(page 14)*

ANZASW notes the significant change in emphasis entailed in shifting to an “initial assessment” and the process for an initial child and family assessment, ahead of an “investigation”.

The inclusion of an “assessment provider” in the possible course of action/ response following an initial assessment – as set out in 17A (1) – is a major departure from the current provisions, especially given that an assessor may or may not be a social worker.



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An issue raised by this new scenario is the importance of the quality of communication between an assessment provider/ assessor who may not specialise in social work with CYF social workers, particularly in relation to referring a report back to a social worker.

In principle ANZASW supports a differential response model that, while it is not spelled out in the Bill, is implied around increased cooperation with the NGO sector. At the same time there are some reservations about blurring the lines between the government and NGO sectors given a need to preserve clear lines of responsibility. The movement in this direction should be carefully monitored.

To be rolled out **safely**, those workers in the agencies charged with the differential assessment, need to be very skilled in not only assessing the appropriate level of service delivery, but also in being very sharp around risk assessment. This would enable those cases that are identified as exceeding the threshold for reduced state intervention, being able to be referred back to CYF without the need for repeat assessments and consequent loss of time before safe interventions are in place. This requires a skilled NGO workforce. NGOs must be able to attract and retain qualified social workers and must be adequately resourced to do this.

It is encouraging that an assessor undertaking a child and family assessment must consider the child's or young person's health and education needs.

It is equally encouraging that the information which FGC convenors must take all reasonable steps to make available to a FGC will include information and advice relating to health and education needs of a child and young person, and that this new requirement also applies to youth justice FGC.

#### 4.6. **Family group conferences (FGC)** *(page 18)*

Of significant concern to ANZASW is the advice we have received over the years about the operation of FGCs (seen as the star provision of the Act). As the Act has developed, the FGC process has become a routine practice by those working with it. The extensive education to each new family about their rights and responsibilities in this process, which occurred at the introduction of the Act, appears to have reduced, even though a large proportion of FGC participants are experiencing it for the first time.

Structurally it has also been influenced by resource limitations and we have been alerted to frustrations from workers, family and referring agencies when plans developed at FGCs, are developed and approved through a FGC decision making process, only to have the final statement being "subject to the Budget Managers approval". This is contrary to Sect



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34 C&P & Sect 268 YJ of the Act which require the chief executive to give effect to agreed plans. We are also advised that limitations are also imposed on costs of setting up conferences and on many occasions that has meant that key family members have not been present, affecting both the options that are able to be considered and the family mandate to see that they are implemented. We note that these concerns are not new and have been referred to in the research of Morris and Maxwell (1992), the Mason Report (1992) and the Brown report (2000).

The ANZASW supports setting a completion timeframe for a FGC of 30 working days (that is 6-7 weeks) as contained in the Amendment Bill. It is unclear, however, whether this applies to youth justice FGCs also (Section 250).

To uphold principles contained in the Act, consulting with affected children or young people as to the practical details of the FGC – date, time place, persons attending, procedure – should be compulsory. The provision that the written record of a FGC must, wherever practicable, record the child's or young person's views in relation to any plans formulated by the FGC is commendable.

#### 4.7. **Sharing of information by government and non-government bodies and organisations** (page 22)

In our submission to *Safeguarding our Children*, ANZASW strongly supported provisions relating to co-operation between agencies and increased information sharing, for both care and protection and youth justice.

Concern was expressed that well-considered assessments for care and protection from other government departments (health, education, justice) and the NGO sector should always be handled seriously.

#### 4.8. **Strengthening victims' provisions** (page 40)

The ANZASW is pleased to see the subsections specific to strengthening participation of victims at FGCs, and will be interested to see if the level of participation increases. Anecdotal evidence has indicated that their participation is very salutary for the young person and their family.

It is important to note the greater acknowledgment of the process of restorative justice in New Zealand and projects in Justice and Education have embraced the model. ANZASW members have stated a belief that the vision for restorative justice within FGCs, along with concurrent potential for support and empowerment of victims, has dissipated over the years. This view holds that youth justice provisions have been turned into a "political football" on too many occasions, for the purpose of point scoring on law and order issues.



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The ANZASW is also interested in how the chief executive of MSD will implement (assign and agree) reporting on a child's or young person's progress against any decision, recommendation or plan made or formulated by an FGC through to victims, and what form such a report will take.

### 4.9. **Supervision orders** (*page 44*)

There are a range of views about extensions to periods of supervision with activity and supervision with residence.

ANZASW members have highlighted that any changes that lead to an increase in group residential care will place pressure on limited bed capacity. If current bedspace has to be increased it is urged that additional units be focused around specific treatment issues.

This reflects a suggestion that there be a strong distinction made between "supervision" i.e. oversight and monitoring of a young person's offence-free behaviour, and that of "treatment" where a problem is acknowledged and court orders or FGC outcomes can enable "treatment" to continue (and be financially supported) beyond the more limited periods of supervision.

### 4.10. **Transition from care to independence** (*page 51*)

ANZASW applauds initiatives around the transition from care, and urges these should go even further (while also noting these do not apply to those who are, or were, in custody under the principal Act's youth justice provisions (Part 4 of the Act)).

Practitioners, family/whanau and young people (many as adults reflecting back on their transition arrangements) recognise the risks that young people were and are still exposed to, with minimal support on leaving "state" care.

These young people are unlikely to have any personal savings and as their family of origin is unlikely to be able to provide financial assistance for their start in independent life, transition assistance is essential. This is also the case if they return to their family during this period, as many families may not have the resources to assist during this period of the young person's life. The challenge will be to define what form the "advice and assistance" will take, and to ensure that access to arrangements for such advice and assistance is well publicised.

In the first instance, ANZASW supports the continuation of care arrangements to enable a young person to finish secondary education (up to 31 December of the year in which the person turns 18 years of age).



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### 5. Conclusion

- 5.1. It is encouraging that this landmark legislation is being reviewed and updated, although some further analysis of and comparisons with other jurisdictions, such as Australia and Canada, that have adopted (and adapted) elements of the CYPF Act would have been welcomed. It would also be healthy to see more signs of independent research and evaluation into the operation of the CYPF Act other than by MSD “experts”.
- 5.2. Overall the amendments and additions contained in the Children, Young Persons, and Their Families Amendment Bill (No. 6) offer some called for enhancements, introduce some positive new approaches to assessing care and protection needs and generate some unanswered questions and fresh concerns.
- 5.3. Doubt remains for instance as to whether the amended Act will become less (or more) procedurally driven than it is. Heavily layered procedures do not necessarily make for good decisions, let alone best practice.
- 5.4. ANZASW members have a concern that the leading principles of the Act, minus the rhetoric, are not always given as strong and cohesive a prominence as they could be. There is a concern about a lack of wider understanding of the outcomes sought by this legislation, and that some outcomes – such as improved interagency collaboration – should be more explicitly articulated.
- 5.5. The ANZASW shares the view – reported in *Safeguarding our Children* – that good outcomes for children are most likely to be achieved when families, professionals, groups and communities are working to a common goal. Whilst the provision of broader services to child, whanau, hapu and iwi may carry more expense they are likely to be cost effective for society in the longer term.
- 5.6. This accords with the care and protection principle that the primary role in caring for and protecting a child or young person lies with the child’s or young person’s family, whanau, hapu, iwi and family group and that accordingly:

*A child’s or young person’s whanau, hapu, iwi and family group should be supported, assisted, and protected as much as possible.*
- 5.7. It is encouraging that more referrals to community services are being legislated for. This will require a skilled NGO workforce with NGOs being enabled to attract and retain qualified social workers.
- 5.8. ANZASW recognises that the FGC is a cornerstone of the CYPF Act and urges that the success of this model not be put at risk of being continually compromised by factors such as lack of adequate resourcing as well as staff training and turnover issues.



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- 5.9. On the point of raising the age for defining a child to include 17 year olds, some other statutes will need to be aligned to this such as the Domestic Violence Act (a review of which is underway, and to which ANZASW made a submission earlier this year).
- 5.10. ANZASW has supported the existing dedicated entry pathway for disabled children and young people whose parents can no longer meet the child or young person's needs within the family. A lot of issues seem to be a result of lack of support systems, rather than care and protection issues. ANZASW has increasingly been advised of situations where it is the parent's disability (often mental health issues or intellectual disability) that is invoking care and protection issues. Disability-related decisions require social workers with a good disability knowledge base to formulate decisions on. We would recommend that guidelines and protocols be developed for all CYF social workers and support services when working with families where disability is an issue, in addition to the employment of specialist staff within CYF with relevant experience of disability issues. Practice changes need to reflect the concerns noted.
- 5.11. The major changes being introduced to the care and protection approach through the introduction of "initial assessments" (Section 17) and the new subsequent options for child and family assessment will mean that social workers employed by MSD are likely to face a range of new challenges. They will need to receive an increase in professional and administrative support and be fully briefed on the scale and timing of new expectations that will be placed on them.
- 5.12. The rationale for changes to youth justice provisions have not been sufficiently explained and a lingering concern persists that too many youth justice provisions are shaped by a politically motivated 'get tough' mentality. What research or evidence, for instance, supports the move to lower the age for transfer to the District Court for sentencing from 15 to 14? Is this a convenient back door to lowering the age of criminal responsibility?
- 5.13. The proposed changes will require significant investment by the government, from training and education through to dealing with infrastructure needs for care and protection and youth justice facilities. ANZASW awaits upcoming Budgets with interest to see where and how that investment will be allocated.

### **Additional references**

- 2006 international conference on the family group conference - 'Coming home - Te hokinga mai' [www.cyf.govt.nz/2753.htm](http://www.cyf.govt.nz/2753.htm)
- *Grandparents Raising Grandchildren Trust, Research report* – Jill Worrell, March 2005