



# **Vulnerable Children Bill**

**Submission to the Social Services Committee**

**30 October 2013**



Action for Children and Youth Aotearoa (ACYA) is a coalition of non-governmental organisations, families and individuals promoting the rights and wellbeing of our children and youth through education and advocacy based on evidence and New Zealand's human rights commitments.

Underpinned by the values encapsulated in the UN Convention on the Rights of the Child (UNCROC), Te Tiriti O Waitangi and the wider human rights framework, ACYA promotes:

- accountability by providing reports from NGOs in Aotearoa New Zealand on Aotearoa's compliance with UNCROC to the UN Committee on the Rights of the Child (UN Committee)
- understanding and implementation of UNCR
- action on the recommendations of UNCROC Committee to Aotearoa New Zealand;
- opportunities for the participation of children and youth and for their voices to be heard

ACYA's principal work is the production and publication of Aotearoa New Zealand's Alternative NGO (non-governmental organization) Reports to the UN Committee on Aotearoa's implementation of the UNCROC. Aotearoa ratified UNCROC 6 April 1993. The alternative reports are submitted as part of the formal periodic reporting process under Article 44 of UNCROC.

ACYA most recently produced and published *Children and Youth Aotearoa 2010*, the NGO sector's third and fourth periodic report on Aotearoa New Zealand's implementation of UNCROC. The report and its working papers were presented to the Committee in Geneva, 7 October 2010.

ACYA produced and published *Children and Youth in Aotearoa 2003*, the second periodic NGO report on Aotearoa New Zealand's implementation of UNCROC. ACYA supported children to develop a video called *Whakarongo Mai / Listen Up* which collated and presented the views of children and young people. Both the report and video were presented to the Committee in Geneva in June 2003.

ACYA has made numerous reports on New Zealand's compliance with other human rights treaties and on proposed legislation and policy that impact upon children. Between 2004 and 2009 ACYA was represented on the UNCROC Advisory Group to the Ministry of Social Development and most recently sits on the UNCROC Monitoring Group co-ordinated by the Office of the Children's Commissioner. All the work of ACYA is done by volunteers. ACYA receives no government funding.

## General Comments on the Bill and its context: the importance of universal principles and services

- 1 Action for Children and Youth Aotearoa's (ACYA's) submissions on the Bill are restricted to comments that are specifically supported by reference to Aotearoa New Zealand's obligations under the UN Convention on the Rights of the Child (UNCROC). ACYA reminds the government that its ratification of UNCROC on 6 April 1993 brings with it a responsibility under international law to ensure all law, policies and practices relating to children under 18 into line comply with UNCROC principles.
- 2 ACYA wishes to exercise its right to an audience with the select committee and to address the committee directly on the issues arising from its submission.
- 3 ACYA welcomes the Government's acknowledgement that better legislative frameworks, policies and practices are required, to improve the lives and experiences of children and young people in Aotearoa New Zealand who are subjected to emotional, physical and sexual abuse and to neglect. ACYA supports the Government's view that one of the keys to tackling child abuse and neglect is sharing and acting on information and therefore welcomes the emphasis on cross agency measures in Part I of the Vulnerable Children Bill.
- 4 ACYA's view is that while the Bill contains some valuable provisions, there are significant shortcomings in the scope of these provisions. ACYA's belief is that these shortcomings arise from a failure to place the Bill in its broader legislative and policy context. ACYA submits that there are three broader considerations that must be addressed, for this Bill to have a realistic hope of making the improvements sought by the government. Those considerations are:
  - Obligations to tamariki and rangatahi under Te Tiriti O Waitangi
  - Provision of universal services to children, whanau and communities
  - Obligations under the UN Convention on the Rights of the Child
- 5 The government and the Ministry of Social Development has obligations under Te Tiriti O Waitangi. In respect of support services and care and protection interventions, there is an obligation to act in culturally appropriate ways. The primary legislation relating to care and protection of children and young people is the Children, Young Persons, and Their Families Act 1989 (CYPF Act 1989). The CYPF Act 1989 objects are, *inter alia* to promote children and young people and their families and family groups by:<sup>1</sup>
  - establishing and promoting and assisting with the establishing and promoting of, services within the community that are appropriate, having regard to the needs, values and beliefs of particular cultural and ethnic groups and provided by persons and organisations sensitive to the cultural perspectives and aspirations of different racial groups in the community

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<sup>1</sup> Children, Young Persons, and Their Families Act 1989, s4(a)(i) and (iii) and s4(b).

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- assisting parents, families, whanau, hapu, iwi and family groups in discharging their responsibilities to prevent their children and young people suffering harm, ill-treatment, abuse, neglect or deprivation.
- The CYPF Act 1989 principles include *inter alia* the principle that, wherever possible:<sup>2</sup>
- a child's or young person's whanau, hapu, iwi and family group should participate in the decisions affecting that child or young person and accordingly that, wherever possible, regard should be had to the views of that whanau, hapu, iwi and family group
- the relationship between a child or young person and his or her whanau, hapu, iwi and family group should be maintained and strengthened.

The objects and principles of the foremost piece of child care and protection legislation clearly require that children's and young people's whanau are closely involved in all decisions and that interventions should aim to strengthen the whanau. The Vulnerable Children Bill should reflect the objects and principles of the CYPF Act 1989, since these reflect the principles in Te Tiriti O Waitangi and were drafted after significant input about what Māori regarded as necessary to provide culturally appropriate legislation.<sup>3</sup> The Bill should contain objects and principles sections that explicitly state that:

- vulnerable children's plans shall be drawn up in consultation with representatives of whanau, hapu, iwi and community groups and shall have regard to the principles of the Treaty of Waitangi
- child protection policies shall be drawn up in consultation with representatives of whanau, hapu, iwi and community groups and shall have regard to the principles of the Treaty of Waitangi
- every contract or funding arrangement entered into with an independent person by State Services, DHBs, school boards or other agencies in respect of responsibilities under the Act shall require that the independent person demonstrate an understanding of and ability to meet the obligations of the Treaty of Waitangi

In ACYA's view, if the Bill is not amended to contain specific references to Te Tiriti and to the objects and principles of the CYPF Act 1989, the measures set out in the current clause 6 of the Bill are in danger of appearing to suggest that the reference to strengthening whanau, hapu and iwi is seen as a consideration separate from – and subservient to – the other references, in particular to protecting children from abuse and neglect. Te Tiriti and the CYPF Act 1989 both regard working with and strengthening whanau and community as integral to protecting children and young people. This Bill should do the same.

- 6 Improving the lives of vulnerable children requires an honest acknowledgement of the broad range of factors that create vulnerability for children, young people and their

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<sup>2</sup> Ibid, s5(a) and s5(b).

<sup>3</sup> See, for example Report of the Advisory Committee on Legal Services *Te Whainga i Te Tika: In Search of Justice* (1986, Government Printer, Wellington), in which legal services were described as dehumanizing, culturally-alien and sensitive; *Puao-te-ata-tu (day break) – The Report of the Ministerial Advisory Committee on a Maori Perspective for the Department of Social Welfare* (1988, Department of Social Welfare, Wellington), available at <http://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/archive/1988-puaoteatatu.pdf> which found institutional racism in the Department of Social Welfare and subjugation of Māori culture and values in the operation of child care and protection policies and practices.

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families. Specific legislative measures dealing with cross-agency working and new court orders will only ever tackle part of the picture – the end result – if the law does not, at the same time, address itself to the provision of universal services to support children, young people and their whanau and communities.

- 7 At present, clause 6 contains a list of measures that are said to “promote the best interests of vulnerable children”. Although the Bill says the list is “(without limitation)”, it is our view that the way Part I of the Bill in general – and clause 6 in particular – is drafted demonstrates a narrow approach that fails to acknowledge the need for universal support services. The reason is clear. Clause 7 refers to the setting of government priorities for improving the well-being of vulnerable children. This is a targeted approach that may place priority on whatever may be politically expedient or recognised at the time, for example, drug or alcohol dependency, sexual predators’ use of the internet, children who suffer from foetal alcohol syndrome. Each priority could be supported by research findings and would be a legitimate use of government funding. ACYA’s concern is that sound, evidence-based information provided in particular by the Office of the Children’s Commissioner Expert Advisory Group on Solutions to Child Poverty<sup>4</sup> and by the Child Poverty Action Group<sup>5</sup> has already indicated one of the universal actions that should be taken. Action to eliminate child poverty would have a profound impact on the number of children vulnerable to child abuse and neglect.
- 8 ACYA recommends that the Vulnerable Children Bill include in the list of measures to promote the best interests of vulnerable children the setting and monitoring of child poverty related indicators.<sup>6</sup>

### Law, policy and practice not yet compliant with Aotearoa New Zealand’s obligations under the UN Convention on the Rights of the Child

- 9 Children’s legislation should make specific reference to Aotearoa’s obligation under UNCROC. ACYA recommends that Clause 6 of the Bill be amended to insert a reference to Aotearoa New Zealand’s commitments to the UN Convention on the Rights of the Child as noted in paragraph 24 below.
- 10 In its concluding observations on Aotearoa’s 3rd and 4th periodic report on its implementation on the UN Convention on the Rights of the Child,<sup>7</sup> the UN Committee on the Rights of the Child made comments in four important areas, all of which indicate changes that are required in the Vulnerable Children Bill to render it UNCROC compliant. The four areas are: (1) harmonisation of domestic laws; (2) action on poverty and inequalities; (3) the child’s right to be heard; and (4) family environment and alternative care.

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<sup>4</sup> See the various publications from the Expert Advisory Group, at <http://www.occ.org.nz>

<sup>5</sup> See, e.g. Donna Wynd *Child Abuse: what role does poverty play?* (2013, A CPAG monograph), available at <http://www.cpag.org.nz>

<sup>6</sup> For detailed discussions of how these could be used, see Expert Advisory Group on Solutions to Child Poverty *Working Paper No 6: Legislative Mechanisms to Reduce Child Poverty*, available at <http://www.occ.org.nz>

<sup>7</sup> For the official text of the concluding observations, see <http://www2.ohchr.org>. A pdf of the observations can also be read at <http://acya.org.nz> under “Children’s Rights and Resources”.

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- 11 The UN Committee noted in its concluding remarks in 2011 that “not all domestic laws are harmonised even among themselves.”<sup>8</sup> It recommended that the government of Aotearoa “ensure that all existing domestic legislation relating to children is consistent and brought into compliance with the Convention.”<sup>9</sup> The first requirement is that the Bill reflect the objects and principles of the CYPF Act 1989, as suggested above.
- 12 The other key change that is required to ensure consistency and compliance with UNCROC is the amendment of the CYPF Act 1989 to extend its provisions to young people aged 17 but under the age of 18. Article 1 of UNCROC defines a child as every human being below the age of 18 years.<sup>10</sup> The current definition in the CYPF Act 1989 is a fundamental breach of UNCROC. The Bill should provide that the definition of “young person” in section 2 of CYPF Act 1989 be amended to read “a boy or girl of or over the age of 14 but under the age of 18.”<sup>11</sup>
- 13 The UN Committee was extremely concerned about the extent of poverty suffered by children and young people in Aotearoa. It noted that “increases in expenditure are not sufficient to eradicate poverty and address inequalities.”<sup>12</sup> It recommended that the government “take urgent measures to address disparities in access to services by Māori children and their families.” For services to be accessible, they must be culturally appropriate, which is why ACYA recommends the addition of CYPF Act 1989 aligned objects and principles in the Bill, as noted above. It is also why it is essential that Vulnerable Children’s Plans and Child Protection Policies must be drawn up in consultation with Māori and in line with Te Tiriti O Waitangi principles.
- 14 To address the UN Committee’s concerns, ACYA also recommends that clause 6 of the Bill be amended to refer specifically to access to services. We recommend that an additional sub-paragraph be added to clause 6 to state: “providing additional support services to support families with their parenting responsibilities and providing information to the public about children’s physical, psychological and emotional needs and how best to meet these.”
- 15 The UN Committee was also concerned that Aotearoa’s laws do not adequately take account of children and young people’s right to be heard in all matters affecting them, as required by Article 12 of UNCROC. The Committee recommended that the government “promote, facilitate and implement, in legislation as well as in practice, within the family,

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<sup>8</sup> Committee on the Rights of the Child, 56<sup>th</sup> session, 17 January – 4 February 2011, *Consideration of reports submitted by States Parties under article 44 of the Convention – Concluding Observations, New Zealand* CRC/NZL/CO/3-4, available at <http://www.2ohchr.org> para 10.

<sup>9</sup> Ibid, para 11(a).

<sup>10</sup> Article 1 applies unless the age of majority is attained earlier. Majority in Aotearoa New Zealand is attained at age 20, Age of Majority Act 1970, s4(1), although there is a proposed members Bill (Colin King) that would lower it to age 18.

<sup>11</sup> The existing s2 definition includes the words “but does not include any person who is or has been married or in a civil union”. ACYA does not agree with the retention of these words. The marital or civil union status of a young person should not affect their rights to support services and protection.

<sup>12</sup> Committee on the Rights of the Child, 56<sup>th</sup> session, 17 January – 4 February 2011, *Consideration of reports submitted by States Parties under article 44 of the Convention – Concluding Observations, New Zealand* CRC/NZL/CO/3-4, para 16.

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schools and the community as well as in institutions and in administrative and judicial proceedings, the principle of respect for the views of the child.”<sup>13</sup>

- 16 The Bill must provide for children and young people’s views to be heard and taken into account, to be UNCROC compliant. ACYA recommends that the clause 7 of the Bill be amended to provide that “the responsible Minister shall set government priorities for improving the well-being of vulnerable children only after the Minister is satisfied that the views of children and young people, especially those who have experience of family support services and out of home care by the state, have been heard and taken into account.”
- 17 Clause 9 of the Bill should also be amended to provide “The vulnerable children’s plan (and any draft of it) must contain measures by which children’s agencies will seek the views of children and young people on the content of the plan and take account of those views in the content and implementation of the plan.”
- 18 It is essential that child protection policies are informed by the views of children and young people. ACYA recommends that clause 19 be amended to provide “Every child protection policy required by this sub-part must have been drawn up in consultation with children and young people, who must have been given opportunities, either individually, in groups or through representatives, to indicate whether they wished to express views. Any views expressed by children and young people or their representatives shall be incorporated into the child protection policy.”
- 19 Article 5 of UNCROC requires States parties to respect the responsibilities, rights and duties of parents and the members of extended family or community. Article 18 requires “appropriate assistance to parents and legal guardians in the performance of their child rearing responsibilities” and Article 19.2 indicates that protective measures for children should include social programmes to provide necessary support. The UN Committee made it clear that it did not believe that Aotearoa was doing enough to fulfil its obligations to support the family environment of vulnerable children and young people. It recommended that the government “intensify its efforts to render appropriate assistance, with timely responses at the local level, including services to parents who need counselling in child-rearing and, in the case of the Māori and Pacific Islander populations, culturally appropriate services to enable them to fulfil their parental role.”<sup>14</sup>
- 20 ACYA recommends that the Bill should make much more explicit provision for universal counselling support services. This could be done either by amending the CYPF Act 1989, or by including additional sections in the Bill. We refer to ACYA’s submissions on the Green Paper, in which we stated (para 12) that we supported the proportionate universalism approach to policies and services for children and their families. The basic human rights of every child must be met and universal services are required to minimise the number of children and young people who require intensive, resource-expensive interventionist

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<sup>13</sup> Committee on the Rights of the Child, 56<sup>th</sup> session, 17 January – 4 February 2011, *Consideration of reports submitted by States Parties under article 44 of the Convention – Concluding Observations, New Zealand* CRC/NZL/CO/3-4, para 27(a).

<sup>14</sup> Committee on the Rights of the Child, 56<sup>th</sup> session, 17 January – 4 February 2011, *Consideration of reports submitted by States Parties under article 44 of the Convention – Concluding Observations, New Zealand* CRC/NZL/CO/3-4, para 32.



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services. We also refer to the collective briefing paper produced by UNICEF and supported by more than 60 non-governmental organisations in Aotearoa: *All Children Thriving, Belonging and Achieving – what will it take?*<sup>15</sup>

- 21 ACYA recommends that the Vulnerable Children Bill provide for an Action Plan for All Children in New Zealand. As suggested in the UNICEF briefing paper, that Action Plan should cover all aspects of children's well-being, apply across all government departments and agencies and be underpinned by legislation for implementation, accountability and sustainability. A new sub-Part of the Bill should enact the Action Plan.

### Part 1 Cross agency measures

- 22 In this part of the Bill, the definition of "children's agencies" in clause 5(1) should be amended to include Women's Affairs, Youth Affairs, Te Puni Kokiri and Pacific Island Affairs.
- 23 As recommended above at paragraph 5, ACYA would insert a requirement that vulnerable children's plans and child protection policies shall be drawn up in consultation with representatives of whanau, hapu, iwi and community groups and shall have regard to the principles of the Treaty of Waitangi. ACYA would also insert a requirement that vulnerable children's plans and child protection policies be drawn up in consultation with, and take account of the views of, children and young people.
- 24 Amend the beginning of clause 6 to read "In this **sub-part, improving the well-being of vulnerable children** in relation to the setting of Government priorities under **section 7** and the preparation of the vulnerable children's plan under **section 8** means promoting the best interests of vulnerable children, having regard to the whole of their lives and to New Zealand's commitments under the UN Convention on the Rights of the Child."
- 25 Measures to improve the well-being of vulnerable children (clause 6) should include the setting and monitoring of child poverty related indicators.
- 26 Measures to improve the well-being of vulnerable children (clause 6) should include "providing additional support services to support families with their parenting responsibilities and providing information to the public about children's physical, psychological and emotional needs and how best to meet these."
- 27 ACYA welcomes the Bill's emphasis on cross agency cooperation and sharing of information. Research and practice experience indicates that this is an essential part of any successful child protection strategy. However, providing support and protection for children and young people in difficult situations is highly skilled work. All members of the children's workforce must be adequately supported and trained to fulfil the important and complex roles required of them. ACYA recommends an addition to clause 6 of the Bill, providing for "training, support and continuing professional development of the children's workforce to deliver the highest possible child support and child protection services to children, young people and their whanau, hapu, iwi and family groups. Such training,

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<sup>15</sup> UNICEF New Zealand *All Children thriving, belonging and achieving – what will it take?* July 2012, available at <http://www.unicef.org.nz>



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support and continuing professional development shall be informed by Te Tiriti O Waitangi and by the perspectives of children and young people.”

- 28 It is important that all government priorities set by the Minister are available to the public and that progress against those priorities is monitored and measured. ACYA therefore recommends that clause 7 be amended by inserting a sub-paragraph that provides “Progress against priorities will be monitored, measured and reported in for the purposes of the purposes of accountability and to ensure that appropriate investment is made to deliver progress.”
- 29 Clause 7 should be amended to provide “the responsible Minister shall set government priorities for improving the well-being of vulnerable children only after the Minister is satisfied that the views of children and young people, especially those who have experience of family support services and out of home care by the state, have been heard and taken into account.”
- 30 Clause 9 should be amended to provide “The vulnerable children’s plan (and any draft of it) must contain measures by which children’s agencies will seek the views of children and young people on the content of the plan and take account of those views in the content and implementation of the plan.”
- 31 The Bill must provide for opportunities for children and young people to express their views. Clause 19 should be amended to provide “Every child protection policy required by this sub-part must have been drawn up in consultation with children and young people, who must have been given opportunities, either individually, in groups or through representatives, to indicate whether they wished to express views. Any views expressed by children and young people or their representatives shall be incorporated into the child protection policy.”

### Part II Child harm prevention orders

- 32 ACYA supports the introduction of orders that will seek to protect children and young people from those adults who may pose risks to them. Under UNCROC Article 12, children and young people must be given the opportunity to express views in all matters affecting them. ACYA suggests that clause 53 be amended to provide that a child harm prevention order may not be made “unless the Court is satisfied that any child or young person under the age of 18 who was a victim of the respondent has been advised of the application and been given the opportunity to express a view, if he or she wishes to do so.” The current provision whereby victims over 16 are asked about specific matters only is inadequate, in terms of opportunities for younger children and in respect of the matters on which they are consulted.

### Part III Amendments to Acts

- 33 As indicated above, it is ACYA’s view that the Children, Young Persons, and Their Families Act 1989 currently breaches UNCROC, in its definition of young people. In clause 101 Section 2 amended (interpretation) of the Bill, add the following “delete existing definition of “young person” and replace it with “young person means a boy or girl of or over the age of 14 but under 18 years.”
- 34 Amend clause 102 Section 5 by adding to proposed sub-section (g) “and views”.

**New Part Action Plan for All Children**

- 35 ACYA asks the social services committee to consider seriously the addition of a new Part to the Vulnerable Children Bill, providing for the preparation of, monitoring on and reporting on progress under, an Action Plan for All Children in Aotearoa.

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