Children, Young Persons, and Their Families (Advocacy, Workforce and Age Settings) Amendment Bill

Submission to the Social Services Select Committee

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Contact

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About the New Zealand Nurses Organisation

NZNO is the leading professional nursing association and union for nurses in Aotearoa New Zealand. NZNO represents over 47,000 nurses, midwives, students, kaimahi hauora and health workers on professional and employment related matters. NZNO is affiliated to the International Council of Nurses and the New Zealand Council of Trade Unions.

NZNO promotes and advocates for professional excellence in nursing by providing leadership, research and education to inspire and progress the profession of nursing. NZNO represents members on employment and industrial matters and negotiates collective employment agreements.

NZNO embraces te Tiriti o Waitangi and contributes to the improvement of the health status and outcomes of all peoples of Aotearoa New Zealand through influencing health, employment and social policy development enabling quality nursing care provision. NZNO's vision is *Freed to care, Proud to nurse*.

EXECUTIVE SUMMARY

1. The New Zealand Nurses Organisation (NZNO) welcomes the opportunity to comment on the Children, Young Persons, and Their Families (Advocacy, Workforce and Age Settings) Amendment Bill.

2. NZNO has consulted members and staff in the preparation of this submission, including the College of Child and Youth Nurses Aotearoa (CCYN) College of Primary Health Care Nurses; Women's Health Section; Te Rūnanga; and professional nursing, policy, and legal advisers.

3. In particular, we have consulted extensively with public health nurses and other nurses whose work includes acting as lead professionals in the Children's Teams (CTs) set up as part of the Children's Action Plan (CAP) implementing the Vulnerable Children's Act 2014.

4. NZNO notes that the Bill is the first of several legislative steps anticipated in the systematic regulatory reform to update and improve the protection of, and services for, vulnerable children, young persons and their families (CYPF).

5. As such, we recognise that the Bill is broad, rather than comprehensive, and intentionally flexible rather than prescriptive, to allow for subsequent developments needed for a modern child-centred regulatory regime. However, members were dubious about agreeing broadly to these preliminary proposals without knowing how they might impact on advocating for vulnerable children in the future.

6. Bearing this in mind, and without pre-empting our response to subsequent legislation, NZNO generally **supports** the Bill and its objectives to:

    - extend State responsibility for the care and protection of vulnerable young persons to young persons aged 17 years;
    - embed the participation of children and young persons in decision-making concerning their welfare;
    - establish an independent children's advisory service; and to
    - enhance utilisation of a broader range of professionals with appropriate specialist skills.

7. However, we are concerned that the Bill does not articulate:

    - the *requirement* for health assessment and ongoing access to health care as integral to agencies' responsibilities for the wellbeing of vulnerable young people;
    - standards for appropriately skilled and knowledgeable peoples and groups/organisations e.g. member of a regulated profession, or safe working practice;
    - transparent funding and contractual obligations that assure State responsibility for resourcing and sustaining services for vulnerable children and young persons (C&YP), including the independent children's advocacy service.

8. We are also disappointed that the extension of state responsibility for young persons aged 17 years is limited to care and protection rather than to all services, and we express our strong reservations about how the independent advocacy services is being developed.

9. *All* feedback received from individual nurses and Colleges and Sections expressed very strong concerns about devolving responsibility of care from the statutory government provider Child Youth and Family to delegated 'other professionals', charged with performing 'key functions'.

10. NZNO is entirely **opposed** to the delegation of public responsibility for key functions pertaining to child safety and welfare to private providers. These are responsibilities that the State cannot opt out of

11. NZNO strongly supports measures to improve services and outcomes and we draw on the experience of nurses who work with vulnerable children and young people, both generally and specifically, to illustrate current barriers/challenges to the effective provision of appropriate health services for them, which are relevant to the Bill.

12. We hope this will inform, if not provide solutions to, your consideration of what measures are required to *safely* broaden the regulatory environment to include a wider range of professionals in the public services responsible for providing care and protection of vulnerable children.

13. NZNO is working closely with the Ministry of Health and the Children's Action Plan Directorate to improve health service delivery and outcomes for vulnerable C&YP.

14. NZNO would like to appear before the Committee and will be represented by Professional Nurse Advisers and experienced child and youth nurses working with vulnerable C&YP.

DISCUSSION

Extending provisions of statutory care and protection to 17-year olds.

15. NZNO has previously advocated for, and now warmly supports, replacing the definition of young person for care and protection purposes to now include 17 year olds (Clause 4 amending Section 2 of the Children, Young Persons, and Their Families Act 1989 ("the Act").

16. This is properly consistent with Article 1 of the United Nations Convention on the Rights of the Child (UNCROC).

17. However, retaining the age of criminal liability from 17 years, and indeed much younger in some circumstances (s 272 of the Act) , is disappointingly inconsistent with the recommendation of the Expert Report[1] which underpins the programme of CYFS reform, UNCROC, and other legislative limits on adult activity such as voting and purchasing alcohol.

18. We trust that the proposed amendments to s 2 relating to Parts 4 and 5 and other provisions of the Act concerning youth justice and youth courts will be reviewed as part of the next tranche of legislative reform.

19. Criminal activity is strongly associated with high levels of deprivation and inequity[2], over which children have no control. Aotearoa New Zealand has a high rate of youth imprisonment compared with similar countries, which has helped entrench intergenerational health, education, and social disparities. It is ethically, socially, and

[1] Modernising Child, Youth and Family Expert Panel (2015) Expert Report on the Modernisation of CYF, p 97
[2] NZ Statistics Human Rights Commission. (2012) *A fair go for all: Addressing Structural Discrimination in Public Services*. Chapter 4 Retrieved

economically[3] responsible to extend legal protection and alternative justice pathways to young people under 18 years.

20. While all age groups will benefit from the Bill's provisions to increase CYP participation, 10-18 year olds are likely to have the most capacity to benefit from inclusive processes and need the special consideration afforded to vulnerable CYP, particularly in circumstances which will inevitably affect their life's course.

21. We recommend that the proposed definition of young person meaning a person of or over the age of 14 years but under the age of 18 as in cl (a) also applies to parts 4 and 5 cl 4(b) (c) and (d)(1) be deleted.

Independent Advocacy Service

22. NZNO agrees that it is a basic human right for the views of vulnerable C&YP to be sought and considered in matters affecting them and strongly supports the Bill's intentions for this. We are confident that this will help protect them, nurture their self-esteem and increase their faith and engagement in society and systems designed for wellbeing. It is a good beginning to empowering them make safe, healthy life choices.

23. We also welcome and support the proposal for a new permanent independent advocacy service providing systemic and individual advocacy for children and young persons in care.

24. However, we are surprised and disturbed that this new service, critical to the new approach to CYFS, is already being developed "in partnership with the philanthropic sector". Ie the design process is already underway, without apparent consultation with statutory and other key children's welfare agencies, or professional organisations, and without it being clear who the invited parties are.

25. This is contrary to the ostensible ethos of the reform, and is certainly contrary to good governance. Independence from government and statutory services may be, and is, regularly achieved under many different structures with clear processes for ensuring the requisite competence and expertise eg Office of the Ombudsman, various expert committees, Health and Disability Commissioner, Human Rights Commission etc. On what grounds can the independence of "philanthropic stakeholder/s" be simply assumed for a statutory service for our most vulnerable citizens?

26. Many philanthropic organisations have very specific agendas eg religious, educational, cultural, and direct their philanthropy

[3] Eg North Carolina and Texas estimate annual benefits of including 17 year olds of $123m and $89m respectively, realised over 35 years due to at least a 10% reduction in reoffending.

accordingly; the government is bound to be 'universal' in its agenda, without risk of potential conflicts of interests eg in attitudes to sexual orientation, race, religion, etc. where vulnerable young people are concerned.

27. The introduction of such an important service would normally and rationally begin with a transparent and inclusive consultative process to establish service needs, costs and options, followed by the development of a service design to meet those needs, and then, if necessary, the drafting of legislation to fit. This is back to front to say the least.

28. Moreover, the Bill provides no assurance or detail as to how the service will be funded, and therefore its sustainability remains in question.

29. NZNO strongly objects to the opaque and selective process under which the independent advocacy service is currently being developed and the lack of detail around funding.

30. We recommend the Committee require the Ministry of Social Development to follow due process and seek appropriate input into the development of the service and to clarify how it is to be funded sustainably.

Health and Social Services

31. Despite the holistic approach asserted in the principle s 5(g)[4], we take this opportunity to observe, as we have previously, that the focus of CYF legislation solely on the care and protection of identified at-risk C&YP is *reactive*, and *assumes* rather than mandates access to core health services that are essential to health and safety and the *prevention* of harm for all children.

32. An unfortunate consequence has been the development of separate health and social services that are not well aligned in terms of assessment, referral processes, communication and information sharing, workforce, standards etc. eg nurses often don't know what has happened to C&YP they have referred; referrals may not be acted on because the criteria CYFS uses are different and an at-risk health assessment may not be perceived as 'abuse' by CYFS or trigger the right interventions; there is duplication and missed care because reporting and communications systems vary and are not integrated.

[4] ie the principle that decisions affecting a child or young person should be made by adopting a holistic approach that takes into consideration, without limitation, the child's or young person's age, identity, cultural connections, education, and health.

33. Statutory duties relating to the health of vulnerable C&YPs ensure the provision of medical and psychological input in particular circumstances; however, the only regulated clinicians the Act identifies are medical practitioners and psychologists, and the legislation *does not provide for* the routine clinical assessment and access to professional primary health care[5] - including health education, screening, disease prevention and management - that at-risk CYPs have generally missed out on.

34. In practice, this often means that the opportunity to treat and manage health conditions to alleviate pain and reduce harm eg from respiratory illness, skin infections and oral decay, is not guaranteed and may be missed, compounding the disadvantages that highly vulnerable C&YP are subject to. And, on the other hand, children assessed as at-risk by health professionals may not reach the threshold of abuse and deprivation (based on a different set of indicators) needed to trigger CYFS intervention.

35. In both cases, opportunities for early intervention and efficient use of workforce resources are impeded. Social workers are not clinicians and cannot be expected to recognise, assess, or manage health conditions and health risks that are often not visible or apparent. Conversely, health practitioners cannot address the broader range of social issues - family violence, housing, employment, drug and addiction, transience etc. - that social workers manage. Health and social workers have different, but complementary, skillsets and scopes of practices.

36. Recent attempts to 'bridge the divide', for instance with the Children's Teams, have, in fact, highlighted the division. There are serious concerns with the gross underestimation of the FTE required to coordinate services[6], lack of safety for both at-risk C&YP, and the naïve expectation that no extra resourcing was required for what is essentially an entirely new service and way of working[7].

37. While the children's teams are part of the $60m (2013-2019) implementation of the Vulnerable Children's Act, the example set and the prospect of an equally unknown future in the *Investing in New*

[5] See NZNO. 2011. *Manifesto 2011*. Challenge one: Universal primary health care, p17-22.
[6] Eg a recent analysis at Waikato DHB indicated that on average for every 1.0 FTE that lead professionals are required to commit to CT work, 2.8 FTE is required?
[7] Eg The response to funding concerns expressed in the Canterbury Children's Team Survey of Canterbury Lead Professionals was that this work "is expected to be provided through the usual channels"[7].

Zealand's Children and Their Families[8] programme of CYFS reform, is acutely concerning.

38. The Cabinet papers outlining the *Proposed Blueprint for Reform and Implementation*[9] appear to retain the same narrow focus on children at risk, without any provision for a shared understanding in core public services of what that means; are based on an unproven actuarial investment model based on assessment of future liability[10]; and foreshadow the reallocation of $421m (2016-2019) funding from agencies, including Ministry of Health, to contribute the programme.

39. There is a significant risk of devolving responsibility for state services and care to other organisations that are unlikely to be adequately funded for service delivery, let alone for timely, nationally consistent and rigorous evaluation. This could lead to the dismantling of much of the existing structure, without having a robust, sustainable and evidence-based alternative in place.

40. Such a precipitate, one-way process based on flawed and untested funding and care models will be extremely difficult to reverse. The power rests with the State - not only for C&YP, but for any agencies considering entering into contractual obligations to carry out delegated functions or powers.

41. Moreover, no amount of restructuring without adequate resourcing will improve outcomes for vulnerable C&YP or service performance. NZNO's concern is that the Bill enables services to be contracted out without robust provisions for quality and safety, and without addressing the real barriers to collaboration between services.

Delegation of duties

42. As it stands, the Bill is somewhat vague, and even contradictory, about contractual obligations, key functions, delegation and appropriate professional involvement.

43. For example, with regard to delegation by the chief executive (s 7), it is not clear what the proposed "contractual obligations that are sufficient to support the appropriate exercise of the delegation" for a person outside the State services (clause 7C(2)(b)) might entail.

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[8] MSD Investing in children and their families webpage: https://www.msd.govt.nz/about-msd-and-our-work/work-programmes/investing-in-children/#FinalReportoftheExpertPanelonModernisingChildYouthandFamily1
[9] Ibid
[10] Though ostensibly there is the potential to quantify the value in the long term of early intervention, it is highly dependent on the assumptions entered and this is largely untested.

44. It risks including all the responsibilities for carrying out the 'functions or powers of the Act' outlined in cl 7A(1), but without the same degree of resourcing or support for equivalent practices in public services eg regular access to individual clinical/professional supervision; ensuring the safety of workers completing tasks (assessments, investigations, etc) during home visits by providing for two staff to attend such visits; etc.

45. These risks are very apparent in some privately provided health services (eg aged care and mental health) where new nursing graduates do not have access to the mentoring and support of a Nurse Entry to Practice programme offered by DHBs. Adverse consequences include lower retention rates, more referrals to Nursing Council and increased risks to clients. This is not something that should be permitted with services for vulnerable children and young people, particularly since those delegated to will have good faith immunity from liability in civil proceedings (cl 7D).

46. The bill must provide for robust and transparent processes that ensure the integrity, ie the quality and safety, of services protecting vulnerable C&YP.

Interpretation – other professionals, health professionals

47. We support the chief executive being responsible for the delegation of powers or functions to both social workers and to persons who are not social workers, but parameters must be put on both. The interpretation for social worker in the Act is so broad as to be almost meaningless, and the requirements for persons who are not social workers in cl 7C(a) is similarly vague - “appropriately qualified… taking into account interpersonal skills, training, experience”.

48. We appreciate the need to be inclusive, but the exercise of statutory powers and functions affecting vulnerable C&YP requires a high level of competence and accountability. We **strongly recommend** the Bill is amended to ensure more robust workforce specifications, eg that professionals be members of regulated professions who are required to demonstrate professional competence and are bound by professional codes of conduct.

49. We understand that social workers are not currently regulated, but soon will be; we support mandatory regulation of social workers and the bill should allow for this and at least stipulate social workers are registered. The quality of social services whether publicly provided or contracted out to private commercial or community providers is a reflection of the quality ie skills, education, training, and qualifications of the workforce.

50. We take this opportunity to reiterate the recommendation in our recent submission on the Social Service Legislation Rewrite Bill (2016)[11], that with regard to the health professionals, legislation should refer to health practitioners as defined by section 5(1) of the Health Practitioners Competence Assurance Act 2003, as is consistent with current and anticipated legislation eg Health Practitioners (Replacement of References to Medical Practitioners) Amendment Bill and current practice. There are sufficient protections using other regulatory instruments to identify appropriate health practitioner groups for specific statutory functions, including nurses and other professionals who are have specific and major roles in services for C&YP, including those at risk.

51. While we support utilising a broader range of professionals for work with C&YP, we also note the potential risk of adding complexity and confusion to a highly demanding area of service need.

52. For example, the Bill's provision may affect Public Health Nurses (PHNs) who have child protection functions within a C&YP team, but do not have statutory authority. Having the statutory authority changes the nature of the relationships for PHNs especially if they are visiting vulnerable children who might be "uplifted". It may affect whether or not they are able to get access to children. Ie to some extent, not having statutory authority protects the integrity of the therapeutic relationship between child, caregiver and nurse. This can be an important factor in maintaining a vital link with vulnerable C&YP who are often transient and difficult to monitor as they may live with various relatives under different names.

53. On the other hand, we recognise the advantage of being able to act immediately when a child or young person is in immediate danger. Nurses working with children are often angry and frustrated by their inability to act to protect the welfare of vulnerable children, and/or to communicate with professionals in other services to ensure coherent care.

54. Consideration must be given to the impact that broadening the range of skilled professionals with statutory authority will have on C&YP, their families and whānau, inter-professional relationships and existing social service systems.

Public notification

55. We have strong reservations about provisions for public notification. Cl 7D(1) (1) says that "delegations … must be publicly notified and on the

[11] http://www.nzno.org.nz/Portals/0/Files/Documents/Activities/Submissions/2016-06%20SS_Legn_Rewrite_Bill_NZNO.pdf

internet" but there is no apparent consequence for non-compliance as 7D(3) states "a failure to notify does not affect its validity".

56. Notification via a website is NOT sufficient on its own to communicate any change in obligations by CYFS or other professionals to children, parents, families, whānau and other professionals engaged in supporting the child/family, and also the wider public.

57. Children, parents, families and whānau may engage with other professionals – e.g. those from existing organisations providing services that support families – quite differently than with CYFS social workers, and they may also not expect the other professionals to be delegated any of the same authorities that CYFS have.

58. NZNO notes the similarity of this provision to the new statutory power to make financial deductions without consent introduced in the Social Services legislation Rewrite Bill. The effect of both is to effectively disenfranchise vulnerable consumers from the public services supposed to protect them, on the spurious grounds of expediency.

59. We recommend that this clause is amended to ensure fair and robust communication of any change in obligations by CYFS to service users.

Information

60. Some clarification would be useful for how to manage special treatment of health information (subject to requirements of the Health Information Privacy Code[12]) when communicating with any other professionals or CYFS (e.g. the use of the unique identifier - NHI).

CONCLUSION

61. In conclusion, while NZNO **supports** the Bill's intentions in principle, we are apprehensive about the basis and direction of the comprehensive reforms proposed for CYFS. These appear to be less about collaboration and integration between public services to ensure care and protection of vulnerable C&YP, and more about the devolution of public health and social services.

62. We urge the Committee to consider that the most significant systems barriers to efficient, proactive assurance of the care and protection of C&YP at risk are the lack of a shared understanding between child welfare, health, education, and youth justice systems; lack of

[12] Privacy Commissioner Website: https://www.privacy.org.nz/the-privacy-act-and-codes/codes-of-practice/health-information-privacy-code/

integrated reporting and communication pathways; and lack of workforce and other resources such as housing, income etc.

63. These are remediable, without the need for 'disruptive innovation' or experimental models. Our social security system is based on recognition and respect for all people, regardless of their circumstances, ie universal human rights, not charity. It must be maintained by strong and competent public services that are underpinned by statutory obligations that ensure quality and safety.

64. The Bill must reference proven regulatory structures that assure the competence of professionals; security of information; clarity of statutory duties and delegation; and the safety of workers.

65. We recommend that you:

- **extend** the definition of young person in all circumstances, to be someone under 18 years of age;
- **ensure** transparent funding and contractual provisions for all services, including the independent advisory service;
- **require** the Ministry of Social Development to follow due process and seek appropriate input into the development of the service and to clarify how it is to be funded sustainably;
- **amend** references to health practitioners to be consistent with the interpretation of health practitioners as defined by section 5(1) of the Health Practitioners Competence Assurance Act 2003;
- **ensure** robust provisions for the competence of social workers and other professions to whom statutory duties are delegated eg by referencing regulation, registration
- **note** NZNO supports the regulation of social workers;
- **specify** the *requirement* for health assessment and ongoing access to health care as integral to agencies' responsibilities for the wellbeing of vulnerable C&YP
- **require** coordinated health and C&YP care and protection services to improve outcomes, reduce duplication and improve quality and safety, including the safety of workers all social workers and other professionals
- **require** robust communication of delegation and changes in obligations to consumers by using all relevant forms of communication, not just the internet; and

- **clarify** treatment of confidential health and other information.

66. NZNO would like to make an oral submission.

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